

Russia

Introduction

Russia has developed a comprehensive set of laws regulating labor relations between employers and employees. The 2002 Labor Code of the Russian Federation (the “Labor Code”), as amended through 2008, and the 1996 Law of the Russian Federation “On Trade Unions and Their Rights, and Guarantees of Their Activities” (the “Trade Union Law”), as amended, are the principal Russian legislation governing labor relations, and particularly the relationship between trade unions, collective workers, and the employer as well as the status of the trade unions, their rights, and their duties. Although individual employment agreements are concluded between the management of an enterprise and each employee, the terms of the agreements cannot deviate from the minimum standards set by the Labor Code. Likewise, any collective agreement that is concluded between the management and its employees must also comply with the minimum guarantees established by the Labor Code. The Trade Union Law is the primary legislation specifically regulating the formation, rights, and obligations of trade unions in Russia.

Trade Unions

The Russian Constitution guarantees the right to participate in trade unions to all citizens (Article 30). Articles 2 and 171 of the Labor Code specifically provide and guarantee this right to all employees. Chapter 58 of the Labor Code outlines the general rights and obligations of trade unions. These general provisions of the Labor Code have been subsequently detailed in the Trade Union Law.

The General Role Of Trade Unions

In Soviet times, trade unions were not truly independent from the employer but were de facto a part of the political system led by the Communist Party. Their main role was to supervise social and welfare benefits and to enforce health and safety regulations. Although almost all employees at this time were trade union members, they did not view trade unions as being representative of their concerns. The formation of the Russian Federation on December 25, 1991, and the new form of private enterprise that developed as a result of the emergence of a market economy, have led to a situation where today trade unions have ceased to play a more active role at

most Russian enterprises. Where trade unions are active (generally large state enterprises and enterprises in certain industry sectors), their primary function is to ensure that the management adheres to the terms of the respective collective labor agreement, provides safe working conditions for the employees, and generally treats the employees fairly and in compliance with Russian law.

The Constitution Of A Trade Union

According to the Trade Union Law, a trade union is a voluntary social association of citizens bound by joint industrial and professional interests and by their type of work, established for the purposes of representation and protection of their social and labor rights and interests.

There is no requirement that a trade union be formed at a company. A trade union may be established by at least three individuals who are at least 14 years old. Pursuant to Article 30 of the Russian Constitution, no one can be forced to join a local trade union organization if one is established at an enterprise. Moreover, Article 9 (2) of the Trade Union Law provides that an individual's employment cannot be conditional upon his or her membership of a trade union.

Pursuant to Article 7 of the Trade Union Law, in order to establish a trade union, its founders must approve its charter or regulations and elect its governing bodies. The following categories of information should be included in the regulations:

- The name, goals, and tasks of the trade union;
- The categories and occupations covered by the trade union;
- The terms and procedure for establishing the trade union, for accepting members, and for allowing members to leave;
- The rights and duties of trade union members;
- The territory on which the trade union will operate;
- The organizational structure of the trade union;
- The establishment and authorities of the various trade union bodies, as well as the term of their powers;
- The procedure for amending the rules;

- The procedure for paying membership fees;
- The methods through which the trade union may derive income and acquire property, as well as the procedure for the ongoing management of trade union property; and
- The procedure for reorganizing and liquidating the trade union.

Russian legislation does not require that all trade union founders or members work with the same employer. Moreover, trade unions are not obliged to inform the employer on their establishment. There may be several trade unions within one company and even within its subdivisions. It is illegal to require individuals when they are hired (or thereafter) to waive their right to form or participate in a trade union. Also, an employer is not entitled to request information from an employee regarding his or her participation in trade unions. There is no requirement for a trade union to be registered as a legal entity, but if the union wishes to possess the rights of a legal entity, i.e., to acquire and dispose of property, to have its own bank account, and to enter into civil law agreements, it needs to be registered as a legal entity. The procedure for registration of trade unions as legal entities is handled by the Russian Federal Ministry of Justice and is quite complicated. Therefore, most of the trade unions functioning at the level of a company (shop-floor or primary trade union organizations) are not registered as legal entities.

The system of trade unions in Russia is as follows. The initial (basic) level of trade unions is made up of primary (shop-floor) trade union organizations. Primary trade union organizations are normally members of the higher territorial or regional trade union of the relevant industry, and such territorial or regional trade unions are united by interregional unions or all-Russia unions. Trade unions may also establish associations. Trade unions or their associations may be formed either within a certain industry (e.g., automotive industry, food industry, etc.) or within a certain territory or region (e.g., Moscow region, Leningrad region, etc.). Generally, on the local level, the employer deals with the primary trade union organizations of its company.

Primary trade union organizations are to operate either on the basis of their own regulations or on the basis of specific rules for primary trade union organizations that have been adopted by the main trade union organization.

The Scope Of Trade Union Rights In Businesses

Chapter II of the Trade Union Law establishes the general rights of trade unions. The goal of a trade union is to represent and protect the rights and interests of its members and, in cases of collective rights and interests, the interests of all workers regardless of whether they are trade union members. In this latter case, the non-union employees must specifically authorize the trade union to represent their interests.

The Trade Union Law gives trade unions powers to influence labor-related decisions made by employers, in particular regarding the following:

1. (i) Liquidation of a company or its subdivisions (including branches), (ii) changes in a company's form of ownership or corporate form, and (iii) a complete or partial suspension of production which may entail a reduction in the number of jobs or worsening of labor conditions. (i) to (iii) above may be implemented by the company only after having informed the relevant union at least three months in advance and after having held negotiations with the trade unions in respect of the rights and interests of union members and those represented by the union;
2. Trade unions have the right to put forward proposals to local authorities to postpone or temporarily suspend the implementation of measures involving mass redundancy of employees;
3. Employees who serve as trade union officers cannot be disciplined, transferred, or dismissed by their employer without the union's consent;
4. Certain decisions of the company affecting labor relations must take into account the opinion of the trade union in cases provided for by law, such as regulatory acts, internal regulations (local normative acts), or collective agreements; and
5. A trade union's labor inspectors may visit the company employing its members and carry out inspections for compliance with labor laws and work safety requirements.

Pursuant to the Labor Code, an employer is obliged to make certain managerial decisions affecting employees only after obtaining a so-called "motivated opinion" of the trade union body. For example, under Article 372 of the Labor Code, the employer shall provide drafts of policies, i.e., local normative acts that affect the

rights and duties of the employees, and explanations on thereof, to the primary trade union organization. The elected body of the primary trade union organization provides the employer with its motivated opinion on such act within five working days. If the union disagrees with the draft policies, the employer must either agree with this opinion or start conducting mutual consultations with the union within three days of receiving the opinion. If the employer and the union do not reach an agreement, the employer is entitled to issue the policies and the union is entitled to challenge them in court or at the State Labor Inspectorate (the government regulatory authority that supervises labor relations and compliance with Russian labor law). Also, the trade union may initiate a collective dispute procedure subject to the Labor Code requirements. If the employer does not request a motivated opinion of the union, the policies may be invalidated by court.

Also, the employer must request the primary trade union for its motivated opinion in case of possible termination of a union member due to staff redundancy, non-compliance of the employee with the requirements of the position occupied confirmed by results of evaluation, or due to repeated violation of the labor legislation. The union considers the request within seven days of receipt and provides its motivated opinion. If the employer disagrees with the opinion, it has to consult with the trade union within three working days; if agreement is not reached, the employer is still entitled to terminate the union member. However, the employee or the primary trade union may challenge such decision in court or at the State Labor Inspectorate. If the employer does not request a motivated opinion of the union in the above case, a court or the State Labor Inspectorate may repeal the termination as illegal.

Although the motivated opinion of a trade union is not binding on the employer, from the practical point of view, negative motivated opinions may cause certain difficulties for the employer in terms of managing the day-to-day internal activities of the company. The bureaucratic procedure of applying for and discussing motivated opinions usually involves significant time and labor expenses for the company.

An employer is not entitled to terminate the elected leaders of the collective bodies of primary trade union organizations or the primary trade union organizations of the company's subdivisions for the reasons mentioned above without the prior written consent of the higher trade union body. The trade union may also take a decision to release an employee from his job duties due to his or her election to a trade union body. In this case the employment agreement between the employer and such employee is to be automatically terminated, and the employer is not to

pay a salary to such employee. However, after the term of election expires, the employer is obliged to reinstate the employee in his or her former job or an equal job subject to the employee's written consent. Moreover, such employee may be terminated due to staff redundancy, due to non-compliance of the employee with the requirements for the position occupied confirmed by results of evaluation, or due to repeated violation of the labor legislation within two years of expiration of the term of his or her election to the trade union body, only subject to the prior written consent of the higher trade union body. However, primary trade unions do not often use such rights since in order to release their leaders from their main work they need to pay a salary to the leaders.

The employer is also obliged to provide certain benefits to trade unions to assist them in promoting their activities and to establish conditions for work of the trade union, i.e., to provide it with office space, means of communication, etc.

The Trade Union Representatives

A trade union representative is defined as a trade union organizer, group leader, leader of the trade union or a trade union association, or any other individual authorized to represent the trade union. To be a union representative, an employee must be a member of the trade union.

Collective Bargaining

The law does not require the employer and the employees to conclude a collective labor agreement; if neither the employer nor the employees initiate collective bargaining, a collective agreement is not concluded.

However, if either the employer or the employees initiate such negotiations, the party that has received an offer to start collective bargaining must enter into negotiations within seven calendar days. The parties should elect the representatives that will participate in the collective bargaining commission. The company's primary trade union is entitled to represent employees in negotiations with the employer and to initiate the collective bargaining process in order to enter into a collective bargaining agreement with the employer. However, only trade unions that represent more than 50% of the employees, or which were so authorized by a general employee meeting or an employee delegates conference, are entitled to do so.

If there are several trade unions in the company that jointly represent more than 50% of the employees, they are entitled to establish a joint body to represent the employees in the collective bargaining process. In the course of collective negotiations the unions have the right to represent employees subject to the limitations mentioned above and are entitled to negotiate a collective agreement and sign it without any final approval from the employees of the company.

In big companies where there are no trade unions, it is common to create a representative body acting on a standing basis. An elected body similar to a Workers Council represents the interests of all employees in the company and acts on the basis of a charter approved by the general meeting. It also enjoys the rights granted by the Labor Code. Among others, this body has the following rights: to participate in collective bargaining, to conclude a collective bargaining agreement on behalf of the employees, to express an opinion on adoption of local regulatory acts, to receive the information necessary for holding collective bargaining negotiations, and to exercise control regarding observance of collective bargaining agreements.

Article 39 of the Labor Code provides that employees participating in collective bargaining as representatives should be relieved of their employment duties, but are entitled to their average salary for a period to be agreed upon by the parties, but not for more than three months. Generally, these employees may not be subject to disciplinary action, transferred to another job, or dismissed by the employer during the negotiations without the prior consent of the general meeting that authorized them to act as the employees' representatives.

In general, a collective agreement should be concluded within three months from the date of entering into negotiations. However, if the employer and the employees cannot agree on all the issues discussed they should conclude a collective agreement on the terms agreed upon and draft a reconciliation protocol.

Any groundless rejection to conclude a collective agreement is considered a violation of law and may lead to the imposition of administrative fines. Article 5.30 of the Code of Administrative Offences of the Russian Federation envisages the liability of the employer or its officer for groundless refusal to conclude a collective agreement. The penalties range from RUB 3,000 to 5,000 (approximately from USD 85 to 142).

Collective Agreement

The content of a collective agreement is to be determined by the parties (Article 41 of the Labor Code). In particular, it may set out the mutual obligations of the employer and the employees on the following issues:

1. System of remuneration;
2. Guarantees and benefits for employees;
3. Improvements in working conditions and work safety arrangements;
4. Procedure for amending the collective agreement;
5. Renunciation of strikes if the parties comply with the terms of the collective agreement; and
6. Other issues agreed upon by the parties.

The collective agreement usually provides for certain labor and social benefits for employees which exceed the minimum benefits guaranteed by applicable legislation.

Pursuant to Article 44 of the Labor Code, a collective agreement is concluded for a period of no more than three years, but the parties have the right to extend it for a period not exceeding another three years. A collective agreement applies to all employees of the company. However, a collective agreement concluded in a separate subdivision of a company (its branch or representative office) applies to employees of this separate subdivision only.

In the event of a company's reorganization, a collective agreement remains valid for the entire period of the reorganization. That means that in the event of a change of name, dismissal of a company executive, and/or a company's change of business, the collective agreement remains effective for the entire period of its validity. Upon a change of ownership, a collective agreement remains valid for three months after the ownership rights have been transferred.

A collective agreement may be amended in compliance with the procedure established for the conclusion of a collective agreement, or in compliance with the procedure established by a corresponding collective agreement.

Resolving Collective Disputes

Under the Labor Code, disputes between employees (their representatives) and the employer (its representatives) regarding establishing and changing the conditions of work, entering into, amending, or fulfillment of collective bargaining agreements, accords, and disputes regarding refusal of the employer to accept the motivated opinion of the union on local normative acts are considered as collective disputes.

The Labor Code establishes a procedure for the review of a collective labor dispute (settlement procedure). Under Article 401 of the Labor Code, a collective labor dispute should be considered by a settlement commission first, and then it may be considered by a settlement commission with the participation of a mediator and/or by the labor arbitration. A settlement commission must be formed within three days after a collective labor dispute arises and must include an equal number of members representing the employees and the employer. The employer should issue an order to form a settlement commission, and the employees' representative body should issue a resolution to the same effect. A settlement commission must consider a collective labor dispute within five business days from the date of the employer's order and employees' resolution. This period may be extended by the mutual consent of the parties. The parties to a collective labor dispute must not refrain from forming such commission or participating in it. If an agreement cannot be reached by a settlement commission, the employer and employees should start negotiations in order to invite a mediator and/or form a labor arbitration body. The mediator may be invited by the parties within three business days from the date of a reconciliation protocol. The mediator must review a collective labor dispute within seven business days since he or she was invited/appointed. Within this period of time, the employer and employees should adopt either a decision or issue a settlement protocol.

As the representative of the employees, the primary trade union organizations usually represent employees in the course of collective disputes and settlement procedures. However, the trade union may not initiate a collective dispute itself since employees' demands may only be approved by an all-employee meeting (or an employee delegate conference). At the same time, if the union represents the employees in the course of such disputes, it is entitled to negotiate with the employer and sign a final settlement agreement.

Strikes

Pursuant to Article 37 of the Russian Constitution and Article 409 of the Labor Code, the employees' right to strike is recognized as a means of resolving a collective labor dispute. Employees or their representatives may organize a strike if (i) settlement procedures have failed to end a labor dispute; (ii) the employer refuses to take part in a settlement procedure; (iii) the employer does not fulfill the agreement reached (if any) in the course of the settlement of a collective labor dispute; or (iv) the employer fails to abide by a labor arbitration decision.

The primary trade union organizations may raise the issue regarding calling a strike, but an order to begin a strike must be approved by an all-employee meeting (or an employees' delegates conference). The employer must provide premises and create the correct conditions for the employee meeting and cannot obstruct its being held. The meeting is considered to have a quorum if at least 50% of the company's employees (75% of delegates of a conference) have participated in it. A decision to call a strike is considered to be adopted if at least 50% of the employees participating in the meeting voted in favor of it. However, if it is impossible to hold an employee meeting, the employees' representatives may approve a decision to call a strike by collecting the signatures of more than half of the employees in support of the strike.

The Labor Code requires inclusion of the following information in a decision to call the strike: (i) a list of differences that constitute the grounds for calling and staging the strike; (ii) the date and time of commencement of the strike, its estimated duration, and number of participants in the strike; (iii) the name of the body leading the strike and a list of the employees' representatives authorized to participate in the conciliation procedures; (iv) a suggestion on the minimum level of work to be performed at the company.

The employer should be notified in writing of the beginning of the strike no later than 10 business days in advance of the strike and must, in turn, notify the Federal Labor Service of the forthcoming strike. During the strike employer and employees must continue the settlement procedures for settlement of the collective labor dispute.

The employer or a prosecutor may apply to court to declare the strike unlawful if it was called not in compliance with the timing, procedures for calling it, and other requirements envisaged in the Labor Code. A strike may be recognized unlawful by the Supreme Court of the respective constituent entity of the Russian Federation

where the company is located. The body leading the strike must immediately inform the employees of the court's decision. The court's decision must be complied with immediately and employees must terminate the strike and resume work no later than the day following the date when a copy of the court's decision was delivered to the body leading the strike. If the employees continue a strike that was recognized unlawful by a court decision, they may be subject to disciplinary action for violation of labor discipline. The employees' representative body that called a strike and did not end it after receiving a court decision must reimburse the employer for damages caused by the unlawful strike. In certain cases the strike may be postponed or suspended by a court decision.

The employees' participation in a lawful strike is not considered to be a violation of labor discipline and a ground for employment termination. For the entire period of the strike, the employees involved should remain employed and keep their jobs. The employer does not have to pay a salary to the employees participating in the strike for the period of the strike except for those employees who perform a mandatory minimum of work. Employees who do not participate in the strike but are unable to perform their work because of the strike may state in writing that they remain idle as a result of the strike. These employees are entitled to a payment for the idle time. Pursuant to Article 157 of the Labor Code, idle time for which an employee is not responsible shall be paid at the rate of two thirds of the employee's basic salary calculated in proportion to the idle time. The employer may transfer these employees to other job positions. The employer is not allowed to dismiss employees due to their involvement in a collective labor dispute or a strike during the settlement of a dispute (including in the course of a strike).