Labour & Employment 2021

Contributing editors
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LEXOLOGY®
Getting The Deal Through

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Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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Getting The Deal Through

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Contents

Russia

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LEGISLATION AND AGENCIES

Primary and secondary legislation

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, the federal level has primacy. The key federal statutes are the:

- 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; and
- the Federal Law on Legal Status of Foreign Citizens in the Russian Federation.

In addition to the above-listed laws, there are also industrial and regional agreements, applicable to employers of a particular industry or operating in a particular region. Such agreements may set out enhanced employment guarantees, such as increased minimum wages, mass lay off criteria and employment benefits (eg, outplacement obligations, additional payments to employees on particular occasions and other obligations).

Protected employee categories

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.

Further, the Labour Code sets out the equal pay for work of equal value principle, which should also be taken into account in assessing discrimination risks. Harassment in employment is not specifically regulated by the Labour Code.

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

Enforcement agencies

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 who are responsible for violations of employment laws.

The general prosecutor's office and its territorial bodies ensure observance of human rights and freedoms and can also enforce employment laws to restore the rights of violated employees. They can also send representatives to participate in court proceedings on unfair dismissal claims of employees. Employees could challenge employers' actions to both the prosecutor's office and the Federal Service for Labour and Employment.

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

Legal basis

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The 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. 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.

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 a 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.

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 various labour achievements.

Powers of representatives

5 | What are their powers?

In addition to the trade unions, employees are entitled to create works councils. The works council prepares proposals for the improvement of production activities, the introduction of new techniques and technologies, and the increase of productivity and skills of employees. It cannot deal with issues that are within the exclusive competence of a company's management bodies, trade unions and other employee representatives.

Trade unions are involved in the adoption of certain personnel decisions.

In certain cases, the employer cannot dismiss a trade union executive (eg, the head or deputy head of the trade union) without the consent of the superior trade union. Further, in certain cases, the employer must seek and consider the 'reasoned opinion' of the relevant trade union before taking certain decisions concerning its employees. Such circumstances include, for example, dismissal of the trade union's members at the employer's initiative or adoption of decisions that may affect the interests of employees and adoption of internal regulations.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

6 | 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 based on an employee's skills (ie,'business qualities').

If the employer subsequently declines to hire the applicant, the decision could potentially be challenged on the grounds of discrimination. The applicant could also apply to the Federal Service for Labour and Employment or the prosecutor's office with a complaint regarding the employer's discriminatory practices.

Medical examinations

7 | 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 only in certain limited instances described in the Labour Code and other federal laws (eg, for employees under 18 years of age or those applying for work in hazardous conditions). 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 should be carried out regularly.

In all other circumstances, information about an employee's health is 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 and compliance with other requirements to its storage term, use and subsequent destruction. 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.

Drug and alcohol testing

8 | 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, the civilian aviation sector, the railway sector, the power generation sector and work involved with the operation of vehicles and underground work), he or she 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

Preference and discrimination

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

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

However, some protective measures have been established for certain groups of people. For instance, the Federal Law on Employment of the Population of the Russian Federation 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 to 4 per cent of the average weighted number of such a company's employees.

Russian law prohibits discrimination in employment based on any criteria other than the employee's skill. Also, article 64 of the Labour Code specifically prohibits any 'limitations' when hiring pregnant women, women with children and certain other categories of employees. Further, an employer cannot refuse to hire employees who are being transferred from another employer.

10 | 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, the terms of an employment contract include:

- the place of work (office location);
- a detailed description of duties and responsibilities;
- the commencement date of employment and the term of the contract, if it is not an indefinite-term contract;
- the salary and compensation for work under hazardous conditions, if applicable;
- the probationary period, if any;

- the hours of work and breaks, and vacation arrangements;
- the 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 or collective bargaining agreements, if applicable. Notably, a deficiency in the essential terms does not invalidate the employment contract, and the missing provisions could be added to the employment contract by entering into an addendum.

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

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 maternity 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 not regulated. The Labour Code also does not allow for prolongation of fixed-term employment contracts (but certain exceptions apply).

Probationary period

12 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 the commencement of work.

A probationary period cannot be established for some categories of employees, such as pregnant women and women with children under the age of one and a half years, persons invited to work by transfer from another employer as agreed between employers, and some other categories.

Classification as contractor or employee

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

An individual can work based on an employment contract or perform services based on 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 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 periodically as established in the contract and can engage third parties to perform the services.

By 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. Article 19.1 of the Labour Code provides that all uncertainties regarding the nature of an agreement are to be interpreted in favour of employment relations.

Temporary agency staffing

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

Article 18.1 of the Federal Law on Employment of the Population of the Russian Federation regulates secondment arrangements and the activities of recruitment agencies in this sector. The article sets out specific provisions to govern secondments. It also states when a secondment is and is not permitted. It permits temporary staffing through private employment agencies in certain cases only, namely:

- the temporary substitution of employees who are absent on vacation, maternity leave or business trips; and
- the temporary fulfilment of services in response to demand for extra labour – but for no longer than nine months.

Further, 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

Visas

15 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 these are usually used for business trips. 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. Certain rules suggest that such a company must be either a Russian company or a foreign company that has a registered presence in Russia.

Spouses

16 | 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 apply.

General rules

17 | 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 foreign employees 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. Under this 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, consisting 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). '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.

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 a personal work permit may receive an administrative fine of up to 1 million roubles or, alternatively, the company's activity may be suspended for up to 90 days, under a court decision.

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

Resident labour market test

18 | 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 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 immigration authorities for a permit to hire foreign employees.

TERMS OF EMPLOYMENT

Working hours

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

Generally, article 91 of the Labour Code provides for a maximum 40-hour working week. Several 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, owing 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 to occasionally 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.

Overtime pay

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

Generally speaking, employees 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.

21 | 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 out by the Labour Code are void. However, instead of receiving overtime pay, the employee may elect to have additional rest time provided for working overtime.

Vacation and holidays

22 | 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 additional paid vacation. Additional paid vacation may also be established by a collective bargaining agreement. The Labour Code sets out the list of public holidays.

Sick leave and sick pay

23 | 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 a 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. It 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 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 employer may provide additional sick pay from its own funds. In the regions of Russia's far north, sick pay is increased by regional coefficients.

Leave of absence

24 | 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 before 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. The amount of the allowance is limited and reviewed annually.
- Childcare leave: parents, grandparents or other relatives can request childcare leave to care for a child who is under 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.
- 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 under 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: 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 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.
- Annual paid vacation: 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 are entitled to additional paid vacation. Additional paid vacation may also be established by a collective bargaining agreement.
- Leave without pay: an employer is obliged to grant leave without pay to employees 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 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).

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

Among the employee benefits prescribed by law are 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 adverse or hazardous conditions must receive increased salaries or additional paid vacations or reduced duration of the working week. 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.

Part-time and fixed-term employees

26 | 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 of 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.

Fixed-term employment contracts are permissible only in cases that are described in the Labour Code. 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. The Labour Code also does not allow for prolongation of fixed-term employment contracts (but certain exceptions apply).

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

There is no requirement for employers to publish information on pay or other details about employees in Russia. Further, in practice, such information is deemed sensitive and is often protected as a trade secret. Public companies must abide by the respective disclosure obligations under the laws, but such requirements relate to executive-level employees for the most part.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | 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 regulated by Russian labour 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, that will be difficult from a practical standpoint.

Post-employment payments

29 | 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 concerning 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

Extent of liability

30 | 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, but such recourse is limited.

TAXATION OF EMPLOYEES

Applicable taxes

31 | 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. From the amount of income up to 5 million roubles inclusive, personal income tax is calculated at a rate of 13 per cent. When income exceeds this threshold, the amount of excess personal income tax must be calculated at an increased rate of 15 per cent.

Any payments that are made to Russian employees are subject to social contributions that must be paid by the employer (certain exceptions apply). The basic rates and thresholds are:

- pension fund: 22 per cent, or 10 per cent for any amount exceeding a certain threshold that is reviewed annually; 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 under the law on mandatory social insurance for industrial accidents and occupational diseases. The amount to be paid as contributions depend 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

Ownership rights

32 | 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 the 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 the payment, the precise amount of remuneration is to be decided upon and awarded by the court. The government is entitled to set minimum rates for such remuneration.

Part IV of the Civil Code also regulates rights concerning 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.

Trade secrets and confidential information

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

Key statutes regulating the 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').

In such cases, intellectual property rights to a commercial secret will be deemed valid if the owner takes 'reasonable measures to protect the information, including through establishing the trade secrecy regime'. These rules 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

Rules and obligations

34 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 Labour Code and the Federal Law on Personal Data (the Personal Data Law).

The employer is obliged to maintain the 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 his or her 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 an employee's membership in non-commercial organisations or trade unions, his or her private life, or his or her political, religious or other beliefs. An employer is also not allowed to obtain an employee's personal data from third parties without his or her consent.

35 Do employers need to provide privacy notices or similar information notices to employees and candidates?

The Personal Data Law requires employers to adopt a 'policy on the processing of personal data' (ie, a privacy policy). The policy must describe the data processing activities of the employer and data protection measures, including the list of personal data collected and processed, the purposes of the processing, the rights and obligations of the employer as well as the rights of the individuals (employees, candidates, etc). Employees must read and accept the privacy policy and all other local documents, describing the processing and storage of their personal data. Also, the Personal Data Law obliges the employer to provide unlimited access to the privacy policy, among other things, which must be published on its website if the website is used by the employer for collecting any personal data (eg, candidates' curricula vitae).

36 What data privacy rights can employees exercise against employers?

The Personal Data Law, in most cases, requires the prior explicit consent of an individual for personal data processing. According to article 86 of the Labour Code and the Personal Data Law, the processing of an employee's personal data by the employer is subject to the employee's explicit written consent.

Also, under the Personal Data Law and article 89 of the Labour Code, an employee has the right to:

- have complete information regarding the processing of his or her personal data;
- have full and free access to his or her personal data, including the right to receive a copy of any record containing his or her personal data (subject to the restrictions expressly provided for by the applicable laws);
- determine a representative for the protection of his or her data privacy rights;
- have access to medical data containing information on his or her health condition (with the help of a medical professional if needed);
- have his or her personal data amended, or deleted if it is incomplete, inaccurate, untrue or was processed in violation of the applicable laws; and
- appeal against the actions or omissions of an employer to the Federal Service for Supervision in the Sphere of Telecoms, Information Technologies and Mass Communications or court, and to use other remedies provided for by applicable laws to protect his or her rights.

BUSINESS TRANSFERS

Employee protections

37 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 owing to a sale or acquisition of shares or assets or outsourcing without his or her consent (certain exceptions apply). There are also protections to employees being transferred from one employer to another.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 | 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 the dismissal of a CEO, who is the only employee of a Russian company that 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 on its 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 owing to poor qualifications confirmed by formal evaluation;
- staff redundancy or liquidation of the company; and
- certain other substantial reasons.

Further, a CEO could also be dismissed on the grounds set out by such an employee's individual employment contract.

Notice

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

An employer must give notice before dismissing an employee in certain cases that are provided for in the Labour Code. Such cases include dismissal owing to staff redundancy (ie, if the number of personnel or job positions is being reduced) and dismissal owing 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 for a dismissal owing to staff redundancy or the closure of a business to be valid. Additional rules apply to mass termination'.

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

40 | 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. Generally, 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 concerning 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. In all cases, however, an employer must properly document each violation of an employee's duties and follow the termination rules and procedures.

Severance pay

41 | 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 owing 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 if he or she has not found alternative employment after the end of the first month after the dismissal. Further, if the dismissed employee has registered with the state employment agency within 14 business days after the dismissal, and has not found work with the assistance of the state employment agency within two months after the dismissal, the state employment agency may issue a decision instructing the employer to pay another average monthly wage to the employee.

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 under 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 under a medical statement; and
- refusal of an employee to continue working owing to a change of certain terms and conditions of the employment agreement.

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

Procedure

42 | 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.

Some additional procedures may apply for the dismissal of employees who are members of trade unions or members of management of bodies of trade unions.

Employee protections

43 | 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.

Mass terminations and collective dismissals

44 | 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.

Class and collective actions

45 | 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 the commission of conciliation, mediation or labour arbitration. The 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.

Mandatory retirement age

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

The retirement age is established by law. Employers do not have the right to change it or request employees to retire before the retirement age. The Federal Law on Insurance Pensions provides for a gradual increase of the general retirement age depending on birth date and certain other criteria effective from 2019. By 2028, the mandatory retirement age will be 60 years for women and 65 years for men (certain exceptions apply).

Additional protections have been introduced for persons reaching pre-retirement age (ie, five years before retirement age). Unjustified refusal to employ, or unfair dismissal of, such a person could lead to the criminal liability of the employer's managers.

DISPUTE RESOLUTION

Arbitration

47 | 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.

Employee waiver of rights

48 | 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.

Limitation period

49 | What are the limitation periods for bringing employment claims?

Generally, 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 unfair dismissal, an employee can bring a claim within one month of the day he or she was handed a copy of the dismissal order, or from the day his or her work record book was released. Concerning disputes over salary payments, the limitation period is one year from the moment when the due payments should have been paid.

UPDATE AND TRENDS

Key developments of the past year

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

From 1 January 2020, the electronic work record book has been introduced. All employers were required to amend, where necessary, their internal regulations to address the enactment of the electronic work record books, notify all employees of the changes to the Labour Code and their right to opt for an electronic work record book and also take other steps for implementing the new rules in this area.

From 1 January 2021, the Labour Code was amended to add new articles regulating remote work. These new rules were expected in response to the challenges of the covid-19 pandemic. In Russia, as almost everywhere globally, the authorities imposed periodic lockdowns, instructing employers to have their employees work remotely whenever possible.

Under the new rules, employers may have their employees work remotely temporarily due to force majeure (such as the pandemic). There is no need to receive the consent of employees for such an action.

If an employee (owing to the nature of their work) is unable to work remotely, an employer can introduce an operational downtime. However, employers must pay at least two-thirds of employees' base salary to employees during such operational downtime.

Coronavirus

51 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Generally, the heads of Russia's constituent territories have the right to determine which measures to prevent the spread of diseases could be established for the relevant territories. Such measures could include transferring a certain percentage of employees to remote work (depending on the epidemiological situation), mandatory body temperature measurements of employees and suspension from work of those with a high temperature. Employers should formalise all measures, including the new rules on remote work, in a formal written policy. Formal written policies will help protect employees and may reduce an employer's liability in the case of any disputes.

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