

Foreign nationals: Employment in Russia

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Bela Yu. Pelman and Dmitry Dmitriev of the Moscow office of global law firm Morgan Lewis examine the employment landscape for foreign nationals in Russia.

As in many other countries, the employment of foreign nationals in Russia is heavily regulated by the state. The core law in the area of employment is the Russian Labour Code (Labour Code) which applies to all employers and employees working in Russia irrespective of citizenship. There is also a special law — the Russian Law on Legal Status of Foreign Citizens in the Russian Federation (the Foreign Citizens Law) — which regulates employment of foreign nationals in Russia.

The Foreign Citizens Law sets out specific rules on the employment of foreign nationals including the need for a work permit and a special work visa to enter, stay, work and leave the country (though certain exceptions apply). The employers and employees alike are subject to numerous registration and reporting obligations. Certain categories of foreign employees may be required to pass tests on the Russian language, Russian history and fundamental legislative principals in order to receive a work permit (certain exceptions apply).

While the Foreign Citizens Law focuses on the procedural formalities for employing foreign nationals, the Labour Code traditionally regulates the employment arrangement. Historically, there was no clear guidance on the application of the Labour Code to foreign employees.

However, in late 2014, Russia amended the Labour Code introducing a new chapter to specifically regulate the employment of foreign nationals (Chapter 50.1). Key changes include rules on the term of employment and the suspension or termination of a foreign employee.

Term of employment

Under Russian law, employment contracts are established for a fixed term or an indefinite term. A fixed-term contract may

only be entered on specific grounds (e.g., temporary nature of work, employment for a specific project). The employment contract of foreign nationals was usually limited to the term of his/her work permit. If the employer and employee decided to continue employment arrangement and obtain a new work permit, the term of the employment contract needs to be extended accordingly.

Under a new article of the Labour Code (Article 327.1) employment agreements with foreign nationals should by default, last for an indefinite term, unless there is a reason for a fixed term contract as noted above. However, a work permit, under which a foreign national may work in Russia, still has a limited term.

Suspension and termination of employment, transfer of employees

Amendments to the Labour Code under Article 327.5 introduce new obligations on the employer regarding the termination, suspension and transfer of foreign employees.

Termination of employment

As a general note, Russian labour law is very pro-employee. An employment contract can only be terminated in accordance with the Labour Code and there is no concept of "termination without cause".

Article 327.6 of the Labour Code introduces new grounds for the termination of a foreign employee, which are, for the most part, linked to the validity of an employee's work permit documentation. Of specific importance, a foreign employee's employment agreement must be terminated one month after the expiration of the employee's work permit documentation or medical insurance policy.

There are additional grounds for termination of the employment of foreign nationals including the expiration or termination of their residential-permit status.

Suspension from work

Under Article 76 of the Labour Code an employer must suspend employees when they are not permitted to work for certain grounds including medical grounds. As a general rule, the suspension period lasts until the reason for the suspension is resolved. During this period the suspended employee does not accrue any salary although certain exceptions can apply.

Article 327.5 of the Labour Code imposes new obligations on

employers to suspend foreign employees where his/her work permit documentation, medical insurance policy or resident permit documents have expired.

It is unclear if Article 327.5 and 327.6 should be read in conjunction. If Article 327.5 is read in isolation the suspension period could be interpreted as lasting indefinitely until the reason for the suspension is resolved. But if the two articles are read together then a suspension, and the time an employer and employee have to resolve the suspension, may only last a month. After this time, an employment contract with a foreign employee whose work permit, medical insurance or resident permit documentation are expired, has to be terminated. It is not yet clear how these provisions will be interpreted in practice.

Transfer of employees

As a general rule any transfer of any employee to another role is subject to the employee's consent. Article 72.2 of the Labour Code establishes a rule whereby an employer may temporarily transfer an employee to another role, without the employee's consent, in emergency situations including natural disasters or technical emergencies requiring the employee's assistance.

Under the newly enacted Article 327.4 of the Labour Code, the transfer of a foreign employee under Article 72.2 may only last for one month. Once this period has expired, an employer cannot return the foreign employee to their previous position and the employment contract must be terminated. This is a supplementary ground for termination of a foreign employee in addition to those introduced by Article 327.6.

Documentation

Under Article 327.2 of the Labour Code, an employment contract with a foreign employee should now include information regarding work permit documentation, residence permit (if any), and details of the employee's medical insurance policy.

Summary

It is too early to tell what approach the Russian courts and the regulatory authorities will take on the new rules. From a practical perspective, the changes to the Labour Code might require amendments to employment agreements to regulate the term of a foreign employee's employment. The new law does not specify a deadline for the amendment of employment contracts, however, taking into account that the Russian labour law environment is quite bureaucratic and looks to "form over

substance" it may be prudent to make any necessary changes as soon as practically possible.

Practical steps that need to be taken by employers using foreign labour, might include reviewing existing contracts term, supplementing contracts with information on an employee's work permit and medical insurance coverage and taking into account the new rules on suspension and termination of a foreign employee's employment contract.

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