

LAW OF THE KYRGYZ REPUBLIC “ON EMPLOYEE’S INVENTIONS, UTILITY MODELS AND INDUSTRIAL DESIGNS”

Bishkek

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Law of the Kyrgyz Republic

“On Employee’s Inventions, Utility Models and Industrial Designs”

(Version of the Law # 46 of the Kyrgyz Republic of February 27, 2003)

Article 1. Subject of Regulation

The present Law shall regulate relationships, which arise between employer and employee in connection with creation and use of employee’s inventions, utility models and industrial designs.

Provisions of this Law shall cover the employee’s inventions, utility models and industrial designs created in the enterprises, institutions, organizations (hereinafter referred to as organization) of any kinds of property.

Article 2. General Concepts

For the purposes of this Law the terms mentioned below mean the following:

Employer – legal entity or natural person, which according to the Law has a right to conclude and terminate a work contract with employee;

Employer – author or authors (hereinafter referred to as author) of the employee’s invention, utility model or industrial design, which is in employment (office) relationships (including off-hour job) with employer in accordance with Law of the Kyrgyz Republic;

Assignee of the employer – legal entity or natural person who on legal grounds obtained from an employer a right to file an application for granting of the patent for employee’s invention, employee’s utility model or patent for employee’s industrial utility model (hereinafter referred to as title of protection) or right to receive a title of protection on filed application or for title of protection;

Employee’s inventions, utility models and industrial designs – inventions, utility models and industrial designs created by the employee during effective employment (office) duties which are determined by official instructions, provisions on structural subdivisions, statutes of the organizations and other similar documents or during execution of particular task of the employer, fixed in appropriate documentation with

which an employee has been familiarized before creation of employee's invention, utility model or industrial design.

Article 3. Legislation of the Kyrgyz Republic on Employee's Inventions, Utility Models and Industrial Designs

The legislation of the Kyrgyz Republic on employee's inventions, utility models and industrial designs consists of the Civil Code of the Kyrgyz Republic, Patent Law of the Kyrgyz Republic, the present Law and other normative and legal acts of the Kyrgyz Republic.

Article 4. Inventions, Utility Models and Industrial Designs, which are not recognized as Employee's ones

The following inventions, utility models and industrial designs shall not be recognized as employee's ones:

Created by the authors during execution of the work on the basis of civil agreements concluded;

Created by the employees which employment (office) duties or particular tasks do not include a work on creation of inventions, utility models or industrial designs.

Article 5. Rights for Employee's Inventions, Utility Models and Industrial Designs

1.

The right for filing of the application and receiving of title of protection for employee's inventions, utility models and industrial designs belongs to employer if otherwise is not provided by the agreement between him and employee.

The author shall reserve an authorship right and other personal non-property rights. He shall also have a right for remuneration.

1.

The rights for inventions, utility models and industrial designs mentioned in Article 4 of this Law belong to authors.

2.

The right for inventions, utility models and industrial designs created by using of the information, experience, material, technical and other recourses of the employer but not due to execution by the employee of employment (office) duties or of particular task of the employer shall belong to employee if otherwise is not

provided by work contract. In this case an employer has a right to use employee's invention, utility model and industrial design in his own production provided that appropriate compensation is paid to the owner of protective document on a contractual basis.

3.

In the event that employee's inventions, utility models or industrial designs are created by joint creative work of several authors, including a person who is not employee of the organization in which it has been created, the authority of such person shall be determined by an agreement concluded by him with organization and other authors.

Article 6. Notification of the Employer on Creation of Employee's Invention, Utility Model and Industrial Design

An employee who has created an employee's invention, utility model or industrial design is obliged to notify his employer in writing within one month since the day of creation of the invention, utility model or industrial design. A notification should be signed by employee and contain a description of created object which is sufficient for registration of the application for employee's invention, utility model or industrial design. Notification shall be also made in cases provided by paragraphs 3 and 4 of this Law.

Article 7. Consideration by the Employer of the Notification on Creation of Employee's Invention, Utility Model and Industrial Design

1.

A notification concerning creation of employee's invention, utility model or industrial design should be registered by the employer at the day of filing of the said notification and employee should be notified in writing.

2.

The employer within four-month-period since the date of receiving of the notification concerning creation of employee's invention, utility model or industrial design is obliged to submit an application to the authorized state body of the Kyrgyz Republic in the field of Intellectual Property (hereinafter referred to as Kyrgyzpatent) or to assign a right for filing of application and receiving of title of protection in favor of other person including an author of created employee's invention, utility model and industrial design or to make a decision on keeping in secret of its content and inform in writing the author a decision made.

If employer or his assignee within four months since the date of notification shall not submit an application to Kyrgyzpatent, shall not assign a right for filing of the application and receiving of title of protection in favor of author or other person and shall not inform the author concerning necessity of keeping of contents of the invention, utility model and industrial design in secret, the author shall have a right to submit an application to Kyrgyzpatent and receive a title of protection in his name. In this case an employer may use an employee's invention, utility model and industrial design in his own production, provided that relevant compensation determined on a contractual basis is paid to the owner of protective document

1.

In the event that notification signed by employee in accordance with Article 6 of this Law does not contain information, which is necessary for application registration, it can be requested within one month since the date of receiving of the notification. In this case the flow of the term mentioned in paragraph 2 of this Article shall stopped and recommenced upon receiving of requested information.

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Article 8. Right of the Author for Remuneration

1.

An author of the employee's invention, utility model and industrial design, the rights for which belong to employer or his assignee (if the said assignee is not an author), has a right for remuneration. An employer is obliged to conclude an agreement with author on amount and conditions of payment of such remuneration no later than term mentioned in paragraph 2 of this Law shall expired.

In the event that employer deviates from conclusion of the agreement on payment of relevant remuneration, the author shall have a right to go to the law with claim on payment of remuneration.

1.

An author of the employee's invention, utility model and industrial design, the rights for which belong to employer or his assignee, within one month since the date of receiving of title of protection, shall receive incentive remuneration which is paid by the employer. Amount of such remuneration for one employee's invention, one utility model or one industrial design irrespective of the authors' quantity must be no less than 10 minimal salaries established by the Law of the Kyrgyz Republic as for the date of making of payment.

2.

A remuneration for use of the employee's invention, utility model and industrial design within effective terms of title of protection issued to the employer or to his assignee, shall be paid by the employer to author at the rate and conditions determined by the agreement. In the event that agreement shall not be concluded, the decision shall be made by the court. If it is impossible to estimate contributions of the author and employer to creation of the employee's invention, utility model or industrial design, the author has a right to receive a half of benefit which employer shall or would receive.

3.

Provisions of paragraph 3 of this Article are also applied during using by employer of the employee's invention, utility model or industrial design in which respect he made a decision on keeping its contents in secret or when a title of protection is not granted due to the reasons depending on employer as well as when the rights for its use to other person are transmitted.

4.

Remuneration shall paid to the author no later than three months after expiration of each year in which the employee's invention, utility model and industrial design have been used and no later than one month after receipt of revenues from license sale.

For late payment of remunerations a guilty owner of protective document shall pay penalties to the author for each day of delinquency at the rate of 0.5 per cent of the amount to be paid.

6.

When employee's invention, utility model and industrial design is not used by the employer and right for its using is not transferred to other person, who wishes and ready to realize use within four years since the date of granting of title of protection for employee's invention or industrial design and within three years since the date of granting of the patent for utility model, employer shall pay remuneration if otherwise is not provided by the agreement. In this case the remuneration is paid once only and is made within three months after expiration of the said terms. Amount of the remuneration for one employee's invention, one utility model and one industrial design irrespective of the authors' quantity must be no less than 10 minimal salaries established by the Law of the Kyrgyz Republic as for the date of making of payment.

7.

When employee's invention, utility model and industrial design, in which respect the employer made a decision on keeping its contents in secret, is not used an author shall receive a lump-sum payment no later than one year since appropriate decision is made. Amount of the remuneration for one employee's invention, one utility model and one industrial design irrespective of the authors' quantity must be no less

than 20 minimal salaries established by the Law of the Kyrgyz Republic as for the date of making of payment.

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Article 9. Right of the Author for Getting of the Title of Protection for the Employee's Invention, Utility Model and Industrial Design

1.

In case of loss of interest for receiving of title of protection after filing of the application its issuance or maintenance, the employer or his assignee is obliged in proper time to offer to the author of the employee's invention, utility model or industrial design a free assignation of the rights for getting of title of protection or title of protection respectively.

2.

When employer or his assignee concedes the protective documents or rights for its receiving, author has a prior right for purchase of title of protection or right for its getting on the same conditions. At that, provisions on prior purchase right of the Civil Code of the Kyrgyz Republic are applied.

Article 10. Ineffectiveness of the Agreement Conditions impairing Employee's Status

Conditions of the agreement of the employee's invention, utility model and industrial design, which are impairing employee's status in comparison with this Law are considered ineffective.

Article 11. Patenting of the Employee's Invention, Utility Model and Industrial Design

A right for patenting of the employee's invention, utility model and industrial design in the foreign countries belong to the employer if otherwise is not provided by the agreement between him and employee.

Article 12. Secret Employee's Inventions, Utility Models and Industrial Designs

Regulation of the employee's inventions, utility models and industrial designs recognized by the State as secret ones is realized by the Law of the Kyrgyz Republic on secret inventions, utility models and industrial designs.

Article 13. Employee's Inventions, Utility Models and Industrial Designs created as a result of the Government Contractual Work

1.

A right for filing of the application and getting of title of protection for the employee's inventions, utility models and industrial designs created in an organization as a result of execution of the agreement which is financed at the expense of the state budget, shall belong to such organization, if otherwise is not provided by the agreement between customer and organization.

2.

An organization shall provide a state customer with the information regarding all employee's inventions, utility models and industrial designs, created in an organization as a result of execution of the agreement, which is financed at the expense of the state budget.

3.

Upon request of the state customer the owner of the title of protection shall provide a producer of arms and defense technology for the execution of the state defense contractual work with nonexclusive royalty-free license for full effective period of the title of protection for use of the employee's invention, utility model and industrial design created during execution of the agreement on development of arms and defense technology financed at the expense of the state budget.

In this case payment of remuneration to the employee shall be made at the expense of state customer assets.

1.

Grant of licenses for employee's inventions, utility models and industrial designs created during execution of the agreement on development of arms and defense technology financed at the expense of the state budget is made by the owner of the protective document to the third parties, by authority of the state customer.

Article 14. Privacy Observance

Both employee and employer are obliged to refrain from any uncoordinated disclosure of the information concerning employee's invention, utility model or industrial design before date of the publication of the information on granting of the patent for employee's invention, industrial design or information on granting of the patent for utility model.

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Article 15. Liability for Non-observance of the Present Law

Non-observance of the requirements of this Law in respect of notification by the employee of the employer on created employee's invention, utility model or industrial design as well as in respect of privacy observance shall involve a liability in accordance with the Law of the Kyrgyz Republic.

In the event that employer infringes the privacy requirements, the employer in accordance with Law of the Kyrgyz Republic shall reimburse the damage caused.

Article 16. Disputes Solution

Disputes related to application of this Law shall be considered in order established by legislation of the Kyrgyz Republic.

Article 17. In Respect of Entering into Effect of the present Law

1. To enter this Law into effect since the date of publication ("Erkin Too" # 66 August 13, 1999).
2. To harmonize the Governmental normative and legal acts in accordance with present Law.

President of the Kyrgyz Republic A. Akaev

Adopted by the Legislative Assembly

Of the Jogorku Kenesh of the Kyrgyz Republic July 15, 1999