

Labour & Employment

Contributing editors

Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek

Morgan Lewis



2016

GETTING THE
DEAL THROUGH 

Morgan Lewis

GLOBAL REACH

Morgan Lewis helps employers successfully navigate the ever-changing landscape of laws and regulations that govern the global workplace. Our international team of labour, employment, immigration, and benefits lawyers advises clients on cross-border projects involving employees and workplace laws in North America, Latin America, Europe, the Middle East, and Asia. With resources across 28 offices worldwide, and through tested local counsel relationships, we partner with clients to effectively and efficiently manage their workforce needs around the world.

Almaty • Astana • Beijing • Boston • Brussels • Chicago • Dallas • Dubai • Frankfurt • Hartford • Houston • London • Los Angeles • Miami • Moscow • New York • Orange County • Paris • Philadelphia • Pittsburgh • Princeton • San Francisco • Santa Monica • Silicon Valley • Singapore • Tokyo • Washington, DC • Wilmington

Learn more at www.morganlewis.com/labourandemployment, and follow us on Twitter @MLWorkforce.

Connect with us:   

www.morganlewis.com

This communication is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. Attorney Advertising. Prior results do not guarantee similar outcomes.

©2016 Morgan, Lewis & Bockius LLP

CONTENTS

| | | | |
|---|-----------|---|------------|
| Global overview | 7 | Germany | 101 |
| Mark E Zelek Morgan, Lewis & Bockius LLP | | Walter Ahrens Morgan, Lewis & Bockius LLP | |
| Using non-competes and other restrictive covenants globally | 9 | India | 109 |
| Matthew Howse Morgan, Lewis & Bockius LLP | | Rohit Kochhar Kochhar & Company | |
| Afghanistan | 11 | Indonesia | 115 |
| Ghazi Khan and Muhammad Ismail Legal Oracles | | Johannes C Sahetapy-Engel and Anissa Paramita Arfidea Kadri Sahetapy-Engel Tisnadisastra (AKSET) | |
| Australia | 16 | Italy | 120 |
| Joydeep Hor and Therese MacDermott People + Culture Strategies | | Valeria Morosini Toffoletto De Luca Tamajo e Soci - <i>member of Ius Laboris</i> | |
| Austria | 22 | Japan | 128 |
| Thomas Boller BLS Rechtsanwälte Boller Langhammer Schubert GmbH | | Motoi Fujii and Tomoko Narita TMI Associates | |
| Belgium | 29 | Kazakhstan | 138 |
| Emmanuel Plasschaert, Evelien Jamaels and Alex Franchimont Crowell & Moring | | Klara Nurgaziyeva and Marat Mukhamediyev Morgan, Lewis & Bockius LLP | |
| Brazil | 34 | Korea | 144 |
| Fabio Medeiros Machado Associados Advogados e Consultores | | Sun Ha Kweon, Milosz Zurkowski and Sung Il Yoon Kim & Chang | |
| Bulgaria | 41 | Luxembourg | 150 |
| Maria Drenska and Maya Aleksandrova Pavlov and Partners Law Firm in cooperation with CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH | | Guy Castegnaro and Ariane Claverie Castegnaro - <i>member of Ius Laboris</i> | |
| Canada | 47 | Malaysia | 160 |
| Craig T Munroe, Roy L Heenan and Andrea L Zwack Gall Legge Grant & Munroe LLP | | Selvamalar Alagaratnam Skrine | |
| Chile | 56 | Mexico | 166 |
| Jaime Salinas Toledo and María Francisca Montenegro Philippi, Prietocarrizosa & Uria | | Humberto Padilla Gonzalez Morgan, Lewis & Bockius LLP | |
| China | 63 | Norway | 171 |
| Min Duan Morgan, Lewis & Bockius LLP | | Tore Lerheim and Ole Kristian Olsby Hombler Olsby advokatfirma AS | |
| Cyprus | 70 | Peru | 177 |
| George Mountis and Yiannis Karamanolis Dr K Chrysostomides & Co LLC | | Alberto Varillas and Sara Kalinicos García Sayán Abogados | |
| Denmark | 76 | Portugal | 182 |
| Morten Langer Norrbonm Vinding | | Ricardo Grilo Barrocas & Associados - Sociedade de Advogados, RL | |
| Ecuador | 82 | Puerto Rico | 189 |
| Patricia Ponce Bustamante & Bustamante Law Firm | | Melissa C Rodriguez Morgan, Lewis & Bockius LLP | |
| Finland | 87 | Russia | 196 |
| Seppo Havia Dittmar & Indrenius | | Bela Pelman and Dmitry Dmitriev Morgan, Lewis & Bockius LLP | |
| France | 94 | Singapore | 203 |
| Sabine Smith-Vidal and Charles Dauthier Morgan, Lewis & Bockius LLP | | Ian Lim, Nicole Wee and Jamie Chin TSMP Law Corporation | |

| | | | |
|---|------------|---|------------|
| Slovakia | 212 | Turkey | 244 |
| Pavol Rak and Lucia Trnková Noerr s.r.o. | | Nilgün Serdar Şimşek, Çağıl Şahin Sünbül and İpek Okucu GSG Attorneys at Law | |
| Slovenia | 218 | United Arab Emirates | 251 |
| Darja Miklavčič Odvetniki Šelih & partnerji, o.p., d.o.o. | | Charles Laubach Afridi & Angell | |
| Spain | 224 | United Kingdom | 257 |
| Iñigo Sagardoy and Ricardo García Fernández Sagardoy Abogados - <i>member of Ius Laboris</i> | | Matthew Howse, Lee Harding and Nicholas Hobson Morgan, Lewis & Bockius LLP | |
| Sweden | 231 | United States | 264 |
| Robert Stromberg and Jonas Lindskog Cederquist | | David A McManus and Michelle Seldin Silverman Morgan, Lewis & Bockius LLP | |
| Switzerland | 238 | Venezuela | 272 |
| Roberta Papa and Thomas Pietruszak Blesi & Papa | | John D Tucker, Pablo Benavente and María Elena Subero Hoet Peláez Castillo & Duque | |

Russia

Bela Pelman and Dmitry Dmitriev

Morgan, Lewis & Bockius LLP

Legislation and agencies

1 What are the main statutes and regulations relating to employment?

In Russia, employment matters are regulated at both the federal and regional levels, however, federal level has primacy. The key federal statutes are:

- the Constitution;
- the Labour Code;
- the Federal Law on Trade Unions, their Rights and Guarantees of their Activity;
- the Federal Law on Employment of the Population of the Russian Federation (Employment Law);
- the Federal Law on Legal Status of Foreign Citizens in the Russian Federation; and
- the Federal Law on Amendment of Certain Legal Acts of the Russian Federation (Secondment Law).

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Discrimination in employment is prohibited. Under articles 19 and 37 of the Constitution, and articles 2, 3 and 64 of the Labour Code, no one should be discriminated against or unduly privileged as a result of gender, race, skin colour, nationality, language, origin, property and family status, social or occupational position, age, place of residence, religious views, political commitments, affiliation to any organisations or any other circumstances that are not related to professional qualities of an employee.

However, some types of work may entail certain requirements, preferences or exceptions limiting some of the employee's rights. Such limitations, stipulated by Russian law, are not deemed discriminatory.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Federal Service for Labour and Employment, including its territorial bodies, is the primary governmental agency responsible for the enforcement of employment statutes and regulations. It can impose fines or other liability measures on entities and their officers responsible for violations of employment laws.

The general prosecutor's office and its territorial bodies ensure observance of human rights and freedoms, enforce employment laws, restore the rights of violated employees and participate in court proceedings on unfair dismissal claims of employees.

Trade unions may create inspectorates to monitor compliance with employment laws, employers' policies relating to labour issues, and the terms of collective arrangements and agreements entered into by employers and employee representatives. For example, trade union inspectors can present demands to employers that operations be suspended in the event of an imminent threat to the lives and health of workers and take part in investigations of industrial accidents.

Worker representation

4 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

Establishment of trade unions and other representative bodies of employees is allowed and regulated by the Labour Code.

The Federal Law on Trade Unions, their Rights and Guarantees of their Activity regulates the procedures related to the formation, rights and obligations of trade unions.

Russian law does not impose an obligation on employees to become members of a trade union. Further, the fact that a trade union operates at a company does not mean that all employees are members of that trade union. There is no obligation under Russian law for an employer to create a trade union where one has not previously been formed, nor does an employer have any obligation to enhance or facilitate the establishment of a trade union within the company. However, if a trade union already exists in the company, the employer cannot wind it up, since such decision is generally made by the trade union itself.

The Labour Code provides that a trade union is to be regarded as a representative of the employees who are members of the union. Trade unions may also represent the interests of employees who are not members of those unions, upon specific authorisation. A trade union may represent all the employees of a company if it comprises more than 50 per cent of the company's staff or if it has received a mandate from a meeting of all employees or an employees' delegates conference.

The Labour Code also provides that an employer has the right to organise a works council – a consultative body that is formed voluntarily and consists of employees who have labour achievements. The works council prepares proposals for the improvement of production activities, introduction of new techniques and technologies and increase of productivity and skills of employees. The works council cannot deal with issues that are within the exclusive competence of a company's management bodies, trade unions and other employee representatives.

Background information on applicants

5 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Background checks are not officially recognised in Russia. Instead, article 3 of the Labour Code generally prohibits discrimination when hiring employees, where 'discrimination' is very broadly interpreted. In essence, Russian law only allows hiring decisions based on potential employees' professional skills.

Further, article 64 of the Labour Code prohibits any 'preferences' or 'limitations' when hiring. Again, this is understood to refer to decisions that are not solely made on the basis of an employee's skills.

If the employer subsequently declines to hire the applicant, the decision could potentially be challenged in court on the grounds of 'discrimination' as discussed above. The applicant could also apply to the State Labour Inspectorate or other authorities (such as the Prosecutor's Office) to complain about the employer's discriminatory practices. In theory, there is a possible risk of administrative fines for such activities.

6 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

A medical examination as a condition of employment is mandatory in certain circumstances, which are described in the Labour Code and other federal laws (eg, for employees under 18 years of age or those applying for certain types of work, including work in the state or municipal service, in the food manufacturing industry, in medical organisations, at child-care centres and at water supply constructions, as well as work that is closely connected with moving vehicles and other dangerous or hazardous work). If an applicant does not submit to an examination, the employer is entitled to refuse to hire the applicant. For some categories of employees, medical examinations are carried out on a regular basis.

In all other circumstances, information about an employee's health is recognised as a special category of personal data (and is further classified as confidential medical information), and the processing of such data requires the prior written consent of the relevant individual under the Federal Law on Personal Data (Personal Data Law). Therefore, where it is not expressly provided for in the federal laws, an employer cannot impose medical tests as a condition of employment and, consequently, cannot refuse to hire an applicant who does not submit to such tests.

7 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There is no established practice regarding drug and alcohol testing of applicants in Russia.

Under article 81 of the Labour Code, however, an employer has a right to terminate the contract of an employee who has been under the influence of alcohol or narcotics in the workplace. If the work of an employee is associated with certain additional risks (eg, police service, civilian aviation sector, railway sector, power-generating sector, work involved with the operation of vehicles and underground work), such employee must undergo a mandatory preliminary medical examination, including drug and alcohol testing, at the expense of the employer. The employer shall not permit an employee to work in these sectors without a relevant medical examination.

Hiring of employees

8 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

In general, Russian law does not require employers to give preference in hiring to particular people or groups of people.

However, some protective measures have been established for certain groups of people. For instance, the Employment Law and the Federal Law on Social Protection of the Disabled in the Russian Federation set a quota for the number of disabled people that a company with more than 100 employees is required to hire. The quota is established by regional laws, but should be in the range of 2 per cent to 4 per cent of the total number of employees.

Russian law prohibits discrimination in employment on the basis of any criteria other than the employee's skill. In addition, article 64 of the Labour Code specifically prohibits any 'limitations' when hiring pregnant women, women with children, employees who have to be hired due to a transfer from another employer and certain other categories of employees.

9 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

The Labour Code requires that employment contracts be in writing.

Under articles 57 and 67 of the Labour Code, the terms of an employment contract required to be evidenced in writing include:

- place of work (office location);
- detailed description of duties and responsibilities;
- commencement date of employment and term of contract (if it is not an indefinite-term contract);
- salary and compensation for work under hazardous conditions (if applicable);
- probation period (if any);
- hours of work and breaks, and vacation arrangements;
- conditions of work at the workplace; and
- certain other details necessary to be included under employment laws.

The terms and conditions of the employment contract cannot be less favourable than the terms and conditions set out by employment laws,

collective bargaining agreements (if any), and the internal policies of the employer.

10 To what extent are fixed-term employment contracts permissible?

Fixed-term employment contracts are permissible only in cases that are described in the Labour Code.

Under article 59 of the Labour Code, a fixed-term contract is entered into if employment cannot be established for an unlimited period.

Examples include the following:

- temporary replacement of an absent employee (eg, being on pregnancy or childcare leave);
- seasonal work;
- temporary increase in production;
- performance of work that is beyond the normal activity of the employer; and
- certain other grounds.

A fixed-term contract may be entered into with certain categories of employees, such as CEOs and their deputies and chief accountants, creative employees, students, part-time employees and various other roles.

A fixed-term contract must specifically refer to the applicable grounds for allowing such a fixed term of employment, as set out in the Labour Code.

Under article 58 of the Labour Code, the term of a fixed-term contract cannot exceed five years whereas the minimum term is two months. The Labour Code also does not allow for prolongation of fixed-term employment contracts (but certain exceptions apply).

11 What is the maximum probationary period permitted by law?

The Labour Code provides for a maximum probationary period of up to three months. For some categories of employees, such as CEOs and their deputies and chief accountants, the probationary period may be up to six months. Federal laws may establish separate probationary periods for special categories of employees (eg, public servants).

The maximum probationary period permitted by Russian law cannot be extended by an employer, even upon mutual agreement with an employee; however, periods of temporary absence of an employee or any other period in which he or she is absent from work are not included in the probationary period.

If an employment contract is entered into for a period of between two and six months, the probationary period cannot exceed two weeks. If an employment contract does not include a condition on probation, it means that the employee was hired without probation. In cases where the employee has commenced work without a signed contract, the probationary period may only be established by a separate agreement between the employee and the employer, concluded before commencement of work.

12 What are the primary factors that distinguish an independent contractor from an employee?

An individual can work on the basis of an employment contract or perform services on the basis of a services contract (also referred to as a 'civil law contract').

Civil law contracts are usually entered into to achieve a specific result within a defined time period. A contractor would normally use his or her own resources and work independently without extensive supervision from the client. The contractor is usually paid after completion of the assignment or on a periodic basis as established in the contract and can engage third parties to perform the services.

In contrast, the following features are inherent to employment relations:

- an employee must perform work in person;
- an employee must work in compliance with the internal regulations of the employer and under the control of the employer; and
- an employer must provide proper working conditions (eg, working place, necessary equipment and tools) and take care of the work-related living needs of its employees.

If a dispute arises, other factors may be taken into account by the court. In practice, there is a significant risk that the relationship between an individual contractor and a client may be reclassified by the court as employment in connection with either tax disputes or the applicability of certain rights and protections for employees under the Labour Code. Court proceedings

may also be initiated by an individual working under a civil law contract. Recently, the Labour Code has been supplemented by new article 19.1, which provides that all uncertainties regarding the nature of an agreement are to be interpreted in favour of employment relations.

13 Is there any legislation governing temporary staffing through recruitment agencies?

In May 2014, Russia adopted a new law which regulates secondment arrangements and the activities of recruitment agencies in this sector (Secondment Law). The Secondment Law took effect on 1 January 2016. The Secondment Law sets out specific provisions to govern secondments. It also states when a secondment is and is not permitted. The Secondment Law permits temporary staffing through private employment agencies in certain cases only:

- temporary substitution of employees who are absent on vacation, maternity leave or business trips; and
- temporary fulfilment of services in response to demand for extra labour – but not for longer than nine months.

Further, under the Secondment Law, a recruitment agency is allowed to engage in temporary staffing and secondment activity only if it has obtained government accreditation for this activity.

Foreign workers

14 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Short-term visas, which provide for a stay of up to three months, are not subject to numerical limitations, and such visas are usually used for business trips. In order to obtain a working visa, a foreign employee should first obtain a work permit. A working visa is then issued for the term of the work permit. Depending on the type of work permit, a working visa can be issued for a term of up to three years, with an option to extend it for an additional term.

Formally, only the company that engages or hires the foreign national can apply for that individual's work permit and it will also be the inviting party for purposes of obtaining the visa. There are certain rules that suggest that such a company must be either a Russian company or a foreign company that has a registered presence in Russia.

15 Are spouses of authorised workers entitled to work?

A spouse accompanying an authorised worker in Russia is entitled to work in Russia, subject to the general requirements that apply to the employment of foreign nationals. However, certain exceptions to this rule do apply (see question 16).

16 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The rules applicable to local employees generally also apply to foreign employees, but there are certain restrictions on the work activity of foreigners in Russia.

The key statute in the area of immigration in Russia is the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation (Foreign Citizens Law). Under the Foreign Citizens Law a foreign national can work in Russia under an employment agreement or a civil law contract. Both the employer and its foreign employee must have the relevant work permits (certain exceptions apply). For instance, diplomats, accredited journalists, foreign lecturers, foreign entities' employees in the course of maintenance of imported technical equipment, and certain other categories of employees do not need to obtain work permits.

The process of obtaining a work permit in Russia is complicated, consists of multiple stages and may take several months.

However, an employer may also employ foreign citizens under a simplified work permit procedure (again, certain exceptions apply) – the 'highly qualified specialists' (ie, foreign employees who have professional skills, knowledge and qualifications in a specific area) may use this procedure. A highly qualified specialist must have a monthly remuneration of at least 167,000 roubles. An employer who engages a highly qualified specialist does not need to have a work permit, in contrast with the general procedure, in which both the employer and the employee are required to hold

work permits. Family members of highly qualified specialists are entitled to work in Russia under the same simplified work permit procedure.

In 2014, a similar simplified work permit procedure was also introduced for foreign workers transferred to subsidiaries, branches, and representative offices located in Russia from companies established in the country-members of the World Trade Organization (specific regulations apply).

The penalties for non-compliance with the procedures for the employment of foreign personnel are significant. A company that employs a foreign citizen without the required permission or without a personal work permit may receive an administrative fine of up to 1 million roubles by the Federal Migration Service (FMS) or, alternatively, the company's activity may be suspended for up to 90 days, pursuant to a court decision.

Further, the FMS may impose a fine on the company's responsible officer (such as a local HR manager) of up to 70,000 roubles. A foreign citizen working without a personal work permit may be fined up to 7,000 roubles by the FMS and may even be deported from Russia.

17 Is a labour market test required as a precursor to a short or long-term visa?

A labour market test is applied to a working visa issued under the general procedure, in which both the employer and the employee are required to hold work permits.

The labour market test consists of several stages. A company seeking to hire a foreign worker within the next year is required to submit a request for a relevant quota to the appropriate regional authorities, subject to certain complicated details. The request must contain such information as the qualifications, education, experience and salary of the potential worker. At the next stage, the company must apply to a local employment centre, which will attempt to find an appropriate local applicant who is an unemployed Russian citizen. If within a period of a month the local employment centre fails to find such an applicant, it will provide a written statement in support of granting the company a permit to hire a foreign employee. Following this, the company may apply to the FMS for a permit to hire foreign employees.

Terms of employment

18 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

In general, article 91 of the Labour Code provides for a maximum 40-hour working week. A number of categories of employees are permitted to have a reduced work schedule.

The maximum number of hours that an employee can work in a day is not specified, except for certain categories of employees (eg, employees under the age of 16 and employees working under hazardous conditions).

Generally, an employer establishes the duration of the working week, the maximum daily hours of work permitted and other work scheduling matters. These matters are included in the employer's internal regulations and are decided at its own discretion, subject to the requirements of the Labour Code, other laws and the nature of the work.

However, a standard daily shift usually does not exceed eight hours, due to the five-day working week. Night shifts are deemed to be between 10pm and 6am and are one hour shorter than day shifts, unless otherwise specifically established by Russian law.

An employer may only request that an employee work longer than the established work schedule (overtime) if it has received consent in writing from the employee, except for special emergency cases. The employer is prohibited from requesting pregnant women, employees under the age of 18 and certain other categories of employees listed in the Labour Code and other federal laws to work overtime. The amount of overtime worked should not exceed four hours in two days and 120 hours per year for each employee. An employer should arrange for keeping exact records of the overtime work duration.

Further, the Labour Code provides that the employer may request employees who have irregular working hours, from time to time, work in excess of their normal working hours without obtaining their consent. In return, such employees should be entitled to additional annual paid vacation of no less than three days.

As a general rule, work performed during weekends or national holidays is prohibited, but certain exceptions apply.

An employer is responsible for its employees' compliance with restrictions and limitations on work hours, as set out in the Labour Code. An

employee's decision to opt out of such restrictions or limitations may be deemed illegitimate.

19 What categories of workers are entitled to overtime pay and how is it calculated?

Employees with regular work hours are entitled to overtime pay if they perform work beyond their scheduled work hours at the request of the employer. Under article 152 of the Labour Code, overtime pay should be no less than one-and-a-half times an employee's usual hourly pay for the first two hours of work and no less than twice the employee's usual hourly pay for any subsequent hours worked. Definite amounts of compensation for overtime work may be determined by a collective agreement, internal regulations or an employment contract. At the request of the employee, additional rest days may be given in lieu of overtime pay for a period that is no less than the amount of overtime worked by the employee.

20 Can employees contractually waive the right to overtime pay?

The right of employees to overtime pay cannot be waived contractually. Under article 57 of the Labour Code, conditions of the employment contract that provide for a lower level of guarantees and compensations to employees than set forth by the Labour Code are void. However, instead of receiving overtime pay, the employer and the employee may agree that additional rest time be provided to the employee for working overtime.

21 Is there any legislation establishing the right to annual vacation and holidays?

An employee is entitled to paid annual vacation of at least 28 calendar days once he or she has worked with the same employer for six consecutive months (but certain exceptions apply). Some categories of employees (eg, those working in hazardous conditions or in the regions of the far north of Russia or those who have an irregular working hours regime) are entitled to certain additional paid vacation. Additional paid vacation may also be established by an industry agreement, trilateral agreement, or collective bargaining agreement. The list of public holidays is contained in the Labour Code.

22 Is there any legislation establishing the right to sick leave or sick pay?

The Labour Code establishes the right to paid sick leave. To apply for sick pay, an employee must receive a medical certificate issued by a licensed medical institution or private practitioner. The employee must then submit the medical certificate to the employer following recovery (ie, on the first working day of the employee). The medical certificate serves as the ground for payment of the employee's disability allowance and proof of his or her legitimate absence. A medical certificate is issued for an employee's illness or injury, sanatorium treatment, prosthetic treatment, family member's illness that requires further care, pregnancy and childbirth, and quarantine.

The first three days of sick leave are paid by the employer from its own funds. Starting from the fourth day of sick leave, statutory established sick pay made to an employee by the employer is later credited against the employer's mandatory contributions to the State Social Insurance Fund. The amount of sick pay ranges from 60 per cent to 100 per cent of the average salary of the employee (depending on the employee's work experience) in the two years preceding the disability; however, the temporary sick pay is limited to an amount established annually by Russian law and used for the calculation of sick pay. The maximum amount for 2016 is approximately 59,800 roubles per month. The employer may provide additional sick pay from its own funds. In the regions of Russia's far north sick pay is increased by regional co-efficients.

23 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Generally, there are several types of leave of absence:

- Maternity leave: female employees are entitled to paid leave of 70 calendar days before the child is expected and 70 calendar days after the child is born. Paid maternity leave is increased to 84 days prior to the birth where more than one child is expected, and 86 days after the birth for a difficult birth or 110 days where more than one child is born. During maternity leave a woman receives a maternity allowance in the amount of 100 per cent of her average monthly salary from the State Social Insurance Fund. However, the amount of the allowance

is limited and reviewed annually. For instance, the amount for 2016 is capped at approximately 59,800 roubles per month.

- Childcare leave: parents, grandparents, or other relatives can request child-care leave to care for a child who is less than three years old. During childcare leave a person receives an allowance until the child is one-and-a-half years old in the amount of 40 per cent of his or her average monthly salary. The amount of the allowance is also limited and reviewed annually. For instance, the amount for 2016 is capped at approximately 53,880 roubles per month.
- Leave for employees who adopt a child: an employee who adopts a child is entitled to a period of leave that commences on the date of the adoption and continues until 70 calendar days after the date of the adoption, or 110 calendar days where two or more children are adopted. A parent may request childcare leave to care for an adopted child who is less than three years old. The amount of the allowance is the same as for employees on maternity leave and childcare leave.
- Leave for employees who care for disabled children: parents who care for a disabled child are entitled to an additional four days off a month, which can be used by one parent or divided between both parents. Compensation payable for the additional days off is equal to the amount of the average (daily) salary of the employee concerned.
- Sick leave (see question 22).
- Annual paid vacation (see question 21).
- Leave without pay: an employer is obliged to grant leave without pay to the employee for legitimate reasons (eg, family reasons). Additionally, the employee and the employer may agree to a more prolonged leave without pay. Certain categories of employees, for example, disabled employees or old-age pensioners, are entitled to unpaid leave at their request for the term specified in the Labour Code for each category (up to 60 calendar days per year).

24 What employee benefits are prescribed by law?

See questions 21 to 23 regarding paid vacation and holidays, sick pay and maternity-related benefits.

As a general rule, employees are entitled to statutory pensions and protection against exceptional situations relating to the employees' health, family events, work-related accidents or illnesses. Employees are also covered against unemployment risk to a certain extent.

Certain categories of employees enjoy additional benefits. For example, employees working in Russia's far North regions or in adverse or hazardous conditions must receive increased salaries and/or additional paid vacations or reduced duration of the workweek. Also, the Labour Code provides for compensation of certain employees' expenses, for example, if an employee moves to a new place of work at the request of the employer or is required to travel for business purposes.

In most cases, however, the relevant benefits and compensations are highly regulated by the state and the amounts payable are nominal.

25 Are there any special rules relating to part-time or fixed-term employees?

An employee may agree with an employer, either during the hiring process or at any other time after that, to work on a part-time basis. Further, under the Labour Code the employer must establish a part-time working regime upon the request of certain individuals, including, among others, pregnant women and parents who have a child who is less than 14 years old.

Part-time employees are paid pro rata for the hours they work or for the amount of work completed. Part-time employees enjoy the same rights and benefits as full-time employees, including the rights relating to the length of annual paid leave.

Please see question 10 regarding fixed-term employees.

Post-employment restrictive covenants

26 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Generally, covenants not to compete, solicit or deal (customers, employers or suppliers) are not directly prohibited by Russian law. However, such provisions will most likely be considered invalid and unenforceable by Russian courts, as they violate the principle of freedom of labour established by the Constitution and the Labour Code.

Moreover, the Labour Code expressly allows any employee (except for a CEO) to work for another employer in his or her spare time without the consent of the primary employer.

If, for example, the employee (or ex-employee) uses the employer's (or ex-employer's) commercial secrets in his or her competing business, the employer may consider alternative protections by entering into a non-disclosure agreement with the employee or suing the employee for damages; however, from a practical standpoint it will be rather difficult.

27 **Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?**

Russian law does not provide any specific regulation with respect to post-employment restrictive covenants and does not provide any requirement for an employer to pay a former employee during such a period.

Liability for acts of employees

28 **In which circumstances may an employer be held liable for the acts or conduct of its employees?**

Under article 1068 of the Civil Code, an employer is liable for any damage caused by an employee during the fulfilment of such employee's labour obligations under a labour or civil contract, or under the instruction of the employer. At the same time, article 1081 of the Civil Code permits the employer to file a recourse claim to the employee after the employer has provided compensation for the damage caused.

Taxation of employees

29 **What employment-related taxes are prescribed by law?**

Taxable income includes salaries and other forms of remuneration (including insurance and other benefits) provided by an employer to its employees. The employer withholds a 13 per cent individual income tax from almost each payment made to an employee (certain exceptions apply).

Any payments that are made to Russian employees are subject to social contributions that must be paid by the employer. The rates and thresholds in 2016 are:

- pension fund – 22 per cent, or 10 per cent for any amount exceeding the threshold of 796,000 roubles per year; and
- social security fund and medical insurance fund – 2.9 per cent and 5.1 per cent, respectively.

The employer is also required to make contributions to the social insurance fund in accordance with the law on mandatory social insurance for industrial accidents and occupational diseases. The amount to be paid as contributions depends on the types of operations the employer is engaged in and the risks involved. The contribution rate starts from 0.2 per cent.

Employee-created IP

30 **Is there any legislation addressing the parties' rights with respect to employee inventions?**

The allocation of rights relating to employee-created inventions is specifically addressed in Part IV of the Civil Code. All non-proprietary rights (personal rights) for inventions created by an employee belong to that employee and are unalienable. As a general rule, if an invention was created while an employee was performing his or her work duties or acting under the employer's specific instruction, the exclusive rights (proprietary rights), including the right to receive a corresponding patent, belong to the employer.

After the employee has notified the employer about the creation of an invention, the employer should act promptly to protect the rights to the invention. If the employer does not file a patent application, assign its exclusive rights to the invention to a third party, or decide to protect the invention as a commercial secret within four months after it has been informed of the invention by the employee, the exclusive rights to the invention transfer to that employee.

As a general rule, if the exclusive rights to the invention are vested in the employer, the employee is entitled to remuneration. The amount of such remuneration and the related payment conditions are defined either in an employment contract or in other documents agreed to by and between the parties. If there is a dispute over such payment, the precise amount of remuneration is to be decided upon and awarded by the court. The government of the Russian Federation is entitled to set minimum rates for such remuneration.

Part IV of the Civil Code also regulates rights with respect to employee-created works, other than inventions. The exclusive right to employee-created works is vested with the employer unless the employee's

employment agreement or any other agreement between the employer and the employee states otherwise. If the employer does not commence using the employee-created work, does not transfer the exclusive right to another person or does not inform the author of keeping the work secret within three years after the work was made available to the employer, the exclusive right to the work will be vested with the employee. Otherwise, the employee is entitled to remuneration, the amount and payment conditions of which are defined by an agreement between the employer and the employee.

31 **Is there any legislation protecting trade secrets and other confidential business information?**

Key statutes regulating protection of trade secrets and other confidential business information are the Federal Law on Trade Secrets and the provisions of the Civil Code. Russian law does not clearly define 'confidential information' or establish rules on the treatment and disclosure of confidential information. Commercially valuable information of any kind may be protected in Russia as a 'commercial secret' (or 'know-how'), or an intellectual property item.

Proprietary rights to commercial secrets are considered to be protected only if the general public does not have open access to the information and the owner of the commercial secret has introduced special protection measures (an 'internal regime of trade secrecy').

According to the recent amendments to the Civil Code, intellectual property rights to a commercial secret will be deemed valid if the owner takes 'reasonable measures to protect the information, including by means of establishing the trade secrecy regime'. Arguably, these amendments may be interpreted in a way as to cover the exclusive rights of owners of foreign trade secrets, which are not covered by a trade secrecy regime under Russian law.

Data protection

32 **Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?**

Protection of employee privacy and personal data are regulated by Chapter 14 of the Russian Labour Code and the Personal Data Law.

The employer is obliged to maintain confidentiality of employees' personal data. This includes the adoption of necessary personal data protection policies and procedures, as well as taking adequate technical measures to prevent unauthorised access to, or the disclosure of, personal data.

The employer is not allowed to transfer an employee's personal data to third parties without the employee's specific consent. The employer can obtain and process employees' personal data only to the extent that it is required for hiring, training, promotion, security, and work quality control and compliance purposes.

Generally, an employer is not allowed to request and process personal data related to employees' membership in non-commercial organisations or trade unions, their private lives, or their political, religious or other beliefs. An employer is also not allowed to obtain an employee's personal data from third parties without the employee's consent.

Business transfers

33 **Is there any legislation to protect employees in the event of a business transfer?**

Unlike in other countries, Russian law does not have a formal concept of a 'business transfer'. However, Russian law is very pro-employee and it protects an employee from being dismissed due to a sale or acquisition of shares or assets or outsourcing without his or her consent (certain exceptions apply).

Termination of employment

34 **May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?**

Generally, an employer may dismiss an employee only on grounds and in compliance with the procedures specified by the Labour Code. There is no possibility of 'termination-at-will' under the Labour Code. The only exception applies to dismissal of a CEO, who is the only employee of a Russian company who can be dismissed without his or her consent at any time (subject to certain corporate formalities).

The Labour Code lists the following grounds that allow an employer to dismiss its employees at the employer's initiative:

- systematic failure to perform duties after written warnings without a valid reason;
- unexcused absence from work without a valid reason;
- disclosure of commercial secrets;
- being under the influence of alcohol or narcotics in the workplace;
- professional inaptitude due to poor qualifications confirmed by formal evaluation;
- staff redundancy or liquidation of the company; and
- other substantial reasons.

35 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

An employer must give notice prior to dismissing an employee in certain cases that are provided for in the Labour Code. Such cases include dismissal due to staff redundancy (ie, if the number of personnel or job positions is being reduced) and dismissal due to the closure of a business (ie the liquidation of a company).

Russian law requires that specific procedural requirements, which are considered to be relatively complicated (including providing two months' prior notice to all employees who will be dismissed and notifying the state employment agency of the intended dismissals), must be carefully observed in order for a dismissal due to staff redundancy or the closure of a business to be valid. Additional rules apply to 'mass terminations'.

Under article 180 of the Labour Code, payment in lieu of the two-month notice period is permitted subject to written consent of the employee.

36 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer may dismiss an employee without notice, but only for the reasons set out in the Labour Code. In general, an employer can dismiss an employee for systematic failures in the performance of his or her employment duties without a valid reason after he or she has already received written warnings in relation to such failures. An employee may also be dismissed following a single violation of his or her employment duties, where such violation is deemed to be serious. Such instances may include those listed in question 34. In all cases, however, an employer must properly document each violation of an employee's duties and follow the termination rules and procedures.

37 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The Labour Code entitles an employee to a severance payment upon termination of employment in limited cases. The amount to be paid depends on the reason for the termination.

A severance payment of an amount equal to an average monthly wage is paid following a dismissal due to an employer's liquidation, staff reduction or elimination of job positions. In addition to this severance payment an employee is also entitled to be paid an average monthly wage until he or she finds alternative employment, but this will only be paid for two months. In exceptional cases, this term may be extended up to three months by the state employment agency if the dismissed employee applies to the agency within two weeks from the day of dismissal and was not employed through the agency.

A severance payment equal to two weeks' average earnings is paid upon termination of employment for the following reasons:

- refusal of an employee to be transferred to an alternative role in accordance with a medical statement or if the employer does not have an appropriate position;
- call-up for military service or assignment to an alternative civilian service;
- reinstatement of the employee who previously held the employee's position;
- refusal of an employee to be transferred to another region together with the employer;
- recognition of an employee as fully incapable of working in accordance with a medical statement; and
- refusal of an employee to continue working owing to a change of certain terms and conditions of the employment agreement.

Update and trends

The Secondment Law that entered into force on 1 January 2016 is the key topic for the business community in the sphere of labour and employment. Even with the new law coming into force, several aspects of its practical application remain unclear and have not been tested in practice. Further legal acts that would define the conditions of secondment between affiliated entities and parties to a shareholders' agreement remain to be adopted by the Russian State Duma, leaving such secondments in a 'grey area'.

Another emerging trend in labour and employment is the strengthening control and supervision over compliance with the labour law requirements at companies. Law enforcement authorities are planning to increase the number of inspections and other forms of control over employers.

Individual employment contracts or collective bargaining agreements may provide for other reasons and higher amounts of severance payments.

38 Are there any procedural requirements for dismissing an employee?

The Labour Code requires that specific procedural requirements be complied with in the case of mass terminations or collective dismissals. The criteria for a collective dismissal are established by federal and regional laws, and generally are based on the number of employees dismissed and the period of redundancy (see questions 35 and 37 regarding the procedural requirements).

There are some additional procedures that may apply for dismissal of employees who are members of trade unions and/or members of management of bodies of trade unions.

39 In what circumstances are employees protected from dismissal?

The following categories of employees are protected from dismissal on all but a limited number of grounds, which are specified in the Labour Code:

- pregnant women;
- women with children under three years of age;
- single mothers raising children under 14 years of age;
- single mothers raising disabled children under 18 years of age;
- employees raising motherless children under 14 years of age;
- employees raising motherless disabled children under 18 years of age;
- employees being the sole wage earners of families with disabled children under 18 years of age; and
- employees being the sole wage earners of families with children under three years of age.

Employees under 18 years of age may be dismissed only with the prior approval of the State Labour Inspectorate and the Commission for the Affairs of Underage Children.

An employer is not permitted to dismiss an employee (except in the case of liquidation of the employer) during the period of the employee's temporary disability or paid annual leave.

40 Are there special rules for mass terminations or collective dismissals?

The Labour Code requires that additional specific procedural requirements be complied with in the case of collective (mass) dismissals. The criteria for a collective dismissal are established by territorial and industrial agreements, and generally are based on the number of employees dismissed and the period during which the dismissals occur.

When an employer proposes a collective dismissal, a consultation with the employee representative body or trade union may be required. An employer must also serve a notice with the state employment agency and trade union organisations no later than three months before the commencement of the dismissal. Collective bargaining agreements (which generally regulate social and employment relations between the employer and the employees, and provide for a higher level of protection of employees than applicable legislation) and territorial and industrial agreements (which generally regulate relations between employees and employers in certain regions or industries) may contain specific provisions relating to collective dismissals.

Further, certain categories of workers cannot generally be dismissed at the initiative of the employer – for example, pregnant women, single mothers and mothers with small children.

41 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Generally, Russian law does not recognise a concept of ‘class or collective’ actions. However, the Labour Code provides for alternative ways to settle collective employment disputes – by commission of conciliation, mediation or labour arbitration. Commission of conciliation is formed on an equal basis and consists of representatives from both the employer and the employees. If the commission fails to settle the dispute, the parties may decide on another form of settlement, which can be through either mediation or labour arbitration, or both, if necessary.

42 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

The Federal Law on Labour Pension in Russia establishes the following general retirement ages: 55 for women and 60 for men. An employer cannot, however, dismiss an employee who has reached retirement age without his or her consent without following the dismissal procedure (see questions 34–40).

Dispute resolution

43 May the parties agree to private arbitration of employment disputes?

Generally, the parties cannot agree to private arbitration; only state courts of general jurisdiction are the appropriate venue for employment dispute resolution. The Labour Code, however, provides for alternative ways to settle collective and individual employment disputes (see question 41).

44 May an employee agree to waive statutory and contractual rights to potential employment claims?

No, employees cannot waive statutory and contractual rights to potential employment claims. Any such waivers are deemed null and void.

45 What are the limitation periods for bringing employment claims?

In general, an employee can bring an employment claim within three months of the day the employee became aware of, or should have become aware of, a violation of his or her rights.

In the case of a dispute over an unfair dismissal, an employee can bring a claim within one month of the day the employee was handed a copy of the dismissal order, or from the day his or her work record book was released.

Morgan Lewis

Bela Pelman
Dmitry Dmitriev

bela.pelman@morganlewis.com
dmitry.dmitriev@morganlewis.com

Legend Business Center
Tsvetnoy Bulvar 2
Moscow 127051
Russia

Tel: +7 495 212 2500
Fax: +7 495 212 2400
www.morganlewis.com