Discover (or rediscover) Russian employment law

Your questions, our answers

Dechert LLP

About us

Dechert is a global specialist law firm. Focused on sectors with the greatest complexities, legal intricacies and highest regulatory demands, we excel in delivering practical commercial judgment and deep legal expertise for high-stakes matters. In an increasingly challenging environment, clients look to us to serve them in ways that are faster, sharper and leaner without compromising excellence. We are relentless in serving our clients – delivering the best of the firm to them with entrepreneurial energy and seamless collaboration in a way that is distinctively Dechert.

Dechert's labor and employment team has the ability to provide rapid, integrated solutions to any employment, benefits or labor matter. We work closely with companies of all sizes in virtually every industry to ensure that their interests are protected. Our lawyers navigate clients through the ever-changing landscape of federal, state and local laws and regulations governing the workplace, assisting them with structuring and implementing effective workplace policies and procedures, preserving their intellectual property, addressing the full range of labor and employment law issues, and guiding them through the challenges of litigation.

Dechert's Moscow office has advised numerous multinational companies on employment issues arising out of their operations in Russia, including:

- Compliance with labor law regulations and procedures.
- Top-level, mid-level and standard employment agreements.
- Guidelines for hiring and dismissal of staff, including advice regarding dismissal in specific instances (including redundancy) and reduction of personnel.
- Employee data privacy issues, including cross-border transfer of personal data.
- Management services agreements, temporary employment and independent contractor agreements.
- Personnel and compensation policies, including health and safety and nondiscrimination policies.
- Employee benefits and stock option programs.
- Employment disputes.

Is Russian employment law a codification of rules? Yes.

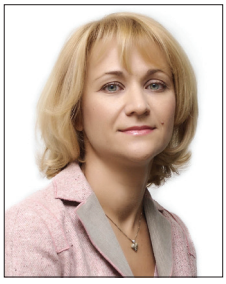
Is Russian employment law protective of employees? Yes.

Is Russian employment law complex? Certainly.

However, we would like to note that Russian employment law is similar to that of other countries in many ways.

Although relatively well-developed, Russian employment law has not yet been fully adapted to the constantly evolving market, and legislators are working to amend this. As a result, Russian employment law is constantly changing, which sometimes catches multinational companies off guard when seeking to establish operations in Russia.

This guide outlines several key aspects of Russian employment law, of which companies need to be most aware.



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Terms and conditions of employment

1. What are the main sources of Russian employment law?

The Labor Code of the Russian Federation (as amended) (the Labor Code) establishes the basis of employment relations in Russia. In addition, employment relations are regulated by the Constitution of the Russian Federation (the RF or Russia), federal laws and laws of the RF constituent regions, other normative acts, collective bargaining agreements, and an employer's internal regulations.

Russian labor law applies to all employees working in Russia (i.e. Russian citizens, foreign citizens, stateless persons). In addition to the Labor Code, the labor status of foreign citizens and stateless persons is regulated by Federal Law No. 115-FZ "On the Legal Status of Foreign Citizens in the Russian Federation", dated July 25, 2002 (as amended).

2. Do employment agreements have to be in writing?

Yes, an employment agreement must be in writing - i.e., signed by two parties in two originals, with one retained by the employer and one by the employee. An employer must execute an employment agreement with the relevant employee within 3 (three) business days of the employee commencing work. An employment agreement which has not been properly documented, for any reason, is considered to have entered into force if the employee has started working at the instruction of his employer (or that of his representative).

3. What are the types of employment agreements?

Employment agreements may be:

- Open-ended.
- Fixed-term but not exceeding 5 (five) years.

The general rule is that employment agreements must be entered into for an indefinite term. Fixed-term employment agreements may be entered into in a limited number of cases, as specified expressly in Article 59 of the Labor Code. Specifically, a fixed-term employment agreement may be concluded where an open-ended employment agreement is impossible (e.g. substitution for an employee who is absent temporarily, seasonal work, etc.) or by agreement of the parties with certain categories of employees (e.g. with a general director or chief accountant).

4. Are there any mandatory terms that must be included in an employment agreement and if so, what are they?

Yes, there are certain mandatory terms to be included in employment agreements (Article 57(3) of the Labor Code), namely:

- The employee's place of work.
- The employee's job function (with job description).
- The date of commencement of work or, if it is a fixed-term agreement, the effective period and the grounds for concluding a fixed-term employment agreement.
- The terms of remuneration.
- Working hours and breaks.
- Conditions at the workplace.
- Compensation for working under harmful (hazardous) conditions (if applicable).
- The nature of work.
- Terms of mandatory social insurance for the employee.
- Other terms and conditions contained in the employment law and other regulatory legislative acts containing employment law provisions.

In addition, employment agreements with foreign individuals must contain information on their (i) work permit, and (ii) voluntary medical insurance agreement (policy) valid within the RF territory.

5. Can a civil law contract be concluded with an individual, rather than an employment agreement? What is the difference between employees and contractors?

No. The Labor Code prohibits companies from concluding civil law contracts for the purpose of regulating

employment relations (Article 19.1 of the Labor Code). Violation of this prohibition may result in imposition of an administrative fine of up to RUB 100,000 on a company and of up to RUB 20,000 on a company's official.

It is necessary to distinguish between employees and contractors, i.e. individuals entering into civil law contracts for the purpose of regulating civil relations. There are a number of criteria for this distinction: (i) whether the employer's internal labor regulations apply or not; (ii) whether there are provisions providing for a payment procedure similar to the payment procedure of employees; (iii) whether any guarantees or other privileges (e.g. vacation, overtime payments, sick pay) are applicable; and (iv) whether automatic renewal of the civil law contract is possible at the end of the initial term.

A civil law contract may be reclassified as an employment agreement on the basis of a court decision or of a labor inspection order if it is found that "actual employment relations" were concluded between the parties to a civil law contract.

6. What statutory rights does the Labor Code provide to employees?

The Labor Code establishes mandatory minimum rights, guarantees and benefits for all employees, which apply irrespective of whether they are included in the relevant employment agreement. Any terms of an employment agreement that impair an employee's statutory rights, guarantees and benefits are not valid.

The Minimum Wage

An employee's salary must be paid in rubles no less than twice a month. A monthly salary may not be lower than the minimum monthly wage established by the RF law. There is a two–level system of minimum monthly wages: on the federal level (RUB 6,204 in 2016) and on the regional level (e.g. RUB 17,300 in Moscow in 2016).

The 40-hour working week

A normal working week cannot exceed 40 hours, irrespective of whether the employee works a five- or six-day week. Any additional time worked is recognized as overtime. Overtime work must not exceed four hours for each employee in two consecutive days and must not exceed 120 hours per year.

Paid Vacation, Public Holidays and Breaks in Work

Employees are entitled to a minimum of 28 calendar days of holiday per year. In addition, certain categories of employees, such as employees working an open-ended working day, are entitled to additional paid vacation of no less than three calendar days per year. Vacation allowance is to be paid at least three calendar days prior to the vacation.

There are also eight public holidays a year, namely:

- January 1-6 and 8 (New Year's Holidays).
- January 7 (Christmas).
- February 23 (Defenders of the Fatherland Day).
- March 8 (International Women's Day).
- May 1 (Holiday of Spring and Labor).
- May 9 (Victory Day).
- June 12 (Russia Day).
- November 4 (National Unity Day).

If a holiday falls on a weekend, the next business day after the public holiday will usually be a paid day off.

All employees must be provided with days off (two days off for a five-day week, and, one day off for a six-day week). Employees must be given a break for rest and meals during the working day. This break must not be less than 30 minutes and not more than two hours per day.

Paid Sick Leave

Employees are entitled to receive sick leave compensation for periods of sickness upon providing an employer with a medical certificate. An employer is obliged to pay an employee sick leave compensation for the first three days of sick leave only. Compensation for subsequent sick leave days is paid by the RF State Social Insurance Fund.

The amount of sick leave compensation depends on the grounds for sickness, term of employment and the employee's average salary.

7. What employment–related documents must the employer adopt?

The Labor Code requires that the employer must issue a number of employment-related documents, namely:

Internal regulations and policies. Currently, there are 6

(six) mandatory internal regulations:

- Internal labor rules and regulations.
- The employee remuneration system regulation.
- The regulation on processing personal data.
- The labor safety regulation.
- The staff schedule.
- The vacation schedule.

Internal orders on any matter related to employment (e.g. when an employee is hired, granted a vacation, paid a bonus, disciplined or dismissed, and in certain other cases).

8. In what cases may a probation period be established? What is the maximum term for a probation period?

A probation period is optional. The Labor Code stipulates the following maximum terms with respect to probation periods:

- No more than 6 (six) months for the general directors/heads of a company/branch office or a representative office (and their deputies), chief accountants (and their deputies).
- No more than 3 (three) months for other employees.

The term of the probation period must be expressly specified in the employment agreement.

Some categories of employee cannot be subjected to a probation period, namely:

- Pregnant women.
- Women with children younger than one and a half years.
- Students within one year of graduation from a university or institution of secondary education.

Maternity leave and parental rights

1. How long does maternity leave last?

Female employees are entitled to maternity leave for a period of 70 calendar days (84 days in case of a multiple pregnancy) before and 70 calendar days (86 days in case of complications with the birth and 110 days in case of a multiple pregnancy) after childbirth.

2. What rights does a woman have during maternity leave?

Employees on maternity leave are given compensation by the RF State Social Insurance Fund. The maternity leave compensation consists of 100% of the employee's average earnings for the two years preceding the maternity leave.

Pregnant women and those on maternity leave may not be dismissed at the employer's initiative, except in the event that the employer goes into liquidation.

In addition, pregnant women are prohibited from working overtime, night shifts, on weekends and on public holidays.

3. Do fathers have the right to take paternity leave?

Yes, fathers have the right to take paternity leave if the mother of the child has not taken maternity leave. Two parents cannot use paternity/maternity leave simultaneously.[1] In addition, the father of a newborn child may take up to five calendar days (as unpaid vacation) upon the birth of the child (Article 128 of the Labor Code).

4. Are there any other rights that employers have to observe?

Parental rights

Mothers, father, guardians, other relatives and persons who are providing care for a child may take parental leave until the child reaches the age of three. The parental leave can be taken in full or in part. In addition, employees can work part-time or at home until the child reaches the age of three (Article 256 of the Labor Code).

1 According to the predominant court practice position (e.g. Resolution No. 3-P of the RF Constitutional Court, dated February 6, 2009)

Adoption rights

Employees (both male and female) adopting a single child are entitled to leave of up to 70 calendar days, while those adopting two or more children are entitled to up to 110 calendar days. An employee can request unpaid leave until the child (or children) is three years old in this instance.

Carers' rights

A carer is a person who takes care of a sick family member. These employees cannot be forced to work overtime, on public holidays or night shifts, or to go on a business trip without their written consent.

An employer is obliged to establish a part-time working day or a part-time working week at the request of a person who is caring for a sick member of the family.

Ban on the dismissal of so-called "protected employees"

Article 264(4) of the Labor Code protects the following categories of employees from dismissal:

- Women with a child under three years of age.
- A single mother[2] raising a small child up to the age of 14 (or a disabled child up to the age of 18).
- A father (or a guardian) raising a child under 14 years of age (or a disabled child under 18 years of age).
- A parent who is the sole breadwinner of a family with a child under 3 years of age in a family with three or more minors (i.e. up to 14 years of age), if the other parent (other legal representative of the child) is not employed.

Preemptive right to be retained

Persons in a family where there are two or more dependants (i.e. family members who are unable to work and who are fully supported by the working family member, or who receive help from a working family member who is their permanent and main source of income) are preemptively entitled to be retained in their position in the event that the agreement of one employee is to be terminated among several employees with identical positions (Article 179 of the Labor Code).

2 According to the clarification of the RF Supreme Court No. 1, dated January 28, 2014, the term "single mother" refers to a woman who is the only person actually performing parental duties in respect of the education and development of her children.

Employment of foreign individuals

1. What permits and authorization are required for a foreigner to work in Russia?

Visas, Work Permits and Patents

The required approvals and the procedure depend on whether a foreign individual requires a Russian visa to enter Russia. In accordance with this criterion, foreign employees can be divided into two groups:

- **Foreign employees entering Russia on the basis of a visa-free regime**[3]
  Foreign employees, who are citizens of visa-free countries are required to obtain a work patent in order to be legally employed in Russia. In order to obtain a work patent, a foreign employee must apply to the relevant authority (as specified below) within 30 days of entering Russia and provide various documents (e.g. certificate of knowledge of the Russian language, voluntary medical insurance agreement (policy), etc.).
- **Other foreign employees**
  Foreign employees from other countries are required to obtain a Russian visa and a work permit.

Under the general procedure, in order to employ a foreign individual, the employer must: (a) file an application for a quota to use a foreign workforce; (b) obtain a permit to hire a foreign employee; (c) assist the foreign individual with obtaining an individual work permit and work visa.

3 Citizens of Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Moldova, Uzbekistan, Armenia and Azerbaijan.

Other requirements

A foreign employee (with certain exceptions) must confirm his knowledge of the Russian language, history and basic legal framework to the authorized state authority - the RF Ministry of Internal Affairs (the MVD), which superseded the Federal Migration Service (abolished in April 2016), within 30 (thirty) days of entering Russia.

In addition, foreign individuals employed at representative offices and branches of foreign companies are required to obtain a personal accreditation card from the accrediting body (i.e. the RF Chamber of Commerce and Industry).

2. Is there a simplified procedure for obtaining a work permit?

Yes, there is a simplified procedure available for special categories of foreign employees.

"Highly qualified specialists" ("HQS")

The main criterion for recognition of a foreign employee as an HQS is their monthly salary. Generally, for companies and accredited branches/representative offices of foreign companies in Russia, this criterion is set to be no less than RUB 167,000 per month. For HQS, it takes up to 14 (fourteen) business days to obtain a work permit (as opposed to three-four months for standard employees). The term of a work permit may not exceed three years with a possibility of multiple extensions for a period not exceeding three years each time. Employers engaging an HQS are not required to apply for quotas to use a foreign workforce or to obtain permits to hire foreign individuals.

Russian companies and representative offices/branches of foreign companies have the right to employ HQS.

"Key personnel"

Representative offices, branches and subsidiaries of foreign companies have the right to engage certain foreign employees deemed "key personnel" (e.g. CEOs, general directors) who have been employed at the head office of a foreign company, which is a member of the WTO, for at least one year at the representative office/branch or a subsidiary. These employees are provided with work visas for a period of up to three years (with the possibility of extending it for another three-year term). The statutory term for these employees to obtain a work permit is 30 (thirty) business days.

3. What are an employer's obligations with respect to employment of foreign employees?

The Labor Code applies to any employees working in Russia, including foreign employees. All employees are required to have an employment agreement and a labor book: a record documenting an employee's work experience.

Following commencement of a foreign employee's employment, an employer must:

- Report to the MVD on the conclusion and termination of employment agreements or civil law contracts with foreign individuals (including those foreigners who work on the basis of an international agreement or an agreement of the RF, i.e. without a work permit or a patent) within three business days of the conclusion or termination.
- Notify the MVD of the salary payable to the HQS on a quarterly basis.
- Notify the MVD if a foreign citizen who occupies the position of an HQS has been given unpaid vacation for more than one month in a year within 3 (three) business days.
- Provide a foreign individual with voluntary medical insurance by entering into an insurance agreement with a Russian insurance company on the provision of voluntary medical insurance.

Legal regulations regarding secondments in Russia

1. How are secondment arrangements regulated?

Secondment arrangements have been widely used for many years in Russia and recognized by the RF Tax Code, however, the Labor Code and migration legislation have remained silent in this respect. In the absence of proper legislation, secondment arrangements were sometimes used to circumvent the employer's obligation to make contributions to Russian social funds and provide guarantees to the employees. To address this problem, in May 2014, the Labor Code was supplemented with a chapter 53.1 which:

- As of January 1, 2016, prohibited so-called "loaned labor" (in Russian: **заемный труд**) – i.e., work performed by an employee at the instruction of his/her employer and for the benefit of, and under the supervision and control of a third party (a receiving company/individual).
- Introduced a concept of "provision of personnel by accredited agencies" (Article 341.2 of the Labor Code) and secondment.[4]

2. In what circumstances are provision of personnel and secondments allowed?

As of January 1, 2016, provision of personnel and secondments are allowed for the following companies only:

- (i) duly accredited private employment agencies (PEA). To be accredited, a PEA must satisfy a number of requirements established by the RF Government (a charter capital of at least RUB 1 million, no outstanding tax debt, subject to the general tax regime, etc.); and
- (ii) any other legal entities, including foreign legal entities and their affiliates (i.e. the seconding entity) that second their employees to:
  - An affiliate.
  - A joint-stock company, if the seconding entity is party to a shareholders agreement on the exercise of rights to shares in the joint-stock company.
  - A legal entity that is a party to a shareholders agreement with the seconding entity.

3. What are the general terms and conditions of provision of personnel?

Provision of personnel is possible under the following conditions:

- The employee agrees with the upcoming transfer to the receiving party.
- The relevant civil law contract between the client (the receiving party) and the seconding party is executed.
- The employee works on behalf of and under management and supervision of the receiving party.
- The receiving party ensures labor safety for the employee.
- The employee's payment conditions are similar to those of employees of the receiving party.

4. Are there any restrictions on provision of personnel by a PEA?

Yes. A PEA can provide personnel to the receiving party for the following purposes only:

- To fill positions left open by employees who are absent temporarily.
- To assist with an increased workload related to an expansion of production or of the scope of services, which is known to be temporary (for a period of up to nine months).
- To provide temporary employment to certain categories of persons (full-time students, single parents, those raising multiple minors, etc.).

4 A separate federal law regulating secondment between legal entities will be adopted soon. The RF Ministry of Economic Development has prepared a draft law on secondment between legal entities and has presented it to the RF Government for its consideration.

5. When are provision of personnel and secondment not allowed?

Provision of personnel and secondment, inter alia, are not allowed for the following purposes:

- To replace employees engaged in a strike.
- To perform work at an idle time or during bankruptcy proceedings, the introduction of a part-time employment regime to deal with the possible collective resignation of the workforce.
- To replace employees who refuse to perform work in cases set forth by labor law.
- To perform certain types of work at sites classified as hazardous facilities (hazard class I and II).
- To perform work at workplaces with harmful (hazard level 3 or 4) or hazardous labor conditions.

Trade unions and collective bargaining

1. What is the main legislation relating to trade union relations and collective bargaining in Russia?

Freedom of association is guaranteed by the RF Constitution: everyone has the right to association, including the right to establish trade unions in order to protect their interests. The Labor Code and Federal Law No. 10-FZ, "On Trade Unions, Their Rights and Guarantees for their Activity", dated January 12, 1996 constitute the principal legislation on trade unions and collective bargaining.

2. What types of trade unions may be established in Russia?

All employees have the right to establish trade unions.

There are several types of trade unions:

- A primary trade union organization: a voluntary association of trade union members, working within the same employer.
- The all-Russia Trade Union.
- The all-Russia Association of the Trade Unions.
- An interregional trade union.
- An interregional association of trade union organizations.
- A territorial association of he trade union organizations: a voluntary association of the trade union organizations, operating within the territory of one RF region or in the territory of a city/district.
- A territorial trade union organization: a voluntary association of members of the primary trade union organizations of one and the same trade union, operating within the territory of one RF region, or in the territory of several RF regions, or in the territory of a city/district.

3. What rights do trade unions exercise?

Among others, trade unions are entitled to:

- Represent and protect the rights and legitimate interests of employees.
- Exercise control over maintaining a set of rules pertaining to labor and the fulfillment of the conditions of the collective bargaining or industrial agreements.
- Carry on collective negotiations, conclude collective agreements.
- Participate in the regulation of collective labor disputes.
- Propose and provide opinions on draft laws concerning the employment rights of individuals.
- Participate in developing state employment programs, participate in the consideration of their proposals by the state authorities.
- Propose measures for the social protection of trade union members.

4. In what circumstances is an employer obliged to consider the opinion of a trade union?

An employer is obliged to consider the opinion of a trade union in certain cases, namely:

- Staff redundancy.

– Dismissal of employees at the employer's initiative.
– Approval of internal regulation, etc.

In the absence of a trade union, the employer is not obliged to request its opinion regarding those matters where the Labor Code would otherwise require it.

5. Are employers obliged to conclude collective agreements?

It is not mandatory for employers to conclude collective agreements. The majority of employers do not conclude collective agreements.

Collective agreements (in Russian: коллективные соглашения) are concluded between representatives of the employers and employees at the federal, regional and territorial level, and at the level of a particular industry. A collective agreement within a particular industry can also be concluded at the federal, regional and territorial levels. Collective agreements may be entered into for a term up to 3 (three) years and extended by up to three more years but only once (Article 48 of the Labor Code).

Collective bargaining agreements (in Russian: коллективные договоры) are entered into at the level of a particular company (or its subdivision) or individual entrepreneur. The employer is not obliged to enter into a collective bargaining agreement; however, the employer is obliged to participate in negotiations to enter into this agreement (Article 36 of the Labor Code).

Termination of employment

1. What are the grounds for termination of employment?

Under Russian employment law, an employment agreement may be terminated on specific grounds, including:

– Mutual agreement.
– Employee's or employer's initiative.
– Expiration of fixed-term employment agreement.
– Other specific grounds listed in Article 77 of the Labor Code.

2. What is the procedure for termination of employment at the initiative of an employee?

An employee may terminate an employment agreement at any time by providing two weeks' written notice (or one month for an employee, who is head (a general director) of a company, branch or representative office of a foreign company). The agreement may be terminated prior to the expiration of the aforementioned notice period with the mutual consent of the employee and employer.

The Labor Code stipulates detailed procedures for terminating employment. Such procedures differ depending on the grounds for termination. On the day of termination, the employer must return the labor book to the employee. Salary, compensation for unused vacation (and other compensation, if any is applicable) must also be paid out on the last working day.

3. What are the grounds for dismissal of an employee at the employer's initiative?

The employment agreement can be terminated by the employer on the basis of an exhaustive list of grounds specified in Article 81 of the Labor Code only. This list applies to all employees (including the heads of companies and similar categories of employees provided that their employment agreements contain additional contractual termination grounds not specified by the Labor Code).

In particular, the employer may terminate the employment:

– Pursuant to a redundancy procedure or in the event of the company's liquidation.
– For incapacity/incompetence due to the employee's bad health or insufficient qualifications.
– For repeated non-performance of employment obligations without valid cause when one disciplinary sanction has already been in effect against the employee.
– For a single gross violation of an employment agreement by an employee (e.g. absence from work without valid cause for a period of four consecutive

hours during one business day, appearance at work in a state of intoxication, etc.).

– During the probation period upon providing three days' notice in writing specifying the reasons for the employee failing to pass the probation period.
– For other rarely invoked grounds.

4. What categories of employees cannot be dismissed?

It is generally prohibited to dismiss:

– An employee who is on sick leave or on vacation.
– A pregnant woman except in the event of a company's liquidation (or termination of the activity of the employer who is an individual entrepreneur).
– A woman with children under three years of age, except in the event of the employer's liquidation.
– Single mothers who have a child under 14 (fourteen) years (or disabled children under 18 years) and single fathers (save for certain exceptions), except in the event of the employer's liquidation.

5. What rights do employees have when their employment agreement is terminated?

Liquidation and redundancy

The Labor Code requires that the employee should be notified of his/her redundancy at least two months prior to the termination date. During this period, the employee should perform his/her duties as usual (please note that the two-month period can be replaced with two months' salary upon the written request of the employee). On the termination date, the employee will be entitled to receive the outstanding salary, as well as compensation for unused vacation days, other outstanding amounts (if any) and a severance payment in the amount of one month's salary.

If the employee is not employed one month after the date of termination, the employee will be entitled to another severance payment in the amount of one month's salary. If the employee is still unemployed two months after the date of termination, he/she would be entitled to receive one more severance payment in the amount of one month's salary (provided, however, that the employee registered with the Employment Services within two weeks of the date of termination). Thus, the maximum severance payment is three months' salary.

"Golden" Parachutes

Severance payments in state-owned companies (companies in which the government holds a 50%+ share) and state agencies are limited to a sum equal to three months of the average salary for CEOs, deputy CEOs, chief accountants and members of collegiate executive bodies.

Furthermore, all categories of employee may no longer receive severance packages in instances where his/her employment agreement was terminated due to misconduct or the imposition of disciplinary sanctions.

Processing employee data

1. How is the protection of employees' personal data regulated?

Chapter 14 of the Labor Code and Federal Law No. 152-FZ "On Personal Data", dated July 27, 2006 (as amended) (the Personal Data Law) deal with the protection of employees' personal data. Personal data constitutes any information directly or indirectly relating to the identified or identifiable individual.

The authority responsible for overseeing legitimate data processing, accepting notifications, performing registration and maintaining the register of data operators, carrying out inspections and enforcement is the Federal Service for Supervision of Communications, Information Technologies and Mass Media (Roskomnadzor).

2. What is the "processing of personal data"?

Personal data processing means any action or combination of actions performed with regard to/with any personal data, including *collection, recording, systematization, accumulation, storage, adjustment (updating, amending), extraction, use, transfer (distributing, providing or authorizing access to), depersonalization, blockage, deletion and destruction* of any personal data.

3. What are the main employer obligations in relation to processing employees' personal data?

Generally, all employers must:

- Obtain their employees' consent to the processing and transfer of their personal data.
- Ensure that certain types of operations (e.g. collecting, storing, updating) involving the personal data of Russian citizens are performed with the use of databases located on Russia-based servers (for more details, see items 4 and 5 below).
- Submit a notification on processing of personal data and location of servers to Roskomnadzor.
- Take technical, organizational and other measures for protection of personal data contained in informational systems (e.g. restricting access to personal data).

4. Do employees' consents to process/transfer their personal data have to be in writing?

The Labor Code and the Personal Data Law do not provide any specific requirements to the form of this consent. However, there is an exhaustive list of situations that require employees' written consent:

- Processing of biometric data.
- A cross-border transfer of personal data to jurisdictions that do not provide an adequate level of protection for personal data (for more details, see item 7 below).
- The processing of data in relation to an individual's race, nationality, political, religious and philosophical views, health or private life.
- Transfer of an employee's personal data to a third party by the employer.

5. What is required by the Data Localization Law?

As of September 1, 2015, while collecting personal data (including through the internet or telecommunications networks) a data operator is obliged to ensure that *recording, systematizing, accumulating, storage, adjustment (updating, amending) and extraction of personal data of Russian citizens* is performed with the use of databases located within the territory of Russia.

6. Is cross-border transfer of employees' personal data still allowed?

Yes. Prior to the cross-border transfer of personal data, a data operator must ensure that the foreign country to which the personal data is to be transferred provides "adequate protection" of the individual's personal data.

7. What is considered an "adequate level of protection" of personal data?

An "adequate level of personal data protection" is considered to exist if the foreign state (to which the personal data is to be transferred):

- Is a signatory to the Convention for the Protection of Individuals with Regard to Automatic Processing of

Personal Data, dated January 28, 1981 (e.g. Germany, the UK, Ireland).

– Is included in the "List of Foreign States which are non-parties to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data that Provide Adequate Protection of Personal Data Subject's Rights" (the "List") maintained by Roskomnadzor. The List includes, among others, Australia, Argentina, Canada, and Israel. Note that the USA is not included in the List.

Compliance with labor safety requirements

1. What are an employer's obligations regarding employee safety?

Generally, an employer must, at its own expense:

– Carry out a special assessment of working conditions in all workplaces and familiarize employees with its results within 30 calendar days of doing so.

– Carry out a medical examination of employees working in harmful and/or hazardous conditions, and/or in the transport sector.

– Provide safe working conditions at each workplace.

– Not allow employees to work unless they have completed training, instruction and medical examinations.

– Take steps to prevent accidents and protect the life and health of employees.

– Provide first aid to employees.

– Ensure that all employees are familiar with the labor protection rules.

2. Do all employers need to carry out a special assessment of working conditions?

The new special assessment of work conditions was introduced in 2014[5] and replaced the previous system of attestation of workplace conditions in full.

It applies to all employers, regardless of their legal form, and all employees (except for employees working from home or remote employees).

Special assessments must be rendered with respect to all workplaces, including workplaces with computers. Such assessments shall be conducted once every five years by the employer in cooperation with a special organization accredited to carry out assessments of working conditions.

If no hazardous or dangerous working conditions are discovered, the employer has the right to submit a declaration to the local labor inspection declaring that the labor conditions of the relevant workplace are in compliance with labor safety requirements. Otherwise, the employer must conduct a special assessment every 5 (five) years.

3. What are the consequences for non-compliance with labor safety requirements?

– **Administrative liability:** (a) an administrative fine of up to RUB 20,000 for an employer's officer (in the event of a recurring offence, the officer may be disqualified for a term of up to three years); (b) an administrative fine of up to RUB 200,000 and/or administrative suspension of activities for up to 90 days for the employer.

– **Criminal liability:** a fine of up to RUB 4,000, or forced labor for up to 240 hours, or correctional works for up to two years, or imprisonment for up to one year on the employer's official responsible for labor safety compliance.

5 Federal Law No. 426-FZ "On Evaluation of Working Conditions" dated December 28, 2013

Protecting business interests following termination

1. Are non-compete or non-solicitation clauses enforceable under Russian law?

Common law concepts such as post-termination non-competition clauses, garden leave, and non-solicitation clauses are not recognized either under Russian law or by Russian courts.

Although many employment agreements, especially with key personnel, often provide negative consequences for the employee for violating his/her non-compete or non-solicitation obligation, these provisions are generally unenforceable. In addition, they can be considered as an infringement on the constitutional principle of freedom of labor (Article 37 of the RF Constitution) and a violation of Russian labor law requirements, which may generally result in the imposition of penalties on the company (up to RUB 100,000) and on its officers (up to RUB 20,000).

2. How can an employer protect confidential information?

A company should ensure that certain information is classified as a commercial secret and oblige its employees to maintain confidentiality of this information – e.g. adopt and implement a commercial secrets policy. Employment agreements should contain non-disclosure obligations. In order to implement the commercial secrets regime, an employer must determine the information that is protected by the commercial secret regime, record the list of individuals who have access to this information, mark documents containing commercial secrets as "confidential", etc. Employees should be notified of the information comprising commercial secrets, the conditions of the commercial secret regime, and liability for its violation.

Covenants on non-disclosure of information comprising commercial secrets are generally enforceable.

3. What liability may an employee face if he/she discloses information comprising a commercial secret?

In the event of disclosure of a commercial secret, the employee may be subject to:

- Civil liability (in the form of damages).
- Disciplinary sanctions.
- Administrative liability.
- Criminal liability.

The employer may claim compensation for the damages caused by an employee (including former employees) for disclosing information comprising commercial secrets during his or her employment.

Discrimination

1. Are employees protected against discrimination?

Both the RF Constitution and the Labor Code contain provisions expressly prohibiting discrimination. Under Article 19 of the RF Constitution and Article 3 of the Labor Code, no preferences can be given on the basis of any circumstances not related to the professional characteristics of the employee (e.g. gender, race, citizenship, social position and occupation, age and place of residence).

Discriminatory job advertisements are also prohibited. Employers placing job advertisements that include requirements that can be considered discriminatory based on race, gender, color of skin, or other categories are subject to administrative fines of up to RUB 15,000 (Article 25(6) of RF Law No. 1032-1 "On Employment in the Russian Federation").

2. What types of discrimination are unlawful and in what circumstances?

Discrimination of employees or job seekers on the basis of gender, race, citizenship, religion, social position and occupation, age, place of residence and other characteristics not related to the professional qualities of the employee is prohibited.

Only professional qualities of job applicants may be taken into account during the hiring process. According to Resolution of the RF Supreme Court No. 2, dated March 17, 2004 "On Implementation of the Labor Code of the Russian Federation by the Russian Courts", personal qualities include, but are not limited to: professional education or qualification/specialization; and personal qualities (state of health, work experience). Employers are prohibited from rejecting a job applicant without having reasonable grounds for doing so. Any direct or indirect restriction of rights or demonstration of direct or indirect preference when hiring on the basis of gender or other characteristics unrelated to the applicant's professional qualities is prohibited. Employers may not refuse to offer a job to a woman on the grounds of her being pregnant or having children either.

Regarding the prohibition of discrimination, the Labor Code establishes certain exceptions and restrictions to an employee's rights due to requirements relevant to a specific type of work that are provided by federal law or the Labor Code (Article 3(2) of the Labor Code). For example, Article 253 of the Labor Code prohibits women from being hired to perform heavy work, to work under harmful (hazardous) conditions.

3. How can employees protect their rights against discrimination?

Job applicants may:

- File a written request asking the employer to clarify the reasons for refusing to conclude an employment agreement with him/her. Employers are obliged to provide written explanations within 10 business days of receipt of the request.
- Submit a complaint to the Federal Labor Inspection or to prosecutors.
- Bring a discrimination claim before a court of general jurisdiction requesting restoration of his/her rights, compensation of damages and compensation of moral harm.

4. What liability may be imposed on employers/company's officials in the event of discrimination?

Discrimination is an offence punishable under:

- The RF Administrative Code, which stipulates an administrative fine of up to RUB 100,000 for legal entities or up to RUB 3,000 for company officials (Article 5.62 of Administrative Code).
- The RF Criminal Code, which stipulates a fine of up to RUB 300,000 for an individual, or disqualification for a period of one-two years, or mandatory work of up to 400 hours or a maximum of five years' imprisonment (Article 136 of the Criminal Code).

Court practice and procedure

1. Who has jurisdiction to consider labor disputes in Russia?

Individual labor disputes can be considered by commissions for labor disputes or by a court. Any individual labor dispute may be taken to a commission for labor disputes and to a court (except for those disputes that may be considered only by a court).

2. What is the limitation term to bring a labor-related claim to court?

Article 392 of the Labor Code provides for a three-month statutory limitation term for labor disputes (except for some particular types of disputes) from the date when an employee knew or should have known about a violation of his/her rights.

In the event of dismissal, the term is one month from the date of issuance of a copy of the dismissal order or the labor book.

3. Is it possible to appeal against a first instance decision or further appeal?

Yes. The decision of a court of first instance can be appealed before a court of appeal.

After the court of appeal issues the decision, this decision enters into legal force but can still be appealed by any party to the court of cassation within six months. The courts of cassation in Russia have a two-tier system: a party may file one appeal to one court division, and then (if the first attempt is unsuccessful) a second cassation appeal to another court division. The first cassation appeal could be filed with the Presidium of the Regional Court. The second cassation appeal could be filed with the Civil Penal of the RF Supreme Court.

Court practice concerning labor disputes predominantly inclines toward defending the interests of employees.

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