

Russia

Introduction

Russia has a comprehensive set of laws regulating labor relations between employers and employees. The principal Russian legislation governing labor relations in the Russian Federation is the 2002 Labor Code of the Russian Federation (“Labor Code”), as amended through 2008. In addition to this core legislation, labor relations are regulated by the 1996 Law of the Russian Federation, “On Trade Unions and their Rights, and Guarantees of their Activities,” as amended through 2005, and the Russian legislation on labor safety, as well as other laws and numerous regulations.

The Labor Code sets minimum employment standards, which cannot be overridden by the agreement of the parties. Accordingly, any provision in an employment contract that negatively affects an employee’s entitlement to these minimum employment standards is not enforceable.

Terminations

Restrictions On Employers

Termination of employment in Russia is strictly regulated by the Labor Code and can only be carried out on specific grounds as provided therein. The dismissal of an employee on the initiative of management is most heavily regulated by law; a number of specific procedural requirements and formalities when dismissing an employee for cause must be carefully completed by the employer for the termination to be valid. “At-will” employment relationships are generally not permitted, except in the case of the employment of a company’s CEO.

Article 77 of the Labor Code establishes the general grounds upon which an employment relationship may be terminated. These general grounds are further described in Articles 71, 78 – 84, 278 – 280, 288, 292, 296, 307, 336, 341 and 347 of the Labor Code. The procedure on formalization of employment termination is set out in Article 841 of the Labor Code.

Article 77 of the Labor Code provides that an employment relationship may be terminated on the following grounds:

- (i) Mutual agreement of the parties (Article 78 of the Labor Code);

- (ii) Expiry of the term of the employment agreement (Article 79 of the Labor Code), unless employment relations effectively continue and neither of the parties require the relations to be terminated;
- (iii) Termination of an employment agreement on the employee's initiative (Article 80 of the Labor Code);
- (iv) Termination of an employment agreement on the employer's initiative (Articles 71 and 81 of the Labor Code);
- (v) Transfer of the employee, at his or her own request or with his or her consent, to a job with another employer, or transfer to an elective office (job position);
- (vi) Refusal of the employee to continue employment in connection with a change of the owner of the organisation's assets, a change of its affiliation (subordination) or its restructuring (Article 75 of the Labor Code);
- (vii) Refusal of the employee to continue employment in connection with changes to the fundamental terms of the employment agreement (the fourth paragraph of Article 74 of the Labor Code);
- (viii) Refusal of the employee to be transferred to another job for a health reason in accordance with the corresponding medical certificate or due to the lack of appropriate job at the employer (the third and fourth paragraphs of Article 73 of the Labor Code);
- (ix) Refusal of the employee to transfer to another locality due to relocation of the employer (the first paragraph of Article 721 of the Labor Code);
- (x) Circumstances beyond the control of the parties (Article 83 of the Labor Code); or
- (xi) Breach of the rules for conclusion of an employment agreement that are prescribed by this Code or other Federal law if the breach excludes the possibility of continuing employment (Article 84 of the Labor Code).

Article 81 of the Labor Code sets out the circumstances that would entitle an employer to unilaterally terminate its employment relationship with an employee. Article 81 of the Labor Code applies regardless of whether the employment relationship is for a definite or indefinite period. Article 81 of the Labor Code provides that an employment relationship may be unilaterally terminated by an employer under the following circumstances:

- (i) Liquidation of the organisation or termination of activity by the individual entrepreneur acting as the employer;
- (ii) Reduction in the number of employees or staff positions at the organisation or at the individual entrepreneur acting as the employer (also referred to as “staff redundancy”);
- (iii) Unsuitability of the employee for the job position held or job performed, as a result of insufficient qualifications as confirmed by the results of the employee’s formal evaluation;
- (iv) Change of the owner of the organisation’s assets (applies to the company’s CEO, his or her deputies, and chief accountant);
- (v) Repeated failure by the employee to perform, without justifiable reasons, his or her employment duties if the employee has a valid disciplinary sanction imposed on him or her;
- (vi) Single gross breach by the employee of his or her employment duties as follows:
 - a. Absenteeism, i.e., absence from the workplace without justifiable reasons for a whole day (shift), regardless of its length, and also in the case of the absence from the workplace without justifiable reasons for more than four consecutive hours in the course of working day (shift);
 - b. Reporting to work (at his or her workplace or on the territory of the employer’s organization or at a location where the employee is to perform his or her employment function under instruction from the employer) under alcoholic, narcotic or other intoxication;
 - c. Disclosure of a legally-protected secret (including State, commercial, service, and other secrets), which became known to the employee in connection with his or her performance of employment duties, including the disclosure of the personal information of another employee;
 - d. Committing at the place of work a theft (including petty theft) of the property of others, embezzlement or wilful destruction or damaging of property, if this has been established by a court conviction or by a resolution of a judge, body or official duly authorised to consider cases on administrative breaches, and if this conviction or resolution has come into legal force; or

- e. Breach of work safety requirements by the employee established by a work safety commission or work safety official if the breach resulted in grave consequences (job-related accident, emergency or disaster) or knowingly created an actual threat of such consequences;
- (vii) Culpable actions by an employee directly involved in handling monetary or other valuables, if such actions constitute grounds for the employer's loss of trust in the employee;
- (viii) Commitment by an employee with tutorial responsibilities of an immoral act if such act is incompatible with the employee's work continuation;
- (ix) Taking of an unfounded decision by an employee who is the company's CEO (the head of the branch or representative office of the organisation), his or her deputies or the chief accountant of the organisation, if the decision resulted in the breach of safekeeping of the organisation's property, or illegitimate use of that property, or other damage to the property of the organisation;
- (x) Single gross breach of employment duties by the employee who is the company's CEO (the head of the branch or representative office of the organisation) or his or her deputies;
- (xi) Provision by the employee to the employer of forged documents upon the conclusion of the employment agreement;
- (xii) On grounds that are provided for in an employment agreement with an employee who is the company's CEO or a member of its collective executive body; and
- (xiii) In other cases that are provided for by the Labor Code and other Federal laws.

Pursuant to Article 83 of the Labor Code an employment agreement is subject to termination in the following circumstances that are beyond the control of the parties:

- (i) Conscription of the employee for military service, or his assignment to alternative civilian service;
- (ii) Reinstatement of an employee who filled the same job position previously if he or she has been reinstated by a decision of the State Labour Inspectorate or a court;
- (iii) Failure of the employee to be re-elected to his or her office;

- (iv) Sentencing of the employee to a punishment that makes his or her continued employment in the same job position impossible as a result of a court conviction that has come into legal force;
- (v) Finding that the employee is completely disabled for employment activity in accordance with a medical certificate issued using the procedure established by Federal laws and other regulatory legal acts of the Russian Federation;
- (vi) Death of the employee or the natural person acting as the employer, or court recognition of the employee or the natural person acting as the employer as no longer being alive or as missing;
- (vii) Extraordinary circumstances that prevent employment relations from being continued (military activities, disaster, natural disaster, major emergency, epidemics and other extraordinary circumstances) if these circumstances are confirmed by a relevant State authority;
- (viii) Disqualification or another administrative punishment which excludes the possibility of the employee performing his or her duties under the employment agreement;
- (ix) Expiry of the validity, suspension of validity for a period of more than two months or removal of an employee's special right (license, right to drive road vehicles, right to bear arms or other special right), if this leads to the impossibility of the employee performing his or her duties under the employment agreement;
- (x) Termination of access to state secrets, if the work performed requires such access;
- (xi) Repeal of a court decision or repeal (recognition as illegal) of the decision of the State Labour Inspectorate regarding the reinstatement of an employee to a job; and
- (xii) Bringing into compliance of total number of foreign employees (including stateless persons) with the proportion of such employees established by the Russian government.

With respect to the company's CEO, Article 278 of the Labor Code sets out additional grounds for termination on the unilateral initiative of the employer:

- (i) In connection with the removal from office of the head of a debtor organisation in accordance with the legislation on insolvency (bankruptcy);

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- (ii) In connection with a decision to terminate the employment agreement, taken by an authorised body of the legal entity, the owner of the organisation's assets or a person (body) authorised by the owner; and
 - (iii) On other grounds provided for by the employment agreement.

This last point in Article 278 is a very important provision of the Labor Code as it permits an employer and the head of the company to determine the grounds for the termination of the employment relationship without being limited to those grounds specifically enumerated elsewhere in the Labor Code.

For certain specific categories of employees, the Labor Code provides the following additional grounds which constitute cause and would permit an employer to unilaterally terminate an employment relationship:

- (i) An employee hired by a natural person acting as the employer (Article 307 of the Labor Code) or an employee of a religious organization (Article 347 of the Labor Code) may be terminated on the grounds that are specified in the employment agreement;
- (ii) An employee holding a secondary job may be terminated where another employee is hired to do the job and if the job is his or her principal one (Article 288 of the Labor Code);
- (iii) A teaching professional working with an educational institution can be terminated on the following grounds (Article 336 of the Labor Code):
 - a. A gross breach of the charter of the educational institution, repeated within a period of one year;
 - b. Any use of teaching methods involving physical and (or) psychological violence or force on a student;
 - c. Where the rector, pro-rector, faculty dean and head of a branch (institute) of a State or municipal educational institution of higher occupational level reaches the age of 65.

The Labor Code also gives protection to a number of specific categories of employees, most particularly female employees. Pregnant women are among those protected from dismissal unless the employer is liquidated. Women with dependent children under three years of age, and single mothers (defined as cases where the paternity of the child has

not been legally established) with children under 14 years of age (18 years of age if the child is handicapped), other persons bringing up children of these ages and categories without the assistance of their mother cannot be terminated on the initiative of the employer except for the cases set out in Article 81 (i), (v) – (viii), (x) and (xi) of the Labor Code (see the fourth paragraphs of this section).

In addition, an employer must consult the trade union (i.e., obtain its reasoned opinion) before dismissing employees who are trade union members in cases where the position has become redundant, the employee is unable to adequately perform his or her job due to insufficient qualifications, as confirmed by employee evaluation process, or repeated failure by the employee to perform, without justifiable reasons, his or her employment duties if the employee has a valid disciplinary sanction imposed on him or her. The trade union must decide whether to permit the dismissal within seven work days of being notified by the employer of its intention to dismiss the employee. Where no mutual consent regarding the employee's dismissal is agreed between the employer and the trade union within ten work days from the date of information of the trade union on possible dismissal of a certain employee, the employer has the right to make the final decision itself. However this decision may be appealed to the State Labor Inspectorate. The employee must be dismissed within one month of receiving the trade union's reasoned opinion.

Article 269 of the Labor Code provides that employees who are younger than 18 years of age in cases other than the liquidation of organization may only be dismissed with the consent of the corresponding State Labour Inspectorate and the Commission on Minors and Protection of Their Rights.

As a general rule, an employment contract is concluded for an indefinite period. A definite term employment contract may only be concluded in the circumstances specifically described in Article 59 of the Labor Code (generally, where the nature or conditions of the work to be performed are of fixed duration) and the term of the contract cannot be longer than five years in duration.

Pursuant to Article 77(2) of the Labor Code, an employment contract, which has been concluded for a definite period of time, is terminated when the term of the contract expires unless employment relations effectively continue and neither of the parties requires the relations to be terminated. A fixed-term contract may also be terminated at the employer's initiative for the reasons set out in Article 81 of the Labor Code and at the employee's initiative in accordance with Article 80 of the Labor Code.

For temporary workers having concluded an employment contract for the term of up to two months, an employer may terminate an employment agreement due to liquidation of the organization or staff redundancy with a three days prior written notice. An employee having concluded such contract also has the right to early terminate it with three days prior written notice.

For seasonal workers (those employees who have concluded an employment contract for a certain period [season] generally not exceeding six months), an employer may terminate the employment relationship with seven days prior written notice by reason of liquidation of a company or staff redundancy. Such employees are entitled to a severance pay in the amount of their average earnings for two weeks. A seasonal worker also has the right to early terminate his or her employment with three days prior written notice.

Please note that seasonal and temporary employees may be terminated for cause on the grounds and with compliance to the procedure set out in the Labor Code.

Notice Provisions/Consequences Of A Failure To Give The Required Notice

The Labor Code provides that an employee has the right to terminate the employment relationship by providing the employer with two weeks' prior written notice (Article 80 of the Labor Code). The parties are free to agree that the employment relationship will terminate prior to the expiration of this two-week period. Any provision in the employment agreement that imposes longer notice requirements on the employee will not be enforceable due to its incompliance with labor law requirements. However, such notice requirement is extended to at least one month in respect of the company's CEO willing to terminate his or her employment (Article 280 of the Labor Code).

In the event an employee has concluded an employment contract for a period of up to two months or was hired as a seasonal worker, he or she is free to terminate it upon three days prior written notice to the employer.

In cases of liquidation of the organization and/or staff redundancy, the employer is required to give at least two months' prior written notice to relevant employees (Article 180 of the Labor Code). Failure to comply with this requirement may invalidate the termination and result in the employee's reinstatement in the job. Additionally, the employer is required to notify relevant employment authorities

of forthcoming dismissals not later than two months prior to the effective date of the dismissal. In case of mass dismissals the employer is required to give at least three months' prior written notice to relevant employment authorities.

Where a trade union has been established at an employer's enterprise, additional notice shall be given to relevant trade union in case of staff redundancy. Pursuant to Article 82 of the Labor Code, the employer which has taken a decision on staff redundancy must notify the relevant elected trade union body in writing not later than two months before such decision is effected. Further, in the event that such redundancy may lead to mass dismissal, the employer must notify the relevant elected trade union body not later than three months before any redundancy measures are taken.

Termination Indemnities

In certain events, an employee who is unilaterally dismissed by an employer has the right to receive a termination indemnity (compensation for early termination of employment). Pursuant to Article 178 of the Labor Code, an employee is entitled to receive a severance payment in an amount of not less than his or her two weeks' average earnings when dismissed because he or she:

- (i) Refuses to transfer to another job which is necessary due to health reasons confirmed by a relevant medical certificate, or due to the lack of suitable work at the employer;
- (ii) Is drafted or enlisted into the army or alternative civilian service;
- (iii) Is replaced by the employee who previously held the position;
- (iv) Refuses to be transferred to a new location with the employer;
- (v) Is recognized as completely disabled for employment activity in accordance with a medical certificate; or
- (vi) Refuses to continue work due to the change of the terms of the employment agreement agreed upon by the parties.

As noted above, in the event of a staff redundancy or the liquidation of the employer, an employee is entitled to receive at least two months prior notice of the impending dismissal and, on the date of dismissal, a mandatory severance payment that is equal

to one month' average salary. In the event that he or she has not been able to secure alternative employment following the date of termination, he or she may be entitled to receive up to two additional month's average earnings as severance.

Laws On Separation Agreements, Waivers And Releases

There are no restrictions on an employer and employee entering into a separation agreement on the termination of the employment relationship. Thus, in order to avoid any uncertainties and misunderstanding connected to employment termination, employer and employee may conclude a mutual consent termination agreement where they can set out specific terms of employment termination, including the amount of compensation for early termination. However, pursuant to Article 9 of the Russian Civil Code, an individual is not legally entitled to waive his or her rights. It is, therefore, very unlikely that a waiver and release of claims by an employee will be upheld by a Russian court, but in any event such claims will be considered by court on a case by case basis. Nevertheless, where a mutual consent termination agreement exists, the employer's position will be enhanced if an employee subsequently files a claim.

Litigation Considerations

In general, a Russian court will only consider the merits of a case if the employee has been dismissed according to the required procedures. Therefore, if an employer has dismissed an employee in breach of the prescribed procedural form, the dismissal will be held by a court to be wrongful, even if the substantive merits of the case are valid.

An employee is entitled to commence a court action against an employer if he or she believes that he or she has been unjustly dismissed or if the employer has committed any other violations of his or her rights. In connection with this action, an employee has the right to demand that the employer stop such violations (including reinstatement at work) and is also entitled to seek moral damages (compensation for damages suffered by the employee as a result of the employer's actions which may include loss of reputation, mental or physical suffering, etc.). The remedy for wrongful dismissal is reinstatement of the employee in his or her former position and repayment of all back earnings for the period of forced absence from work (e.g., for the period from the date of dismissal until the date of reinstatement at work).

Employment Discrimination

Laws on Employment Discrimination

Although there is no specific Russian legislation on discrimination in the work place, both the Labor Code and the Russian Constitution contain provisions explicitly prohibiting discrimination. Article 3 of the Labor Code prohibits discrimination on the grounds of gender, race, nationality, language, social origin, property status, place of residence, religious beliefs, affiliations with social associations and other circumstances not connected with the professional qualities of the workers. Article 19 of the Russian Constitution contains a similar provision. Article 3 of the Labor Code does permit preferential treatment prompted by the nature of the job. Additionally, preferential treatment is permitted for certain classes of individuals that are viewed by the state as requiring additional protections or to whom an affirmative action program applies.

The Labor Code makes specific exceptions for female employees in a number of areas. These distinctions are, for the most part, set out in Chapter 41 (Articles 253 to 263 of the Labor Code). Article 64 of the Labor Code provides that an employer is prohibited from refusing to hire an employee on the basis that she is pregnant or has a child or children. If such an individual is not hired, she has a right to request that the company provide her with written reasons as to why she was not hired. Pursuant to Article 255 of the Labor Code a female employee is entitled to 140 days of maternity leave (or more days in specific cases) and is subject to a maternity state allowance during the period of this leave. Following the maternity leave period, the employee is entitled to take a further period of a childcare leave until the child reaches the age of three (Article 256 of the Labor Code), without salary. During this leave she is entitled to a childcare state benefit until the child is 1.5 years old. During this leave, a female employee may choose to work part-time, for example, seven hours a day, while preserving her entitlement to the childcare leave state benefit. This additional leave can also be taken by the father, grandmother or grandfather, or other relatives and/or guardians caring for the child provided that the mother of the child has returned to work. Article 253 of the Labor Code prohibits women from being hired to perform arduous work, to work under harmful conditions or to work underground. Additional legislation lists the various positions that fall into these categories. Pursuant to Article 259 pregnant women cannot be asked to work overtime, at night (from 10pm until 6am), on days off nor be sent on business trips.

Women who have children under the age of three can be asked to work overtime, on days off or sent on business trips only if they consent (in writing) and such work is not against medical advice for health reasons.

Sexual Harassment

Laws on Sexual Harassment

There is no specific legislation that prohibits sexual harassment in the work place. Article 133 of the Criminal Code of the Russian Federation provides that compelling an individual to engage in sexual relations through the use of blackmail, the threat of destruction, damage or withdrawal of property, or the withdrawal of any other material right upon which the victim depends is a crime. Although this provision of the Criminal Code is broad enough to include claims of sexual harassment in the work place, no court cases on this issue exist.