12. Employment

12.1 Introduction

The principal legislation governing labor relationships in the Russian Federation is the Labor Code of the Russian Federation (the “Labor Code”), effective 1 February 2002, as amended through 2015. In addition to this core legislation, labor relationships are regulated by the 1996 Federal Law On Trade Unions, Their Rights and Guarantees of Activity, as amended (currently through 2014), as well as Russian legislation on minimum wages, labor safety and other related laws and numerous regulations.

Russian labor law applies equally to regular employees and top managers, including the CEOs of Russian companies and heads of representative offices and branch offices of foreign companies accredited in Russia. Russian labor law also applies to foreign nationals employed by Russian or foreign businesses in Russia. All employers should comply with special immigration law requirements for foreign employees.

A written employment agreement in Russian setting out the basic terms and conditions of the employment relationship must be entered into with each employee working in Russia. The Labor Code provides all employees with mandatory minimum guarantees and employment-related benefits and compensations, which cannot be superseded by the agreement between the employer and the employee. Accordingly, any provisions in an employment agreement that impair the employee’s position as compared to that set forth by such guarantees will be invalid. As a general rule employment agreements are entered into for an indefinite period of time. A definite term (fixed-term) employment agreement may also be concluded, but such an agreement cannot be enforced for longer than five years, and it may only be concluded when the nature or conditions of work make it impossible for the parties to enter into an indefinite term agreement, in particular in the circumstances specifically provided for by Article 59 of the Labor Code. Recently the Russian Labor Code has been supplemented
with a special chapter regulating the employment of foreign nationals. Now employment contracts with foreign workers should generally be concluded for an indefinite term; fixed-term employment agreements with foreign employees may be concluded only in the cases specifically provided for by Article 59 of the Labor Code.

An employee in Russia cannot be prohibited from holding a second job in addition to his/her full-time employment, with certain limited exceptions and restrictions provided by the Labor Code and other federal laws.

Since 19 April 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 employers, in particular, they may add specific grounds for termination at the employer’s initiative and specific provisions allowing more control over employees. In addition, a distance work arrangement entails fewer work safety obligations for employers and more flexibility. The employment agreement and any addenda to it can be concluded electronically by exchange of documents between the parties. In such cases both parties (the employee and the company) have to use approved electronic digital signatures. 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 relevant employment duties and obligations must be expressly defined in the employment agreement. It is important that these duties and obligations are defined broadly enough since an employee cannot be required to perform tasks outside the scope of the job duties expressly described in his/her employment
agreement. The employer cannot expand or otherwise modify these unilaterally without the written consent of the employee. Similarly, the employer generally cannot make unilateral changes to the employee’s obligations. In general, employment terms and conditions that have been agreed upon by employer and employee can only be amended by a written agreement of both parties. In the limited cases where an employer is allowed to unilaterally amend the employment terms and conditions agreed upon by the parties the employer must have legal grounds for such changes, must notify the employee two months in advance of any changes, and follow other formalities prescribed by law.

12.2 Employment-related Orders

Employers in Russia are required to issue an internal order each time an employee is hired, transferred to a new job, granted vacation, disciplined or dismissed, and in certain other cases. For example, Article 68 of the Labor Code expressly requires that the order on hiring must be issued and presented to the employee for countersigning no later than three days after the employee has commenced work. When an employment agreement is terminated for any reason an order on termination must be issued and presented to the employee for countersigning on the last day of employment (Article 84.1 of the Labor Code).

In case of a distance work arrangement an employer can provide the employees with internal orders and regulations for acknowledgment in electronic form using an electronic digital signature.

12.3 Labor Books

The labor book is the principal document containing a formal record of a person’s employment history and certain other information. The employer must make a record of employment in its employees’ labor books on any employment exceeding five days. The labor book is vital to each employee because it confirms his/her right to a state pension and other social benefits. Employers are responsible for keeping their
employees’ labor books (if this job at this employer is the employee’s primary employment) and making all records in them in a timely manner and in strict conformity with the required format. The employer must return the labor book, duly completed and stamped, 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 the employee’s salary for the whole period from the date of termination of employment until the date of return of the completed labor book to the employee.

12.4 Mandatory Policies and Procedures

All employers in Russia are required to issue Internal Labor Regulations and other mandatory labor-related policies and procedures. All employees should familiarize themselves with these policies against their signature (except for distant employees who have obtained an electronic digital signature). This procedure is essential for the relevant policies, procedures and other mandatory requirements to become binding on the employees. The employer’s policies and procedures should be issued in the Russian language (or in a bilingual version) and be approved by an internal order of the CEO of the company or head of the representative office/branch office.

12.5 Probationary Period

The employer has the right to establish a three-month probationary period for a newly hired employee. The employer may also set a six-month probationary period for employees hired for certain top executive positions (e.g., head of an organization and chief accountant and their deputies, and head of a branch office, representative office, or other separate structural subdivision of an organization). The imposition of a probationary period must be specifically stated in both the employment agreement and the order on hiring. If during the probationary period the employer determines that the employee does
not meet the criteria established for the role for which he/she was hired, the employee can be dismissed by the employer without payment of severance pay and with only three days’ written notice. Such notice to the employee must state the reasons why the employee is deemed as having failed to pass the probation. The employee is also entitled to resign during the probationary period, without stating any reason, with three days’ written notice to the employer.

12.6 Minimum Wage

Wages for full-time work may not be lower than the minimum monthly wage established by the applicable Russian legislation. The amount of the minimum monthly wage is periodically indexed by the government. The statutory minimum monthly wage on the federal level will be RUB 6,204 per month from 1 January 2016.

Regional minimum wages are established by regional agreements. They apply to all employers in that region that do not opt out within 30 calendar days of the official publication of the respective regional agreement. Some of the constituent regions of the Russian Federation, including the City of Moscow, have already implemented regional agreements on a minimum wage. Regional minimum wages are always equal to or higher than the federal minimum wage and are tied to the regional minimum standard of living. For instance, the minimum monthly wage in Moscow as of 1 January 2015 was RUB 14,500, as of 1 November 2015 it is RUB 17,300.

12.7 Working Time

Employers are required to keep a record of all the time worked by each employee, including any overtime. The regular working week is 40 hours. Any time worked over 40 hours per week is classified as overtime and may only be demanded by employers in extraordinary circumstances, as specified in Article 99 of the Labor Code, and in most cases only with an employee’s prior written consent. The Labor Code limits the total amount of overtime for an employee to 120 hours a year, and an employee cannot be required to work more than four
hours of overtime over two consecutive days. Overtime must be paid at a rate of 150% of the regular hourly rate for the first two hours of overtime worked in any one day, and at a rate of 200% of the regular hourly rate thereafter. Upon the employee’s written request, the employer can compensate for overtime work by granting the employee additional time off in lieu of payment; the time off should be no less than the time worked as overtime.

It should be noted that certain limitations regarding overtime work apply to certain protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of three, disabled employees, and some other categories defined by federal laws.

Workers may also be hired on the terms of an open-ended working day. The primary advantage of this is that there is no need to obtain consent whenever the employer asks an employee to work overtime. Moreover, the extra hours worked by employees with an open-ended working day need not be paid as overtime: instead they are entitled to additional paid vacation of no less than three calendar days per year. Nevertheless, it is important to note that employees with an open-ended working day can be required to work overtime only occasionally and upon a specific order of the employer when there is a need for such overtime work. Further, job positions subject to the open-ended working day regime must be approved by the employer and listed in the company’s Internal Labor Regulations.

12.8 Holidays and Non-working Days

There are currently 14 public holidays in the Russian Federation. The official public holidays are as follows:

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

Uninterrupted weekly time off must not be less than 42 hours. As a rule, employees may only be required to work on a non-working day or public holiday in extraordinary circumstances, as specified in the Labor Code, and only with the employees’ prior written consent. As a general rule, employees must receive payment at no less than twice the regular rate for any work performed on a non-working day or public holiday, or be given time off in lieu of extra payment.

Some limitations regarding working on public holidays and non-working days apply to certain 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.

12.9 Vacations

Employees in Russia are entitled to annual paid vacation of at least 28 calendar days per year. An employee is entitled to use his/her vacation time in full once he/she has worked for the employer for at least six months. The Labor Code requires that the dates of the annual vacation of each employee be indicated in the vacation schedule for the calendar year, which the employer must approve 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 commencement of the vacation. Each employee’s vacation allowance should be paid at least three days before a vacation is due to start.
12.10 Sick Leave

Employees are required to submit a doctor’s note for any absence only after their recovery and return to work. Generally, employees cannot be dismissed by the employer while absent on sick leave, and are entitled to receive statutory sick leave compensation. Sick leave compensation for the first three days of sick leave is covered by the employer, the rest of the term of sickness is covered by the Russian State Social Insurance Fund, which is funded by the employer’s mandatory social contributions paid on a year-to-date salary of up to RUB 718,000 in 2016 for each employee per calendar year. Since 1 January 2007, sick leave compensation and maternity leave compensation have been regulated by Federal Law No. 255-FZ “On Obligatory Social Insurance in the Event of Temporary Disability and in Connection with Maternity” (as amended), dated 29 December 2006. Pursuant to this law, sick leave compensation must be paid to an employee in the event of his/her illness or injury (labor-related or other) and when an employee is caring for a sick family member, as well as in some other instances.

The duration of payment and amount of sick leave compensation varies according to the grounds for the sick leave. In cases of labor-related injury or occupational disease, the amount of sick leave compensation is 100% of the employee’s average earnings. In other cases sick leave compensation is determined on the basis of the employee’s average earnings and total term of employment.

The average earnings for the purpose of sick leave compensation should be calculated with reference to the two calendar years preceding the year when an employee takes sick leave. In 2016 the statutory maximum average daily earnings for the purpose of sick leave compensation are RUB 1,772.60 per day, if the employee’s overall employment term exceeds or is equal to eight years.

If the employee’s total term of employment is less than six months, the sick leave compensation cannot exceed the federal minimum monthly wage.
If the employee has more than one place of employment and has been employed with the same employers for the preceding two calendar years, he/she is entitled to sick leave and/or maternity leave compensation at each place of employment and to child care leave compensation at one place of employment at the employee’s choice. If the employee has more than one place of employment and has been employed with different employers for the preceding two calendar years, he/she is entitled to the above compensation only at one of his/her current places of employment at the employee’s choice. If the employee has more than one place of employment and has been employed both with the current and with other employers for the preceding two calendar years, he/she is entitled to the above compensation either at each place of employment or at one of his/her current places of employment at the employee’s choice.

12.11 Maternity Leave

Paid maternity leave consists of 70 (or in the case of multiple pregnancy 84) calendar days prior to a birth, plus 70 calendar days after the birth. Further paid maternity leave is provided in the event of complications while giving birth or in cases of multiple births (86 and 110 calendar days after the birth respectively). Maternity leave is to be provided cumulatively; that is, the employee is entitled to the total amount of her maternity leave days even if she uses less than 70 days of maternity leave before birth.

Just like sick leave compensation, maternity leave compensation is paid by the Russian State Social Insurance Fund, which is funded by the employer’s mandatory social contributions. The amount of the maternity leave compensation is determined on the basis of the employee’s average earnings and total term of employment.

Average earnings are calculated with reference to two calendar years preceding the year when an employee takes maternity leave. In 2016 the statutory maximum average daily earnings for the calculation of maternity leave compensation are RUB 1,772.60 per day.
The maternity leave compensation is to be paid as a single payment. If the employee’s total term of employment is less than six months, the maternity leave compensation cannot exceed the federal minimum monthly wage.

A child’s care provider (the employee who has given birth or who is the father, grandmother, grandfather or other relative who is taking care of the child) may request partially paid childcare leave until the child is three years old. The employee retains the right to return to his/her job during the entire period of paid/unpaid leave, and the full leave period is included when calculating the employee’s length of service.

The procedure for calculation of sick leave, maternity leave and childcare leave allowances is rather complicated in Russia; it is highly recommended to verify the procedures and documentary requirements on a case-by-case basis.

12.12 Dismissal

An employment relationship may be terminated by the employer only on the specific grounds provided in the Labor Code, including: a reduction in the workforce, the employee’s repeated failure to perform his/her employment duties without justifiable reasons (if the employee was lawfully disciplined within the preceding 12 months), the employee’s unjustified absence from the workplace for more than four consecutive hours during one working day, and other reasons. Arbitrary termination of an employment relationship by the employer is not allowed, except in the case of the company CEO, who can be dismissed by unilateral decision of the owner provided he/she is paid adequate severance compensation equal to at least three months’ average earnings.

Employers must strictly comply with specific procedures and documentary requirements provided by the Labor Code when terminating employment for any reason. The Labor Code gives additional protection to a number of categories of employees,
including minors, female employees, employees with children, trade union members, and various other categories. Conversely, 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.

12.13 Compensation

Salaries must be paid to employees at least once every fortnight. Employers are obliged to pay salary and other employment-related payments on the dates set by their internal labor regulations and by the individual employment agreement. The employer is required to pay compensation (i.e. interest) for any delay in payment of salary and other employment-related payments in accordance with Article 236 of the Labor Code. In addition, employees have the right, upon prior written notice to their employer, to stop working if their employer delays payment of their salary for more than 15 days. Employees must be paid in the currency of the Russian Federation (rubles). As a general rule, employment-related payments in a foreign currency (both in cash and by bank transfer) are prohibited.

12.14 Employment of Foreigners in Russia

Generally, when hiring foreign national employees employers must obtain: (i) permission to hire foreign nationals, (ii) individual work permits and (iii) work visas, before foreign nationals are employed and/or actually commence work in Russia (except for citizens of Belarus and Kazakhstan). As a precondition for obtaining permission to hire and a work permit, a company must file an application for a quota for work permits.

The above procedure also applies to foreign nationals working in Russia under civil-law agreements for the performance of work or the provision of services (e.g., marketing consultants or sales representatives). Permission to hire, work permits and work visa requirements equally apply to branch offices of foreign firms and, as a general rule, to representative offices of foreign firms. Foreign
nationals working at accredited Russian representative offices or branch offices of foreign firms also need to obtain a personal accreditation card from the accrediting body of the representative or branch office. Generally a work permit and work visa are issued for a one year period.

The procedure and required documents vary according to whether or not the foreign national requires a Russian visa. In practice, the process of obtaining permission to hire foreign nationals, individual work permits and work visas in Moscow may take from three to four months to complete. In other regions of the Russian Federation this period may differ. Also employers are required to provide financial, medical and social guarantees in respect of their foreign employees in Russia and comply with the general migration monitoring requirements, including filing notifications of foreign employees’ travel into Russia and within its territory.

Thus, employment of a foreign national in Russia requires advance planning to allow sufficient time for all procedures.

The Russian authorities have adopted a list of quota-exempt professions/positions, which allows employers to hire foreign employees without observing the quota requirement.

From 1 January 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.

Under recent changes effective as of 1 January 2015 employees from countries enjoying a visa-free regime with Russia may obtain a “patent” (special permission document issued in a standard simplified procedure and in the form prescribed by statute) allowing them to work for both individuals and legal entities.

There is also a special category of foreign employees — the highly qualified foreign specialist (a “Specialist”). A Specialist is subject to a
simplified procedure for obtaining a work permit and a work visa. To obtain a work permit for a Specialist his/her employer is not required to obtain a quota to hire foreigners or permission to hire foreign employees. The Specialist 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 1 January 2015. Specialists are not required to provide certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles to the Federal Migration Service of Russia.

The main criterion for recognizing a foreign employee as a Specialist is the salary level paid in Russia. To satisfy this criterion, the salary received by the Specialist under a local employment /civil law agreement should be RUB 167,000 per month or more. A work permit and a work visa invitation letter are issued within 14 business days. The Specialist may receive a work permit and a work visa for up to three years.

Following Russia’s joining the WTO, the Russian Parliament has adopted a bill on simplification of migration law requirements for employing key personnel (as a general rule, CEOs and top managers). Such key personnel will be granted Russian work visas for not more than three years on the basis of invitations from representative offices and branches of foreign companies. Also representative offices, branches and subsidiaries of foreign companies will not need permission to hire such employees. Quotas for invitations to enter the country and obtain work permits will also not apply to this category of employees. At the same time, it is proposed to limit the number of such employees at the offices of foreign companies to no more than five employees and in the banking sector to not more than two employees. This special procedure for employment will apply only to those employees who have worked at least one year in the foreign organization that sent them to Russia.

Russian law provides for severe penalties for non-compliance with the above work permit and work visa requirements. In recent years the
Russian government has made it a priority to increase control over the use of foreign employees in Russia. It has considerably extended regulation, tightened up enforcement of the above-mentioned migration law requirements and toughened the penalties for non-compliance.

In addition, recent amendments to the migration law 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 1 January 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 and upon granting unpaid vacation to them within three business days from the date of such conclusion or termination or the date of granting such vacation. Should the foreign employee’s personal data change, he/she is obliged to notify the Federal Migration Service within seven days to make the relevant changes in his/her work permit.

Russian migration legislation is still undergoing significant amendment, so the procedures involved could be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

12.15 Trade Secrets (Know-how)

Trade secrets (know-how) can form an important element of an employment relationship. Federal Law No. 98-FZ On Trade Secrets, which was enacted on 29 July 2004, and Part Four of the Civil Code of the Russian Federation, effective from 1 January 2008, regulate trade secrets (know-how) in an employment relationship context. Under these laws, if an employer wishes to protect its trade secrets (know-how) from unauthorized disclosure by employees it should
implement certain statutory procedures under a “commercial secrecy regime.”

In order to implement a commercial secrecy regime, an employer should determine a list of trade secrets (know-how), restrict access to them, keep track of the individuals who have access to trade secrets (know-how) and/or individuals to whom trade secrets (know-how) were transferred, include provisions in the employment agreements regulating trade secrets (know-how), and mark documents constituting trade secrets (know-how) in a special manner set out by the Federal Law On Trade Secrets. Also, the Federal Law On Trade Secrets expressly lists information that may not constitute trade secrets (know-how) and that therefore is not protected under the commercial secrecy regime.

Employees should be notified, against their signature, of the trade secrets (know-how) directly related to their job functions and of their liability for violation of the commercial secrecy regime. Also the employer is required to provide the conditions necessary for employees to observe the commercial secrecy regime.

The participating employees, for their part, must observe the commercial secrecy regime, must not disclose trade secrets (know-how), and must pay damages for a culpable disclosure of protected trade secrets (know-how), if all the statutory procedures were properly implemented by the employer. In accordance with Part Four of the Civil Code of the Russian Federation the protection of trade secrets (know-how) extends beyond the termination of the employment relationship, forbidding employees from disclosing trade secrets (know-how) for as long as the employer has effective exclusive rights to the trade secrets (know-how). However, we recommend concluding a separate civil-law contract on non-disclosure of trade secrets (know-how) with an employee after termination of employment in order to protect trade secrets (know-how).
12.16 Personal Data

Pursuant to Federal Law No. 152-FZ “On Personal Data,” enacted on 27 July 2006 and effective as of 26 January 2007, employers are required to obtain prior consent from employees and other individuals in order to process their personal data. If an employer transfers personal data to any third parties and/or abroad it must obtain formal written consent. These requirements are of importance to transnational companies with subsidiaries and representative offices or branch offices in Russia that generally process the personal data of their Russian employees and individual contractors at a central location abroad. They are also important for all employers who transfer the personal data of their employees to law firms, audit and accounting firms, and other providers of professional services. In the case of transfers of personal data to any third parties, such third parties processing personal data of individuals who are not their employees are required to notify the authorized government agency of their intention to process personal data.

All employers in Russia must keep their information systems in which personal data are processed in compliance with the requirements set by the law “On Personal Data” to ensure due protection of personal data.

In July 2014 the President of the Russian Federation signed Federal Law No. 242-FZ, which created an obligation for all companies that collect and process personal data of Russian citizens to use databases located in Russia, subject to certain limited exceptions. The date of the entry into force of this law was changed from 1 September 2016 to 1 September 2015.