The Global Employer

Focus on Russia
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Foreign investors should be aware of the broad set of laws regulating labor relationships between employers and employees that currently exists in Russia. The principal piece of legislation governing labor relationships is the Labor Code of the Russian Federation (the “Labor Code”), effective February 1, 2002 and most recently amended in 2014. In addition to this core legislation, labor relationships are regulated by the 1996 Russian Federal Law on Professional Unions, Their Rights and Guarantees of Activity, as well as Russian legislation on the minimum wage and labor safety and other related laws and numerous regulations.

A written employment contract in Russian, setting out the basic terms of the employment relationship, must be entered into by each employee working in Russia. The Labor Code provides all employees with minimum guarantees that cannot be superseded by any other agreements between the employer and the employee. Accordingly, any provision in an employment contract that diminishes an employee’s position from that set forth in such guarantees will be invalid.

As a general rule, employment contracts are to be entered into for an indefinite period. A definite term employment contract may also be entered into, but such a contract cannot be enforced for a term longer than five years, and it may only be executed in the circumstances specifically provided for by Article 59 of the Labor Code. Such situations usually occur when the nature or conditions of work make it impossible for the parties to enter into an indefinite term contract. Recently the Russian law regarding the term of employment has been supplemented by provisions in accordance with which employment contracts with foreign workers should be concluded for an unspecified period of time. Specific-term employment contracts with foreign workers similarly may only be executed in the circumstances specifically provided for by Article 59 of the Labor Code. Further, an employee cannot be prohibited from holding a second job in addition to his/her full-time employment, with certain limited exceptions provided by federal law.

Since April 19, 2013 the law has entitled employers to conclude employment agreements for distance work, where distance work means the performance of job functions by an employee outside the employer’s premises. Specifically, performing job functions and related communication between the parties must be carried out via telecommunication networks, including the Internet, telephone, etc. Concluding a distance work employment agreement provides various benefits to the company, in particular, it may add specific grounds for termination at the employer’s initiative, more options to control employees, fewer work safety obligations, flexibility, etc. The employment agreement and any addenda to it can be concluded in electronic format by exchange of documents between the parties. In such cases both parties (the employee and the company) have to use approved electronic digital signatures. The employer can also provide the employee with internal orders and regulations for acknowledgment in electronic format using an electronic digital signature. In certain cases the parties are still obliged to send each other hard copy documents by registered mail with confirmation of delivery (for example, a hard copy of the employment agreement previously signed in electronic format, documents confirming temporary disability, notarized copies of documents submitted upon hiring requested by the employer, etc.).

Under Russian labor legislation the employment duties and obligations should be defined in the employment contract. It is important that these duties and obligations are broadly defined because an employee cannot be required to perform tasks outside the scope of duties described in his/her employment contract. Similarly, an employer cannot make unilateral changes to an employee’s obligations. Moreover, the employer must notify an employee two months in advance of any changes in the fundamental terms and conditions of employment.
Employment-related Orders

Employers in Russia are required to issue an internal order (decree) each time an employee is hired, transferred to a new job, granted a vacation, disciplined, or dismissed, and also in several other cases. For example, Article 68 of the Labor Code expressly requires that the order on hiring must be issued and given to the employee for countersignature not later than three days after the employee actually starts work. When an employment agreement is terminated for any reason, an order on termination must be issued and given to the employee for countersignature on the last day of employment (Article 84.1 of the Labor Code).

Labor Books

A labor book is a document that contains information about a person’s employment history, as well as certain other information. An employee must make sure that a note of employment is made in his/her labor book by an employer when the employment lasts for over five days. The parties of the employment agreement on distant work may agree not to make any entries in an employee’s labor book. The labor book is vital because it confirms an employee’s right to a state pension and other benefits. Employers are responsible for keeping their employees’ labor books and making all records in them in a timely manner. The employer must return the duly completed and stamped labor book to the employee on the last day of employment. If this is not done, the employee may claim that his/her employment was not properly terminated and, therefore, he/she could not enter into employment relations with a new employer. In this case the employer may be required by a court to pay salary to the employee for the whole period from the date of termination of employment until the date of return of the completed labor book to the employee.

Probationary Period

An employer has the right to establish a three-month probationary period for a newly hired employee. As an exception to this rule, an employer may establish a six-month probationary period for employees hired for certain top executive positions (e.g., CEO of a company and his/her deputies, chief accountant and his/her deputies, head of a branch/representative office or other separate divisions of a company). The imposition of a probationary period must be specifically stated in the employment contract, as well as in the order on hiring. If during the probationary period an employer determines that an employee does not meet the criteria established for the job position for which he/she was hired, the employee can be dismissed by the employer without a severance payment and with only three days’ written notice. The above-mentioned notice to the employee must state the reasons for the employee’s failure to pass the probationary period. However, an employee is entitled to resign during the probationary period without stating any reason with three days’ written notice to the employer.
Minimum Wage

Wages may not be lower than the minimum monthly wage established by the applicable Russian legislation. The minimum monthly wage is subject to frequent indexation. The statutory minimum monthly wage on the federal level will be 5,965 rubles per month from January 1, 2015 (approximately USD 109). In addition, the minimum monthly wage can be locally set at a higher level. Thus, for example, the minimum monthly wage in Moscow is set by the tripartite agreement between the Moscow government, Moscow associations of employers and Moscow associations of trade unions at 14,000 rubles (approximately USD 255) as of June 01, 2014.

Working Hours

Employers are required to keep a record of all time worked by each employee, including any overtime. The regular working week is 40 hours. Any time worked over 40 hours is classified as overtime and may only be demanded by employers in extraordinary circumstances, as specified in Article 99 of the Labor Code, and upon an employee’s prior written consent. The Labor Code limits the total amount of overtime for each employee to 120 hours a year, and an employee may not be required to work more than four hours of overtime in two consecutive days. Overtime must be paid at the rate of 150 percent of the regular hourly rate for the first two hours of overtime worked during one day and at the rate of 200 percent of the regular hourly rate thereafter. Upon an employee’s written request, an employer must compensate overtime work by granting the employee additional time off instead of payment of overtime compensation. Such time off shall be not less than the time worked as overtime. Note that certain limitations regarding overtime work apply to protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of three, disabled employees, and certain other categories as defined by federal laws.

Holidays and Days Off

In Russia, there are 14 public holidays. The official public holidays are as follows:

- **January 1, 2, 3, 4, 5, 6 and 8** New Year’s Holiday
- **January 7** Christmas
- **February 23** Defenders of the Motherland Day
- **March 8** International Women’s Day
- **May 1** Holiday of Spring and Labor
- **May 9** Victory Day
- **June 12** Russia Day
- **November 4** National Unity Day

The length of weekend time off shall be not less than 42 hours. As a rule employees may be required to work on a day off or on a public holiday only in extraordinary circumstances, as specified in the Labor Code, and only upon the employees’ prior written consent. As a general rule, employees should receive payment of not less than twice the regular rate for any work performed on a day off or on a public holiday or receive another day off instead.

Certain limitations connected with working on days off and on public holidays apply to the protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of three, disabled employees, and other categories as defined by federal laws.
Vacations

Employees in Russia are entitled to an annual paid vacation of at least 28 calendar days per one year of work. An employee is entitled to use his/her vacation time (in full) once he/she has worked for an employer for at least six months. The Labor Code requires that the dates of the annual vacation of each employee should be indicated in the schedule of vacations for the calendar year. The employer must approve this schedule by mid-December of the preceding year. The Labor Code further requires that employers notify their employees in writing at least two weeks before the vacation is to start. An employee's vacation allowance should be paid out to the employee at least three days before the vacation is due to start.

Sick Leave

In Russia the system of sick leave requires an employee to submit a medical certificate (a so-called "sick leave sheet") only after his/her recovery. Generally, employees cannot be dismissed by their employer during sick leave and are entitled to receive sick leave compensation. Sick leave compensation is covered by the Russian State Social Insurance Fund (except for the first three days of each temporary disability period of an employee, which should be compensated by an employer). This compensation is funded by the employer's contributions that are retained as a percentage of its employees' salaries in the form of contributions to the Social Insurance Fund. Under current rules, sick leave compensation must be paid to an employee in the event of his/her illness, injury (labor-related or other), and in cases when an employee is looking after a sick family member, as well as in some other instances. Currently, the amount of compensation paid to the employee during such sick leave is set at between 60 and 100 percent of the employee's earnings, depending on the employee's uninterrupted work history and other circumstances. In cases of a labor-related injury or occupational disease, the amount of sick leave compensation is 100 percent of the employee's earnings. However, in any event sick leave compensation can not exceed a maximum limit established by legislation. Pursuant to the currently effective laws, in 2015 the maximum amount of sick leave compensation (regardless of the average earnings), currently remains at the level of 1632,88 rubles (i.e. approximately USD 30) per calendar day.

Maternity Leave

Paid maternity leave starts to accrue a minimum of 70 calendar days prior to the birth and continues to accrue for an additional 70 calendar days after the birth. Paid maternity leave is provided for a longer period in the event of complications while giving birth or for multiple births. The maximum amount of maternity leave compensation is the same as the maximum amount of sick leave compensation (1632,88 rubles (i.e. approximately USD 30) per calendar day). Maternity leave compensation is covered by the Russian State Social Insurance Fund, which is funded by the employer’s contributions that are retained as a percentage of its employees’ salaries in the form of contributions to the Social Insurance Fund. A child’s caregiver (the employee who has given birth, the father, grandmother, grandfather, or another relative who is actually taking care of the child) may request partially paid childcare leave until the child is three years of age. During the entire period of paid/unpaid leave, the employee retains the right to return to his/her job, and the full leave period is included when calculating the employee’s length of service.
Dismissal

An employment relationship may be terminated by an employer only on the specific grounds provided in the Labor Code, including a reduction in the workforce, the employee’s repeated failure to fulfill his/her employment duties without justifiable reasons (if the employee was disciplined within the preceding 12 months), and the employee’s unjustified absence from the workplace for a whole working day or for more than four consecutive hours during one working day. The at-will termination of an employment relationship by an employer is not allowed. When terminating employment for any reason employers must strictly comply with specific procedures and documentary requirements provided by the Labor Code. The Labor Code gives additional protection to a number of specific categories of employees, including minors, female employees, employees with children, trade union members, and various other categories. However, employees are entitled to terminate their employment at any time, without stating any reason, and, as a general rule, with only two weeks’ written notice to the employer.

Compensation

Salary payments must be made to employees at least once every half a month. Employers are obligated to pay salary and other employment-related payments on a date set by the internal labor regulations or by the individual employment contract. An employer will be obligated to pay compensation (i.e., interest) for delaying the payment of salary and other employment-related payments in accordance with the rules established by Article 236 of the Labor Code. In addition, employees have the right to stop working, with prior written notice to their employer, if their employer has delayed payment of their salary for more than 15 days. Employees in Russia must be compensated in the currency of the Russian Federation (Russian rubles). As a general rule, employment-related payments in a foreign currency, both in cash and by bank transfer, are considered by the state authorities as a violation of the law.

Foreigners Working in Russia

The prior permission of the appropriate migration authority is required for companies employing foreign nationals for work in Russia. In addition, a valid Russian work visa and a work permit are required for foreign nationals before they may commence working in Russia. The same rule applies to foreign nationals working in Russia under civil-law contracts for performance of works or provision of services (e.g., sales representatives). As a general rule, permission for the employing company to hire foreign nationals and individual work permits for foreign nationals are issued for a period of up to one year. Currently in Moscow the procedure for obtaining permission to hire foreign nationals and individual work permits may take from three to five months to complete. This timeframe can differ depending on the particular region of the Russian Federation.

Work permits for citizens from visa regime countries are issued by the Federal Migration Service within a special quota established annually by the Russian Government. The quota sets a maximum number of foreign employees allowed to be hired each year in different regions of Russia. Therefore, companies planning to employ foreign nationals have to
preaminarily apply to the relevant state authorities for approval of their personal quota for the forthcoming year. Absence of an approved quota makes it impossible for the company to receive work permits for the relevant year. Certain positions, a list of which is approved annually by the Russian government, do not fall under the quota requirement. Employers hiring foreign nationals for these “quota exempt positions” can apply for the relevant work permits without applying for a quota.

From January 1, 2015, in order to obtain work permits foreign nationals are required to provide relevant certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles to the Federal Migration Service of Russia.

There is a special category of foreign employees called “highly qualified foreign specialists” (”Specialists”). The main criterion for recognizing a foreign employee as a Specialist is a salary level of two million rubles per year (currently approximately USD 34,000) or more.

Highly qualified foreign specialists can take advantage of a simplified procedure for obtaining work permits and work visas. To receive work permits for Specialists their employers are not required to obtain a quota for work permits and a permit to hire foreign nationals. Moreover the Specialist is not required to provide the above-mentioned certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles. A work permit and work visa for a Specialist may run for three years, with the possibility of repeatedly extending them as long as the Specialist has a valid employment contract. The work permit may be effective in more than one region of the Russian Federation, subject to some additional documentary requirements. A work permit for a Specialist and the relevant multiple-entry work visa invitation are processed by the Federal Migration Service of the Russian Federation within 14 business days.

The Specialist’s work permit and work visa procedure is available to Russian companies and accredited branches of foreign commercial companies. This option is also available for representative offices from January 01, 2015. Certain types of employers, in particular, branch offices of foreign non-profit and religious organizations, and those employers who have been penalized for illegal employment of foreigners in Russia within the last two years, can not use the simplified procedure for obtaining work permits and work visas for Specialists.

Recently the Russian law regulating employment of foreign nationals in Russia has been amended. Most of the amendments take effect from January 1, 2015. The amendments allow foreigners who enter Russia on a visa-free basis to work for legal entities and individual entrepreneurs by virtue of “patents” (special permission documents issued in a standard simplified procedure and in the form prescribed by statute). In addition, the amendments introduced changes into the procedures under which employers report on the work activities of all their foreign hires. In particular, employers are no longer required to inform the tax authorities about the employment of, and/or enlistment of the services of, foreign workers. Also, employers who enlist the services of foreigners (including those who enter Russia with or without visas, and highly qualified foreign specialists) as of January 1, 2015 will have to inform the Federal Migration Service, not the tax authorities, about the conclusion and termination of employment contracts or civil law contracts with foreign citizens, within three business days from the date of such conclusion or termination.
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