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EMPLOYMENT LAW OVERVIEW
RUSSIA 2021-2022

Pepeliaev Group

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I. GENERAL OVERVIEW

1. INTRODUCTION

Russia is a federative state, which consists of 85 constituent territories (cities of federal importance, republics, regions and other territorial administrative components) with certain legislative rights. Employment issues fall within the scope of the common competence of the Federation and its integral parts. In Russia, the principal act governing employment rights is the Labour Code of the Russian Federation, which is applicable throughout the whole country (all other regulatory acts adopted at a federal, regional or municipal level must not contradict the Labour Code).

2. KEY POINTS

Russian employment laws are regularly reviewed, but are still considered to be archaic, excessively bureaucratic and not meeting the demands of business:

- Bureaucracy – almost every interaction between the company and its employee needs to be formalised as a paper document with a "blue" signature (a significant step forward to ease these rules has been introduced as of 1 January 2021 for teleworkers).
- Formalism – many procedures (e.g. redundancy) are highly formalised and any sidestep is likely to result in the employer's actions being classified as illegal.
- Unregulated areas – Russia does not have analogues of many concepts of European law, e.g. severance does not depend on seniority, the transfer of an undertaking will not entail the obligation to onboard affected employees, and restrictive covenants are generally void.

Russian employment law protects the employee in various spheres; first of all, by setting complicated procedures for company-initiated dismissals; fixed term contracts are permissible only in limited cases and special protection is given to employees with dependents.

3. LEGAL FRAMEWORK

The main statute that governs employment relations is the Labour Code of the Russian Federation.

Other key sources of employment law are federal laws (e.g. Federal Law No. 10- FZ on Trade Unions dated 12 January 1996), laws of constituent territories, presidential decrees, rulings of the RF government and governmental agencies at the federal and local levels, and acts of local authorities.

Specific employment rights and obligations are set by regional and industry agreements, and collective bargaining agreements signed at the company level.

The Labour Code has priority over federal laws and other acts.

Employers are free to set local rules contractually or by company policies; such regulations must provide at least a minimum level of the guarantees set by the law.

4. NEW DEVELOPMENTS

The COVID-19 pandemic revealed that the Russian employment law lacks regulation for such force majeure cases. To bridge this gap, significant amendments have been made to the Russian Labour Code in the section regulating remote

work. From 1 January 2021, there is flexibility as to whether an employee performs 'office work' or 'telework' (i.e. works remotely) which allows an employee to have both office and "home office" days during the week. In addition, remote work can be set for up to six months. Previously, an employee was only eligible for one or the other, either office work or work remotely, and these were regarded as separate types of contracts.

A special mechanism has been introduced for the employer to unilaterally announce remote work during an epidemic or another force majeure event. Employees who cannot work remotely will have downtime with reduced pay, and those who are working remotely will be entitled to compensation of related expenses.

The law significantly simplifies the procedure of exchanging documents during remote work – electronic signing has become required only in the most important cases (amendment of the employment contract, termination, and a few others), while another exchange of documents (notices, applications, etc.) can be handled as per a company's own rules, subject to certain conditions. Another important change concerns special grounds for separating from remote employees – previously these were negotiable and set contractually, but now they are regulated and limited to only two cases, which will not address all business needs.

Also from 1 January 2021, under the Russian Government's Decree No. 1848 dated 16 November 2020, employees who create specific IP items must be paid enhanced remuneration for such creations (2-3 times their monthly salary instead of 1).

Speaking about general trends in employment law, we would mention the gradual digitalisation of HR documentation (which has long been a market demand). An important milestone on this path is the introduction as of 1 January 2020 of so-called "electronic labour books" – employers now file special electronic reports with the state database in the events of hiring, a transfer to another role, termination and a small number of other events. This is done alongside or instead of making entries to the hard copy (paper copy) labour book (each employee chooses individually). For those who start their career in 2021, no paper labour book will be maintained, only electronic format.

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

Equal protection of employment rights is guaranteed to all employees notwithstanding their nationality. However, Russian law does impose certain citizenship restrictions in specific sectors of the economy, for example construction and the retail trade.

The general rule for employing a foreign national requires a) that the foreign national must have a valid work permit and must comply with all visa requirements (if they require a visa to enter Russia); b) the employer must have a valid permit to employ foreign workers; and c) the profession of the foreign employee concerned must be included within the quota that is determined annually by the Russian state authorities. There are exceptions to this rule that provide for less strict regulation and fewer requirements to comply with for certain privileged categories of foreign employees, e.g. highly qualified foreign specialists and their family members, and nationals of those ex-Soviet republics who do not require a visa to enter Russia.

Employing a foreign national who does not have a valid work permit in Russia is an administrative offence. The employer company may have to pay a penalty of up to RUB 800 000 (up to RUB 1 million for certain regions) or face an injunction to suspend any economic activity for up to ninety days. The same penalties will apply to those companies that do not have a valid permit to hire foreign personnel (whenever such a permit is required).

Foreign employees who work in Russia without a valid work permit have to pay a monetary penalty. They may also be expelled from the country and receive an administrative ban on re-entering Russia for a certain period of time, if the migration authorities deem this necessary.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

There is no formal prohibition on a foreign company hiring an employee in Russia without establishing a local entity. Still, there are many technical issues (payment of taxes and social charges, filing reports on hiring, dismissal, transfers, obtaining work permits, etc.) that can be resolved only via a local presence.

3. LIMITATIONS ON BACKGROUND CHECKS

Russian legislation rigidly limits the scope of a background check by the principles of:

- obtaining all personal data from the employee directly (thus the company may either request the candidate to provide a reference from former employers, or obtain the employee's written consent to its requesting such references directly);
- the right to demand only those documents that are listed by law (these are very few – the passport, education certificate, labour book or electronic record of employment, registration in the pension system and military registration, if relevant). Demanding a certificate of a clean criminal record is allowed only for specific professions;
- basing the choice of a candidate solely on business qualities that are clearly job-related.

In view of this, background checks are often carried out informally (we have to admit that such practice is widespread). Recruiters also use available public information to check on the candidate (court

websites, the bailiffs' database of enforcement proceedings, social networks).

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

A job advertisement must not contain discriminatory provisions unrelated to the business qualities of the future employee.

Interview questions should concern job-related qualities of the candidate (education, experience, skills, goals, etc.). Exploring other areas, such as time to commute to work, family status, trade union membership, religion, smoking or drinking habits, age, nationality, etc. may result in claims concerning the processing of excessive personal data or an ungrounded refusal to hire (though such claims are rare for Russia).

A refusal to hire must also be justified solely by the business qualities of the employee that are clearly related to the role.

Criminal liability exists in the event of a refusal to hire a woman for reasons associated with pregnancy or with her having children under 3 years of age. The same applies to a refusal to hire a candidate close to retirement (5 years or less) for reasons of his/her age.

III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

Employers in Russia must enter into employment contracts in writing. If an employee is admitted to work without a written employment contract, such contract is implied (de facto employment). It is also implied that the employee has been engaged by the employer without any probation period.

An employment contract is normally accompanied by the relevant job description (a list of key tasks assigned). The minimum set of terms that should be indicated in the employment agreement are as follows:

- the place of work (the company or its branch or another subdivision);
- start date and term of the contract (if applicable);
- the job title (role);
- workplace conditions and, if these are harmful/ hazardous, etc., the compensations and benefits related to such workplace;
- the amount of remuneration;
- working hours;
- the terms and conditions defining, where necessary, the nature of the work (teleworking, en route, or another kind of work);
- mandatory social insurance for an employee.

An employment agreement may contain provisions on probation, the non-disclosure of confidential information, and other terms that do not worsen the position of the employee compared with those provided for by law or company policies. If the contract contains terms that are below the level guaranteed by law or company policies, such contractual terms will not apply.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

As a general rule, employment contracts are open-ended in Russia. Fixed-term contracts are permissible only in a very limited number of cases (listed in article 59 of the Labour Code). The duration of a fixed-term contract must not exceed five years. Extending or renewing a fixed-term contract may entail the risk that it will be classified as open-ended.

As concerns fixed-term agreements, there are cases where such agreements must be concluded (e.g. with an individual replacing a colleague, a contract for temporary work for up to two months), and cases where they may be concluded (e.g. employees in secondary employment, contracts with the CEO, etc.).

A fixed-term contract does not terminate automatically on its end date. The employer should serve 3 days' written notice of termination and should perform the standard termination actions. If the employee acts as a replacement, the notice is not required, as the contract terminates once the replaced employee returns to his/her job. Where neither of the parties has demanded that a fixed-term employment contract be terminated in connection with the expiry of its term, and the employee continues working, the contract automatically becomes open-ended.

3. TRIAL PERIOD

An employer hiring an employee may wish to establish a trial period. The maximum length of a trial period is 3 months. A longer, 6-month trial may be established only for the CEO of a Russian company and his/her deputies, the chief accountant and his/

her deputies, heads of branches, representative offices and other subdivisions.

A trial period cannot be established for specific categories of employees, such as pregnant women and women with children up to 1.5 years old, employees under 18, graduates from state educational establishments applying for employment for the first time within one year after graduation, etc. It is recommended to set clear criteria to be met for probation to be qualified as passed.

4. NOTICE PERIOD

The Russian Labour Code sets a number of mandatory notice terms that can be reduced/ extended, but only if this favours the employee. For example, the statutory notice for an employee to resign is 2 weeks (1 month for a company's CEO). The parties cannot contractually set a longer notice term, but may agree to separate earlier.

The key minimum periods for notice to be served by the employer are:

- 2 months in the case of redundancy (lay off), payment in lieu of notice is possible, subject to parties' consent;
- 3 days in the case of the expiry of a fixed term contract (no notice is required if the employee acts as replacement);
- 3 days in the case of termination due to an unsuccessful probation.

Dismissal for cause has no notice requirements, but an employee should be given at least 2 business days to justify the misconduct, so this basically serves as the notice period.

Failure to observe the notice term carries a high risk for the employer; in that his actions could be classified as unlawful. This mainly concerns dismissals on the grounds of misconduct, expiry of the contract term and redundancy.

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

Articles 21-22 of the Labour Code establish the employees' rights to safe working conditions, as per state standards. Employees must comply with labour safety requirements, treat the company's property with due care, and immediately inform the employer of any threat to their life and health or to the company's property.

Each employer has to have a Workplace Safety Service or Specialist, who has due qualifications in this area. Companies with under 50 employees may outsource such function.

Each workplace must be appraised by a licensed organisation and classified depending on the level of harmfulness/hazard; indicating the workplace's class in this regard, is a mandatory term of the employment contract.

2. SALARY

Russian federal laws determine a minimum wage on an annual basis. The amount of the minimum wage not only guarantees the lowest income payable to an employee, but is also the basis for calculating various social compensations for which employees are eligible.

Constituent territories of Russia are entitled to set, by regional agreements, a higher minimum wage to apply in their respective territories. Thus, for example, the minimum wage for Moscow is significantly higher than the national minimum wage established throughout the country. If an employer pays a qualifying worker less than the applicable minimum wage, this constitutes an administrative offence. Still, actual salaries are commonly higher than the minimum wage.

The employer must ensure that employees receive equal remuneration for work of an equal value. The Labour Code provides for several cases when the remuneration of employees should be increased. These include higher pay for night work, work on days off and public holidays, as well as any overtime, compensation and benefits due to employees as a reward for work in harmful and hazardous conditions.

Salary should be paid twice a month, i.e. in two instalments, and should be paid in Rubles. Russian labour authorities discourage the denomination of salary in foreign currencies, even where the salary is actually paid in Rubles.

3. MAXIMUM WORKING WEEK

Normal working hours in Russia must not exceed 40 hours per week, but there are certain categories of workers who are eligible to work less than that. Thus:

- workers under 16 years of age must not work more than 24 hours per week;
- workers from 16 to 18 years old must not work more than 35 hours per week;
- disabled workers (disability groups 1 and 2) must not work more than 35 hours per week;
- medical workers must not work more than 39 hours per week;
- teachers and other pedagogical workers must not work more than 36 hours per week;
- reduced working hours are stipulated for those employees who are working in specific harmful and hazardous conditions, as well as special social groups who are eligible for greater protection, such as pregnant women.

4. OVERTIME

Any hours over the above amount will normally be considered overtime. Generally, an employer may have an employee work overtime only with the employee's consent in writing. Overtime work is prohibited for pregnant women, employees under 18, and other specific categories of employees set by the Labour Code and other federal laws. Disabled persons, women who have children below three years of age and certain other categories of employees, should be informed in writing of their right to refuse to work overtime. The duration of overtime work must not exceed four hours for two days in a row and 120 hours per year.

Overtime should be compensated at 150% of the regular hourly rate for the first 2 hours of overtime and at 200% of the regular hourly rate for every subsequent hour. Upon the employee's request, overtime work may be compensated by additional time off instead of enhanced pay.

It is a popular choice to contractually set "irregular working hours" – this implies no monetary compensation for occasional overtime (and thus spares the requirement for additional paperwork to formalise overtime), but at least 3 extra days of annual leave.

5. HEALTH AND SAFETY IN THE WORKPLACE

A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

An employer must provide employees with safe working conditions. Measures concerning the occupational safety of employees include conducting a special evaluation of workplaces, issuing special clothing, special shoes and other personal protective gear to employees, and conducting medical check-ups for certain categories of employees, when they are hired and during their employment.

An employer must also investigate and record all accidents that occur on their territory or premises. In addition, an employer must, in line with the duly established method and deadlines, inform the appropriate authorities of accidents that have occurred.

The COVID-19 pandemic revealed that the Russian employment law lacks regulation for such force majeure cases. To bridge this gap, significant amendments have been made to the Russian Labour Code in the section regulating remote work. From 1 January 2021, there is flexibility as to whether an employee performs 'office work' or 'telework' (i.e. works remotely) which allows an employee to have both office and "home office" days during the week. In addition, remote work can be set for up to six months. Previously, an employee was only eligible for one or the other, either office work or work remotely, and these were regarded as separate types of contracts.

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Another important change concerns special grounds for separating from remote employees – previously these were negotiable and set contractually, but now they are regulated and limited to only two cases, which will not address all business needs.

B. COMPLAINT PROCEDURES

The general principle of resolving employment disputes, requires that the parties should apply all their efforts to resolve the dispute amicably, by way of negotiations.

The out-of-court complaint procedure envisaged by the Labour Code implies the resolution of conflicts by an internal Labour Dispute Committee. This

procedure is regarded as archaic and is very rarely undertaken.

Some employers (mostly international companies) regulate their complaint procedures by policies, encouraging employees to report problems to a dedicated internal compliance team, instead of using the remedies that are envisaged by Russian law, namely, an application to the State Labour Inspectorate (the state body authorised to remedy specific types of infringements) or to the courts.

An employee may at any time, bring a dispute before the court if she believes that her employment rights have been infringed.

Collective employment disputes can arise when the employer refuses to satisfy complaints communicated to it in writing, by the authorised representatives of employees. The resolution of collective disputes involves several stages, in particular an analysis of the dispute by a reconciliation commission, consideration of the dispute by an intermediary and/or employment arbitration.

C. PROTECTION FROM RETALIATION

Russian law contains very few clauses that can be interpreted as an analogue of the "protection from retaliation" concept. Such clauses concern trade union leaders (also ex-leaders) – there are special procedures for terminating their employment at the company's initiative, giving them enhanced protection.

At court, e.g. in cases considering dismissal, the plaintiff often asserts that the decision to terminate was an act of retaliation. However, such statements have no legal impact, with the court verifying the correctness of the termination procedure (documents, notices, etc.) and not the motives behind it.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

Any discrimination in the area of employment relations is prohibited under art. 2 and 3 of the Labour Code and art. 19 of the Constitution. In accordance with these provisions, all employees enjoy equal opportunities in the exercise of their employment rights. No restrictions may be placed on employment rights or freedoms, and no advantages may be awarded based on gender, race, skin colour, nationality, language, ethnic origin, property status, social position, age, place of residence, religion, political affiliation, trade union association, or any other circumstances that are not related to the professional qualities of an employee.

2. EXTENT OF PROTECTION

Discrimination based directly on the grounds mentioned above is never permitted. However, it shall not be deemed discriminatory if certain differences, exceptions, preferences and restrictions of employees' rights due to the requirements relevant for a specific type of work, are provided for by normative acts. Thus, women are restricted from engaging in certain occupations where they would be exposed to harmful conditions and hazardous workplaces.

Russian employers with a specified headcount (which differs per region) are obliged to provide a workplace to a specific percentage of disabled employees and employees under 18 years of age (the latter is aimed mostly at supporting those who were brought up in orphanages).

3. PROTECTION AGAINST HARASSMENT

Harassment is not identified as a separate type of criminal or administrative offence in Russia, though some situations fall under concepts regulated by the criminal or administrative codes (e.g. sexual assault and insult).

Employers often make an effort to compensate this grey area in company policies by copying a definition of harassment from foreign sources. The violation of such internal rules may result in disciplinary sanctions for the offenders (a warning, reprimand, or dismissal). In this way employers more broadly interpret their obligation to provide a safe workplace, while their statutory obligations in this sphere are limited only to ensuring the safety of premises, tools, protective gear, etc., and do not concern personal relations among employees.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

Russian law not only obliges companies (above a specific headcount threshold) to hire disabled persons, but sets reduced tax rates for them, subject to certain criteria.

There are no legal obligations to accommodate the employees' religious needs (e.g. in terms of working hours or clothing). However, such matters may be agreed individually or regulated by company policies.

5. REMEDIES

Unless the issue of discrimination is not resolved amicably, the sole competent body to consider the matter in Russia, is the court. Discrimination claims are not that prominent in Russia, though this subject is becoming more and more acute.

One side of this trend is a growing number of fines imposed by the State Labour Inspectorate for job ads that contain discriminatory requirements for candidates (the most frequent are age, sex and nationality).

6. OTHER REQUIREMENTS

Employers should give special attention to the list of guarantees assigned to each protected category of employees (e.g. disabled employees are entitled to additional leave, reduced hours, etc.).

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

Art. 22 of the Labour Code obliges the employer to ensure equal pay for work of equal value. Being guided by this, and also by the general prohibition of discrimination in the field of employment, remuneration should depend solely on the value of work provided (its quality, expertise, volume, etc.). There are no regulatory requirements in the Russian Federation that compel an employer to disclose, report or take any positive action to ensure equality in compensation or benefits.

2. REMEDIES

It is important to emphasise that there are no special remedies for this sphere in Russia.

3. ENFORCEMENT/ LITIGATION

Employees quite often apply to the courts or to the State Labour Inspectorate claiming they are receiving lower pay than their peers. Such claims are not supported by the courts, provided that the employer evidences the differentiation by a difference in work value, which in its turn, should be documented by appraisal results, the scope of tasks performed, etc.

Employees as a rule, cannot evidence that underpayment is caused by discriminatory motives. Apart from this, there are important court precedents on the subject of pay equity focused on:

- the requirement to provide equal pay to new hires who are still on probation;
- the requirement to provide equal pay to employees on fixed-term contracts, as compared to their colleagues on indefinite contracts;
- the requirement to preserve bonus rights for employees who have worked the target period, but have been deprived of a bonus due to their leaving the company.

4. OTHER REQUIREMENTS

No, there are no such requirements for Russia.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

An employer has a right to restrict and prohibit the use of social media and the Internet during working hours, as provided for in the internal policies or employment contracts. An employer may also prohibit their employees from publishing any business-related information or making statements on behalf of the company on their social media accounts, without the employer`s consent. This should also be prescribed by the internal documents (such as policies, instructions, internal rules and codes).

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW AN EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

In practice, an employer has the right to monitor access, and review an employee's electronic communications or other corporate devices, if their use is permitted solely for business purposes. Such limitations can be set by company policies or employment contracts.

2. AN EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

According to the specific circumstances of the case, an employee's use of social media to disparage the employer or divulge confidential information may trigger disciplinary action (in some cases up to dismissal) and may also constitute an administrative offence or a crime.

Russian legislation also provides for liability for an employee who has personal data of other employees.

Cases where employees face an employer's sanctions for divulging confidential information are becoming more prominent in Russia, with an important precedent being set where an employee disputed dismissal based on him sending protected data to his own private e-mail address (the court supported the employer). In such cases, it is often problematic to evidence that the information was treated by the employer as protected, as the establishment of a commercial secret regime requires a complex set of measures to be taken.

Evidencing any monetary damage caused by the disclosure is also a complicated task, and it should be noted that Russian law allows recovery from employees of direct actual damage only and not loss of profit (in general case).

VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

Termination of employment agreements is one of the most heavily regulated areas of Russian employment law, involving a specific set of formalities (notices, deadlines, severances, etc.) for various dismissal grounds.

The Russian Labour Code provides six groups of grounds for termination:

- separation agreement;
- expiration of the term of a fixed-term employment agreement;
- termination at the initiative of the employee (resignation);
- termination at the initiative of the employer (termination for cause, terminations related to transfers and redundancy (lay off));
- forced termination, due to circumstances beyond the parties' control; and
- the illegal signing of an employment contract (e.g. the hiring of an employee who is administratively banned from the relevant profession).

"At-will" termination of employment relationships is generally not permitted, except for a CEO of a Russian entity. In any case, whenever an employer intends to terminate an employment contract even on the grounds of an employee's having served a resignation notice, the dismissal procedure must be carried out in strict compliance with all legislative and procedural requirements applicable to that particular ground for dismissal.

2. COLLECTIVE DISMISSALS

The headcount criteria for a collective (large-scale) dismissal are provided for in sector-based or regional agreements.

The collective dismissal procedure includes extended notices to any relevant trade union and to the State Employment Service (3 months before the separation date, while for an individual dismissal it is 2 months, see article 82(1) of the Labour Code and art. 25 (2) of the RF Law on the Employment of the Population).

It should be noted that collective dismissals are rare, as this concept applies only to separation on the ground of redundancy (lay off). It is common practice that employees on the redundancy list are offered separation agreements and leave on these grounds, thus allowing the company to avoid the criteria of collective dismissal.

3. INDIVIDUAL DISMISSALS

A. IS SEVERANCE PAY REQUIRED?

The minimum rates of a severance payment are set by the Labour Code and depend on the ground for termination.

No severance is required in case of termination:

- for cause;
- due to the expiry of a contract's term;
- through an employee's resignation; and
- in specific other cases.

Where an employment contract is terminated because of a company's liquidation or a staff reduction, severance pay shall be awarded to

the dismissed employee. It is paid in instalments, subject to certain conditions and amounts to between 1 and 3 times the average monthly wage.

Severance pay in the amount of two weeks' average wages shall be paid to employees in the event of termination for the following reasons, among others:

- an employee's health condition requires him/her to transfer to another job but he/she refuses, or no such job is available with the employer in question;
- an employee is drafted to military service;
- an employee refuses to relocate when an employer moves to another locality;
- an employee is recognised as completely disabled;
- an employee refuses to continue to work because of a change in the conditions of the labour contract.

A company's CEO is paid severance in the amount of 3 times the average monthly wage in the case of termination by the company's decision ("at-will").

Collective bargaining agreements, company policies, and employment contracts may provide for the payment of severance pay in other cases or of an increased amount, as compared with the legislation, though such cases are rare.

4. SEPARATION AGREEMENTS

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

The termination of employment under a separation agreement takes place only on the condition that it is signed under the free will of both parties. There are no statutory requirements as to the grounds or the timeframes of signing a separation agreement. Either party may propose such termination at any time, while the other is not obliged to accommodate such a request.

Separating by agreement is not classified as a company-initiated dismissal, so it may apply to any protected category of employees at any time (though it is not recommended in case an employee is pregnant, in view of recent court precedents).

A separation agreement is considered the best option for ending employment, as it entails the lowest risk of a dispute. Moreover, the cases where courts classify such terminations as illegal are exceptional and relate mostly to situations where an employee was pregnant.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

A separation agreement commonly contains the date of termination and severance, obligations to return company equipment, to keep the confidentiality of company information, and an acknowledgement that the severance satisfies all claims that the employee has or might have, against the employer.

Separation agreements may be with or without severance (the latter is a popular option when the alternative is dismissal for cause). Commonly, separation agreements offer the same severance that an employee would receive in the case of redundancy (a lay off) with a notice period, namely 3-5 times the average monthly wage.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

As a general rule, the age of the employee or his/her seniority does not influence termination. For example, in the case of redundancy (a lay off), an employee in his/her fifties with 30 years of service, is entitled to the same severance as a trainee on a trial period.

Still, seniority may influence the choice of the employees to be made redundant – if such a choice is to be made among several employees in the same role, protection shall be given to those with better qualifications, experience and efficiency, and years of service typically match these qualities.

Employers should also be aware of criminal liability for the termination of the employment of an employee who is close to retirement age (5 years

or less) for reasons of his/her age. When separating with such employees, companies should have clear evidence of the business reasons for the action in question.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

Russian law provides protection to certain categories of employees against dismissal, based on their family, trade union or other status. For example, a pregnant woman can be dismissed at the company's initiative, only if the company is dissolved.

Women who have children up to three years of age, single mothers who are bringing up children aged up to 14 (a disabled child up to 18) and other persons who are bringing up such children without a mother, may be dismissed at the company's initiative only on limited grounds (dismissal for cause, the company's liquidation, etc.). The same protection also applies to a company's CEO.

It is not permissible to dismiss employees at an employer's initiative (except in cases of the liquidation of a company), while an employee is on sick leave or on annual leave.

The dismissal of trade union members requires specific consultation procedures to be carried out at the local level or with the association of trade unions.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

Dismissal cases can only be resolved in court. The employee may claim reinstatement to her job and/or salary, for the time from the date of the unlawful dismissal, up to the date of the court's decision. Cases where reinstatement is claimed are attended by the public prosecutor, who gives an independent appraisal of the case (the judge may or may not be guided by this).

6. WHISTLEBLOWER LAWS

In Russia, we have no special whistleblowing rules in the sphere of employment. There is only a general obligation for employees to immediately inform the employer of any threat to life and health, or to the company's property (art.21 of Labour Code).

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

According to Russian law, non-compete clauses are not enforceable, particularly since the freedom of labour, including the right to work, is afforded to each employee, and every person is free to choose his/her profession or type of activity. The freedom of labour is one of the most important and fundamental principles protected by law.

Under Russian employment legislation, an employee also has the right to have a secondary job (i.e. to work concurrently for another employer). Employers generally cannot restrict an employee from doing this. The only statutory possibility allowing employers to restrict or control work for third parties relates to a CEO of a Russian company. A CEO can work for another employer only with the employer's consent.

Covenants not to solicit customers/employees are considered to be covenants not to compete and, therefore, are at odds with federal law. Such clauses are nevertheless often set contractually, as merely a formal proclamation of a so-called "gentleman`s agreement".

As there is no legal basis to conclude non-compete agreements, employers use indirect means of protecting their interests, at least partially for example, via confidentiality agreements or non-disclosure agreements, i.e. the legal obligation for an employee to keep commercial secrets during his/her employment and after the termination of employment, for the entire period of the commercial secrecy regime. Additional post-termination payments may also be conditional to observance of such obligations.

2. TYPES OF RESTRICTIVE COVENANTS

The following restrictive covenants are not applicable under Russian law:

- non-compete clauses;
- non-solicitation of customers;
- non-solicitation of employees.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

Employers have very limited instruments to protect themselves against an employee's competitive actions or solicitation. As a rule, the only available means is to prosecute the employee for disclosure of confidential information – either by way of disciplining him/her (up to dismissal for cause) or through the recovery of damage caused by the employee's actions (internally at company level or in court). The employer may also initiate an administrative or criminal case against an employee who has disclosed information constituting a commercial secret and/or personal data of other employees.

4. USE AND LIMITATIONS OF GARDEN LEAVE

Russian law does not recognise the concept of garden leave. The doctrine that most closely resembles garden leave, concerns the suspension from work, but this can occur only in a small number of cases prescribed by law, e.g. if an employee cannot perform duties for medical reasons or due

to the suspension of a job-related permit (such as a driving licence), or due to alcoholic intoxication. The period of such suspension is generally unpaid and short-term. Where employers face the need for garden leave, they have no option but to negotiate with the employee for him/her to take annual leave or additional paid or unpaid leave.

X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

There is no Russian analogue to the transfer of undertaking concept contained in UK law and European law. The company is free to transfer its business to another legal entity, while this creates no obligation towards the affected employees.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

In the absence of any special regulation in the event of a transfer of an undertaking, the predecessor and successor parties shall follow the general legal rules in handling the HR aspects of the transfer. Commonly, the predecessor and successor agree that selected employees will be offered jobs with the successor.

There is no legal requirement to offer the same employment terms for employees who are to be transferred, but it is quite common to do so, to facilitate the transition. The remaining employees who have no business tasks in the predecessor companies are either transferred to other roles or separated by agreement, or on the grounds of redundancy (lay-off).

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

Employees in Russia are free to create trade unions and become members of trade unions to protect their rights and interests. State registration of a trade union is optional.

A trade union created at company level does not necessarily include all the employees working for the employer in question; however, those employees who do not wish to join the trade union may at any time, authorise the trade union unit to represent them with regard to the employer. There may be several trade unions within one company.

Company-level trade unions often join an association of trade unions, as this facilitates the processing of trade union contributions and gives trade union leaders access to legal support, and enhanced protection against dismissal. Associations of trade unions are, as a rule, industry/territory-specific.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Once a trade union has been created in a company, its key rights depend on its headcount. Trade unions uniting over 50% of employees have the right to give a motivated opinion on specific company policies, dismissal of trade union members on specific grounds (e.g. redundancy or repeated misconduct), and in numerous other cases outlined by law. This opinion is not binding on the company, but the consultation process allows the company to at least access the employees' demands. Such trade union may also initiate the signing of a collective bargaining agreement, with the aim of promoting employee protection and the level of compensation and benefits.

Nationwide trade unions and associations of trade unions are entitled to create legal and technical inspectorates, in order to monitor compliance with the labour law. To this end, they shall be granted unrestricted access to any employer's premises where the trade union's members work, take part in investigations of industrial accidents, present demands to employers that operations be suspended in the event of an imminent threat to the lives and health of workers, etc.

Employers' associations in Russia may be nationwide, may cover specific region(s) and/or may be industry(ies) specific.

Tripartite agreements signed between local government authorities, associations of trade unions and associations of employers have an important role in labour relations. In Moscow, for example, such an agreement prohibits the redundancy of members of the same family within a year, obliges a company to provide sign language interpreters for their employees with hearing disabilities, etc.

3. TYPES OF REPRESENTATION

Trade unions, depending on their headcount, are involved in (among other things) the approval of company policies, dismissals, the appraisal of workplace conditions, strikes and collective bargaining.

A. NUMBER OF REPRESENTATIVES

The minimum membership for creating a trade union is 3 individuals. The law does not require them all to be active employees of the same company.

B. APPOINTMENT OF REPRESENTATIVES

Russian law does not provide for rules about the appointment of representatives of trade unions. Commonly, such rules are set by the trade union's Articles of Association. The trade union also has a chairman and 1-3 deputies.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

Russian law does not stipulate rules about the tasks and obligations of representatives of trade unions. Such provisions may be part of a trade union's Articles of Association.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

Trade union representatives have the right to participate with a consultative vote in meetings of the company's collegial management body (art. 53 of the Labour Code).

Trade unions also have the right to discuss with the company, its plans for economic development, to obtain information about a reorganisation, dissolution or technological changes that will affect the workplace, etc.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

If there is no trade union within the company or the existing trade union does not bring together over 50% of employees, a general meeting of employees of the company may elect, by a secret vote, another representative or representative body.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

The Russian Federation has a system of obligatory social insurance. Employers pay insurance premiums in amounts set by law from the moment the employment contract is concluded. The following facts are recognised, among others, as insured events: reaching retirement age, disability, the loss of a breadwinner, illness, injury, an industrial accident or occupational disease, pregnancy and childbirth, plus maternity and paternity leaves until the child is 1.5 years old. When an insured event occurs, the insured persons receive insurance coverage from the relevant state non-budgetary fund (the Social Insurance Fund, the Obligatory Health Insurance Fund and the Pension Insurance Fund).

2. HEALTHCARE AND INSURANCES

Russian employers pay insurance premiums to the Obligatory Health Insurance Fund, which finances the obligatory health insurance for all nationals, from birth. Employers also pay premiums to the Social Insurance Fund to cover the risk of industrial accidents. Quite many companies provide additional medical coverage to employees for the term of employment; in some companies this coverage is extended to family members.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Each employee has the right to annual paid leave of at least 28 calendar days. Extended annual paid leave is provided to specific categories of workers, e.g. employees working in the Northern regions, or in a harmful workplace, or having "irregular working hours".

Annual leave should be provided in the year it accrues, and if some days remain unused they roll over to subsequent years without limitation. Receiving monetary compensation for unused days during employment is allowed in limited cases, while at termination, compensation is due for all of the unused leave entitlement.

Public holidays in Russia include:

- 1, 2, 3, 4, 5, 6 and 8 January, New Year holidays
- 7 January, Christmas
- 23 February, Fatherland Defender's Day
- 8 March, International Women's Day
- 1 May, Day of Spring and Labour
- 9 May, Victory Day
- 12 June, Day of Russia
- 4 November, Day of Public Unity.

Work performed on public holidays as well as on days off is paid at enhanced rates.

B. MATERNITY AND PATERNITY LEAVE

There are two types of maternity leave in Russia:

- pregnancy and childbirth leave starts 70 calendar days (84 in the case of a multiple pregnancy) before childbirth and lasts 70 calendar days (86 in case of birth complications and 110 in case of a multiple birth) after childbirth, with payment of the state-funded allowance in the amount set by law; and
- childcare leave can last until the child is 3 years old. This leave can be taken by the mother, father or any other relative or guardian who actually takes care of the child. The state allowance is envisaged for the period until the child is 1.5 years old.

C. SICKNESS AND DISABILITY LEAVE

For periods of sick leave (to be confirmed by a standardised medical certificate), an allowance

is paid to the employee instead of her salary. Sick leave allowance is paid at the expense of the Social Insurance Fund, with the exception of the first three days, which are paid by the employer.

The amount of the temporary disability allowance depends on the length of service of the insured person and may be 60%, 80% or 100% of the average wage on which insurance premiums are calculated, but cannot exceed the legal maximum, which is reviewed regularly.

Russian law does not operate a separate concept of 'disability leave'. This is instead handled as a succession of ordinary sick leave until the employee recovers or is qualified as permanently disabled.

D. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

There are numerous cases when certain categories of employees are entitled to additional forms of annual leave (fully paid), such as:

- employees of Northern regions (their entitlement is 8 or 16 or 24 days of additional paid leave, depending on the region);
- employees with 'irregular working hours' are entitled to 3 extra days;
- employees in harmful workplaces are entitled to 7 extra days;
- employees disabled in Chernobyl are entitled to 14 extra days;
- students, for the exam periods (certain leaves of this kind are unpaid).

There are also a number of specific cases which provide an entitlement to additional paid or unpaid days off, for example:

- 4 paid days off per month for a caretaker of a disabled child;
- paid days off for blood donors;
- paid days off for medical check-ups;
- up to 5 days of unpaid leave in case of marriage and death of a close relative.

An employer may also grant an employee unpaid leave at the employee's request, for example for family reasons. Many employers enhance the statutory guarantees; the most popular cases involve providing additional paid leave on 1 September for parents whose children go to school, and paying for days off taken for marriage, childbirth (for a father) or for the death of a close relative.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

The current Russian retirement age is 60 for men, 55 for women. This retirement age is gradually being increased and is targeted to be 65 for men and 60 for women by 2028. Despite this, some categories of individuals may retire earlier (e.g. medical workers and employees working in Far North regions).

Since state pensions are quite low, employees may choose to pay additional pension insurance contributions to an investment account intended to fund their state pension. These additional contributions are to be calculated, withheld from salary and transferred to the Pension Fund by the employer based upon application of the employees.

On top of the employees' contributions, the employer may pay matching contributions to the investment accounts of the employees' state pension, though he is not obligated to do so. Individuals in Russia also have the option to pay into voluntary Russian pensions, via private Russian pension funds.

5. ANY OTHER REQUIRED OR TYPICALLY PROVIDED BENEFITS

In addition to the above listed statutory benefits, it is important to take note of the requirement to compensate employees working in specific Northern regions, for the cost or their travel to the place of annual leave and back, every two years (also for family members who are unemployed).

Speaking of optional, but popular benefits, we would like to also mention:

- paying up to salary during sick leave for a limited number of days per year;

- paid days of self-certified sick leave (commonly up to 5 per year);
- additional pay during maternity leaves;
- lunch allowance;
- paying up to salary during business travel or annual leave (during such periods the employee is paid average wages, which might be below the base contractual salary);
- material aid in case of childbirth, marriage or other family occasion.

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