Russia


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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The regulation of employment relations in Russia is based on the employment law acts, which include the following sources put in hierarchical order:

a) Labour Code dd. 30.12.2001 No. 197-FZ;

b) other federal (i.e. all-Russian) laws;

c) Presidential decrees;

d) Governmental resolutions and regulatory legal acts issued by federal executive authorities;

e) regional legislative acts and local (municipal) legislative acts;

f) collective bargaining agreements (i.e. agreements entered into between employees and particular employers);

g) agreements in a particular industry; and

h) local regulations at a company (internal documents or policies).

Judicial precedents do not have a force of law, but they play a considerable role, and judges take them into consideration.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Russian employment legislation protects all individuals in employment relations with employers (companies, individual entrepreneurs or physical persons) located in Russia. Moreover, it applies to relations between Russian employers and foreign nationals, as well as stateless persons. The employment relations with several categories of employees with special status are regulated by separate chapters of the Labour Code (the employees with special family status, distant workers, seasonal, part-time employees, etc.). As a general rule, the Labour Code does not apply to the relations with military personnel, with the members of boards (supervisory boards) and contractors. Russian labour law protects not only those employees who have officially entered into employment contracts, but also those who have started their employments without such contracts under permission from the company officer or have illegally concluded a civil-law agreement instead of an employment contract.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Employment contracts have to be in writing; otherwise the employer may be held administratively liable for breach of the labour legislation (there is an administrative fine for each breach of the legislation of up to RUB 100,000, which is approximately EUR 1,334). If an employee starts working without a valid employment contract, the employer must sign the contract no later than three working days after the actual commencement of work.

1.4 Are any terms implied into contracts of employment?

An employment contract shall specify:

- the place of work;
- job function (i.e., job position according to the staff schedule, a special internal document with the full list of job positions and their payment conditions);
- commencement of employment, the term, the end date and the ground for entering into a fixed term agreement (under the general rule, an employment contract shall be indefinite);
- payment conditions (base salary, additional payments and incentives);
- regime of work and rest (if this differs depending on a particular employee);
- working conditions according to the special assessment of working conditions;
- guarantees and compensations for harmful or hazardous conditions (e.g., additional pay and/or vacation, shortened working week); and
- type of work (e.g., "en route", itinerant, distant, etc.).

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Russian labour legislation mainly consists of the mandatory provisions prescribed by the Labour Code. The parties to an employment contract cannot negotiate decreasing the level of guarantees provided by law (even if they both agree). Employers are obliged to pay a salary respecting the statutory minimum which

currently amounts to RUB 11,280, which is approximately EUR 150, per month for 40 hours per week of work. Regional statutory minimums can be higher (e.g., RUB 18,781 in Moscow, which is approximately EUR 250). Employers are responsible for creating safe working conditions for employees according to the statutory requirements. Employees must be equipped with all items necessary for the performance of their job duties. They shall grant employees all types of legal guarantees: working hours and rest; statutory insurance; and additional payments, etc.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective bargaining agreements play a significant role only in certain industries, where strong trade unions have existed historically (production, mining, automotive, etc.). Collective bargaining agreements at industrial level usually have declarative statements. They can have additional guarantees related to mass staff redundancy. Collective bargaining agreements at company level provide specific guarantees to employees and exist only if there is a powerful primary trade union organisation that unites the majority of the employees.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

A trade union can be established by at least three persons who shall adopt a charter of regulation of the organisation. It is not required for the organisation to be registered as a legal entity. The exception is when trade unions intend to receive membership fees on their bank accounts. Trade unions are not obliged to notify employers about their creation. Usually they do so only when they want to receive guarantees in certain situations. Primary trade unions (i.e. local, at company level) can become members of superior trade unions at different levels (industrial, all-Russia trade unions). Such membership allows primary trade union leaders to receive immunity from certain types of dismissal and to enjoy organisational and legal support from the superior organisations. A number of primary trade union organisations at one legal entity is not limited.

2.2 What rights do trade unions have?

Trade unions represent employees in labour relations, collective bargaining, entering into collective agreements and in collective disputes (which may lead to a strike). They have a right to request documents and information from the employer, the latter shall ask for their motivated opinion when drafting certain internal regulations (e.g. work schedule, regulations of salary payment). The employer shall procure the trade union with equipment, premises and communication facilities for its activity.

2.3 Are there any rules governing a trade union's right to take industrial action?

In order to be able to make official demands to the employer and to take industrial action, a trade union shall count more than 50% of the company employees. If it does not count more than 50% of the employees, or no trade unions in the company unite more than 50% of the employees and are not authorised to protect the interests of all employees in collective bargaining, the employees shall have a right to hold a general meeting (conference) and appoint an authorised body for representing their interests and taking industrial action. The trade unions and the employers have to participate in conciliation procedures. If they are not successful, the employees shall have a right to go on strike.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Employers are not required to establish works councils. They may exist and are recognised as "another form of organisation of employees". Works councils are not popular in Russia since they do not have special authorities as trade unions do. Work councils have minimum powers and are usually loyal to the employer. The law does not regulate the procedure for their establishment. Therefore, it can be done under an oral or a written agreement of employees to unify powers for certain activities.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

They do not have such rights.

2.6 How do the rights of trade unions and works councils interact?

They do not legally interact and shall communicate with the employer separately. The presence of "other representatives" does not prevent the primary trade unions from their activities.

2.7 Are employees entitled to representation at board level?

The trade unions with more than 50% employees of the company on them shall have a right to send their members to attend meetings of the board of directors or in collective agreements and industrial agreements.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Discrimination on the grounds of gender, race, complexion, nationality, language, origin, as well as financial, family, or social status, official position, age, place of living, religion, beliefs, participation in public associations or other social groups, as well as other facts not connected with the employees' professional skills, is prohibited.

3.2 What types of discrimination are unlawful and in what circumstances?

All types of discrimination are prohibited in Russia. Establishing preferences and limiting the rights of employees due to special care

of the state for them or an increased protection, or in order to ensure the national security or the priority employment for Russian citizens, do not constitute discrimination.

3.3 Are there any defences to a discrimination claim?

In case of a discrimination claim, the employer has a possibility to defend themselves and seek to prove that the preferences or limitations have been established in connection with the professional skills or objective factors (e.g., no hazardous works are allowed for pregnant women).

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees shall have a right to file discrimination claims directly with the court. There is no legal obligation for them to go through a pre-trial settlement first.

3.5 What remedies are available to employees in successful discrimination claims?

In case of discrimination, an employee shall be entitled to request restoration of his/her rights (e.g., reinstatement at work) and compensation of material and moral damages. The maximum amount of moral damage is not prescribed by law. In practice, the courts compensate a very low amount of moral damage, approximately RUB 5,000–10,000 (approximately EUR 67–125).

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Additional protection against discrimination is granted to pregnant women, women with kids aged under three and the so-called "pre-retirees" (those people who will reach retirement age in the next five years). In case of their illegal dismissal or an illegal refusal to hire them, the employer's officer could be brought to criminal liability (fines of up to RUB 200,000 (approximately EUR 2,667) or the amount of their salary for up to 18 months or obligatory works for 360 hours).

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

As a general rule, maternity leave lasts 70 days before the childbirth (84 days in case of more than one child) and 70 days after the childbirth (86 days in case of a complicated childbirth, 110 days in case of more than one child). After the maternity leave, the woman has the right to get childcare leave until the child is three years old.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

The periods of maternity leave and childcare leave are included in the calculation of the length of service necessary for the calculation of social payments. During the maternity and childcare leave, the employee receives state allowances from the Federal Social Security Fund, i.e. from the federal budget. No employer can dismiss a pregnant woman upon its initiative under any ground, except for liquidation. It is prohibited to assign pregnant women to go on business trips, to work overtime, at night, on weekends and during holidays. The working conditions of a pregnant woman shall suit her health state. If not, she shall be provided with another suitable job with the same pay. If no such job can be provided, she shall be free of work with the same pay.

4.3 What rights does a woman have upon her return to work from maternity leave?

During the maternity and childcare leave, an employee's workplace shall be secured by the employer, i.e. the employee shall be able to come back to work from the leave any time and work the same job position with the same pay.

Women with children aged under three shall be entitled to refuse to go on business trips, work overtime, at night, on weekends and during holidays.

4.4 Do fathers have the right to take paternity leave?

Yes, fathers (as well as grandparents, other family members, adoptive parents or guardians) can use paternity leave in case the mother of the child works and does not use the childcare leave, and they actually take care of the child.

4.5 Are there any other parental leave rights that employers have to observe?

It is prohibited to dismiss a woman with a child aged under three, a single mother with a child aged under 14 (or a disabled child aged under 18), a bread-winner in the family with three infants, where another spouse does not work, upon the employer's initiative (except for liquidation and a number of guilty disciplinary dismissals after the employee has committed a violation).

Employees with three or more kids under 12 and the employees who have a disabled child under 18 have a right to choose the dates of their annual leave themselves (no obligation to receive approval of the employer).

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Yes, women during their childcare leave and the persons who take childcare leave instead of women (fathers, grandparents, family members, adoptive parents or guardians) have the right to work part time or at home.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

In case of an asset sale, the employees do not automatically transfer to the buyer. They shall be terminated by the seller and hired by the buyer. In practice, it is done under the offer-and-acceptance procedure: the buyer offers a new employment; and the employee and the seller agree to accept it and formalise the termination. In this case, the buyer is not allowed to refuse to hire those employees who were offered a new employment within one month after their dismissal from the seller.

In case of a share sale, actually, there is no transfer of the employees, as the immediate employer does not change at all. The corporate change of control over the employer does not involve a need to amend the employment of the employees. In case the name of the employer changes, the employees shall enter into respective amending agreements to their employment contracts.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

The collective agreement with the seller's employees remains in force after the share sale. In case of an asset sale the collective agreement of the seller does not influence the employment in the buyer's company as the employees terminate their employment with the seller and are hired by the buyer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

If no terms of the employment agreements are changed, there is no legal obligation for the seller to notify the employees about the forthcoming deal. However, such obligation to make a notice and give information to the employees could be provided by a collective agreement. Typically, the process relating to the employees and formalisation of their employment takes one to one-and-a-half months under both scenarios. Where it is necessary to amend the employment agreements as well, the employer shall follow the procedure prescribed by the Labour Code. The employees shall agree with the amendments. In case they do not agree, the employer shall be entitled to amend their employment agreements without the employees' consent in case of organisational or technological changes at the company subject to a two-month notice given to the employees.

5.4 Can employees be dismissed in connection with a business sale?

A business sale is not a ground for termination of the employees except for the general director, their deputies and the chief accountant. The Supreme Court of Russia has clarified that this rule applies only to the cases of privatisation and de-privatisation of state-owned companies and the sale of an enterprise as a property complex (registered as a real property). It means that this rule does not apply to other cases of change of control, asset deal and share deal. In this case, the new owner shall be entitled to dismiss the general director, their deputies and the chief accountant within three months after it has obtained the ownership. Such employees shall be paid statutory compensation of a minimum three months' salary.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

There is no such ground for changing the terms and conditions of an employment as a "business sale". In case an employer wishes to amend the employment agreements, they shall follow the procedure prescribed by the Labour Code (organisational or technological reasons for changes plus a two-month notice or obtaining the employees' consent for changes, see question 5.3).

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Russian Law provides for only four types of situations where an employee can be dismissed with a notice:

- liquidation of the company (two months);
- redundancy (two months);
- employee not successful during the probation period (three days); and
- expiry of a fixed-term agreement (three days).

In other cases the notice period is not required, however, other requirements of the Labour Code shall be met.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

The garden leave clauses are not enforceable in Russia. An employee could file a claim to the state labour inspectorate saying that he/she is suspended from work illegally. The employer is obliged to provide the employee with the work due to him/her.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

An employer has to get a consent from:

- the higher trade union in case of dismissal of a member of the elected body of a lower trade union for the reasons of staff reduction or insufficient qualification of the employee; and
- the state labour inspectorate and the infants commission in case of dismissal of an employee aged under 18 at the employer's initiative.

It is impossible to dismiss employees under any grounds at the employer's initiative during their vacation or sick leave.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The following employees may enjoy special protection against dismissal:

- pregnant employees (can be dismissed at the employer's initiative only in case of liquidation; a fixed-term labour contract should be extended until the end of the pregnancy); and
- employees with special family status (see question 4.5).

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

There is no such division between business-related dismissals and individual dismissals in Russia. All dismissals in Russia can be

divided into three groups: of the employee's own volition; on grounds beyond control of the parties; and at the employer's initiative. There are two main types of the employee's dismissal at the employer's will: 1) dismissals not connected with the employee's misconduct, e.g. redundancy, liquidation and change of the employer's ownership (see question 5.4); and 2) dismissals connected with the employee's fault.

If the employment is terminated due to liquidation or redundancy, the employees shall be notified two months prior to their dismissal. During the notice period, the employees shall continue working and receiving their salaries. After the notice period, a dismissed employee shall be paid a severance of one average monthly salary. An employee is also entitled to payment of one average monthly salary while searching for a new job after termination (during the second month after termination). If the employee obtains an agreement of the state employment service, he/she may be entitled to severance for the third month as well, provided that he or she registered with the employment service within two weeks after the dismissal and did not find a new job.

The employer and the employee have the right to enter into a mutual separation agreement. In this case they can negotiate the severance payment amount. There are no legal requirements to the amount of a severance payment, it shall be agreed between the parties.

If the employee is dismissed due to his/her fault, no severance payment shall be paid. The employee shall be provided only with the final payment, i.e., the due salary and the compensation for unused vacation. The final payment shall be provided in all cases of dismissal under any ground.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

In case of dismissal of the employee due to his/her fault, the employer has to follow the procedure prescribed for disciplinary actions: to ask the employee to provide written explanations of the misconduct; to issue an order on dismissal within one month after the misconduct was revealed by the employer and within six months after it was committed by the employee; and to familiarise the employee with the dismissal order against a signature within three working days. On the last day of employment, the employee shall be provided with the respective HR and payroll documents, as well as a final payment and a labour book (a standardised document containing the employment history records).

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

The employee has a right to file a claim with the court for illegal dismissal and for reinstatement at work. If the employee wins, his/her claim on reinstatement shall be enforced immediately. The employee has the right to be compensated for the whole period of forced absence from work throughout the court hearings. The claim for partial compensation in the amount of three base salaries could be enforced immediately after the court decision has been delivered. Another part of the compensation for the forced absence shall be paid to the employee after the court decision has come into force, i.e. one month after the decision has been published in its final form if no appeal has been filed by the parties.

6.8 Can employers settle claims before or after they are initiated?

Employers can settle claims either before or after they are initiated.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

In case the employer reduces a number of employees holding the same job position, the employer shall check who has the priority to stay at work. Priority should first be given to the employees with higher qualifications and labour productivity. Among the employees with equal qualifications and productivity, some employees should be given preference, e.g., employees with dependants, employees having suffered from a workplace injury, employees doing professional training, etc.

In case of mass redundancy, the employer shall notify the employment service and the trade union (if any) three months prior to the dismissals. The number of the employees necessary for the redundancy to be deemed mass redundancy is specified in the industrial or regional agreements. If there are no such agreements or they do not apply to the employer, the following dismissals shall be deemed mass:

- 50+ employees within 30 days;
- 200+ employees within 60 days;
- 500+ employees within 90 days; or
- 1% of all employees within 30 days in the regions with less than 5,000 employees.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

There are no special guarantees for employees who have the protection of their rights during mass dismissals. The employees shall challenge such dismissals in the same way as individual dismissals. The Russian civil procedure legislation does not prescribe filing of a claim with the court for protection of a group of employees and their collective reinstatement at work. In case the employer breaches the labour legislation, the company and its officer might be brought to administrative liability (up to RUB 50,000, which is approximately EUR 667, for each breach). In case the dismissals are deemed illegal, the employees might be reinstated at work with payment of a compensation for forced absence at work, legal fees and moral damage.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Non-compete and non-solicitation clauses are not enforceable in Russia because of the constitutional freedom of labour. They are not prescribed by laws and may only have a moral impact on the employees. Restrictive covenants are not recognised and protected in Russian courts; they play the role of a gentleman's agreement.

The only part of the covenant which is recognised by law is a non-disclosure agreement. There is a legal obligation for an employee to keep commercial secrets after termination of his/her employment for the whole term of the commercial secrecy regime. In order to protect their interests in a better way, employers enter into non-disclosure agreements with their employees.

7.2 When are restrictive covenants enforceable and for what period?

No maximum validity of a non-disclosure agreement is established by law.

7.3 Do employees have to be provided with financial compensation in return for covenants?

There is no legal obligation for employers to provide any financial compensation in return for an employee's entering into a non-disclosure agreement.

In practice, some employers provide compensation to their employees in order to try to prevent them from competing. However, such sums do not receive this legal protection in the Russian courts.

7.4 How are restrictive covenants enforced?

In case of the breach of a non-disclosure agreement, the employer has a right to file a claim with the court and to recover direct real damage caused to the employer by the employee within one year after the damage was revealed. It is not possible to recover a lost profit.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

The employer shall be responsible for taking all steps to ensure the protection of the employees' personal data. If the employer performs a cross-border transfer of the personal data to the states that do not ensure adequate protection of personal data or are not a party to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the employer must obtain a written consent from the employee. Generally, employers process the personal data of Russian nationals with the use of databases located in Russia. It does not prevent companies from transferring data abroad, but the personal data shall be initially placed in the databases in Russia.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

The employee has a right to receive copies of the documents related to his/her employment for free within three working days after the request has been made.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers are obliged to receive the personal data of employees directly from them or from third parties (e.g., a former employer) upon the employees' consent. Thus, no background checks are legally allowed. In practice, they are conducted during the recruitment through the use of public resources. Only employers in certain spheres are allowed to ask the potential employees to provide a certificate of no criminal record (e.g., teachers).

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Employers may monitor an employee's corporate emails and computers in case it is prescribed by the internal documents and does not breach the employee's privacy. Employees shall be informed of such monitoring and request to use corporate devices only for business purposes. Employers are not entitled to monitor employees' phone conversations, however, employers might monitor the time of the calls and the phone numbers of their participants.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

An employer has a right to monitor and prohibit the use of social media in the workplace and on corporate devices if it is prescribed by the internal documents. An employer may prohibit their employees to publish any business-related information on their social media accounts without the employer's consent.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

As a general rule, employment-related disputes are resolved by the district courts of general jurisdiction. The disputes are heard by one judge.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

The main feature of the cases related to reinstatement at work is that the state prosecutor is involved in giving his/her official opinion as to reinstatement. This opinion serves as a guideline for the judge. Other employment-related complaints are heard under the procedure common for all civil cases.

Pre-trial procedures are not obligatory for the parties.

An employee is free from any fees for submission of an employment-related claim. In case the employee loses the case, he/she could not be obliged to compensate the employer's legal costs.

9.3 How long do employment-related complaints typically take to be decided?

The cases connected with reinstatement at work shall be resolved within one month. In practice, such terms are hardly complied with. The court proceedings in reinstatement cases can last for up to six to nine months. The rest of the employment-related disputes shall be resolved within two months. However, depending on the region, the court hearings in the first instance could take three to six months.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Employees and employers have a right to appeal against a first instance decision within one month after the decision was published in its final form. Depending on the region, court hearings in an appeal could take two to six months.

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Anna has wide experience in advising Russian and foreign companies from various sectors on all aspects of Russian employment and migration law. She has successfully represented clients in many individual and collective labour disputes, including litigation and amicable settlement of conflicts. Her experience includes both general employment advice, incentive plans, employee separation (over 120 successfully handled cases over the last four years), structuring of employment relations of foreign specialists in Russia and aspects of migration law.

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