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Awara Russian Labor Law Guide 2014



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Moscow

The Awara Russian Labor Law Guide is intended for both practical purposes and general orientation in Russian labor law. It gives a description and analysis of major legal issues that may affect those who want to conduct a business in Russia. This publication is particularly timely since by now the 2002 Labor Code of the Russian Federation has been in effect for over 10 years, resulting in many amendments to it, the promulgation of much related legislation and regulations, and court decisions regarding its interpretation and implementation. Now, in practice, the Labor Code is not the only (and in some matters not the main) authority to consider in arranging relations between Employer and Employee. Russian labor law is not easy to apply and understand because it is abundant in both gaps and regulations, whereas administrative and court practices are patchy, uneven, and often unpredictable. This Guide will no doubt serve as a reliable aid in going through this maze of regulative acts and decisions and help the reader to avoid gross mistakes that might result in significant but quite unnecessary losses. It embraces all legislative novelties as of November, 01 2014.

First Edition published, 2014

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Awara Russian Tax Guide / Jon Hellevig, Usov A., Katyshev I. — Awara Group, 2014.

Publisher: Awara Group

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Introduction

The distinction between the Soviet Union and Russia is nowhere seen more clearly than in Russian human resources. Did you, dear reader, have a chance to visit a restaurant in Moscow in the 1980s? Those who did still have a lot to tell about it, and everyone who listens is sure to be amused. We remember that some of the restaurants were closed during lunch time, to allow the staff to have their lunch break; we remember the guards at the entrance asking us the much-telling question "What do you want?"; we remember the "service", which involved the ritual of going through all the items on the menu with a reply from the waiter "Out of it today". It seemed that the restaurant belonged to the waiter and the guests were a mere disturbance.

Go to a Moscow restaurant today. It's another world. The techniques of service might not be up to the standards of the Swiss schools, but the friendliness and willingness to serve beats the level of most European countries.

The difference between the old and the new is called management. Russians seem to be very quick to adapt. This is proven by many things, not least by the capacity of the people to adapt to all the changes in the country during the last 10 years. But it can be said that the Russians easily catch onto both good and bad. They adapt to good management and bad management. What the Soviet Union was all about was bad management or, rather, mismanagement of all things. The employees had a feel for this system with all the visible results.

Today the Russians are answering the call of a new management style. With privatization, foreign investors and new local entrepreneurs, modern management techniques have entered the country, and the results achieved by the vanguard companies are encouraging. Russian human resources are manifesting the place they deserve amongst Russia's riches. These human resources, more than the natural resources, will ensure the prosperity of the country and the success of an individual company.

In Russian human resources the accent is placed on management. The management style, policies and actions become decisive. People will adapt to and follow good management.

The underlying mechanism of these changes is labor law. In the background of Russian traditions management also means the enactment of clear, but not necessarily rigid, rules, for all issues concerning work. The labor and the taxation laws also call for a documented process of work-related issues. This Awara Russian Labor Law Guide explains in detail what is needed in accordance with the law and what options the administration has available in order to achieve the best results of good management.

1. Overview of Russian Labor Laws and Regulations

The Labor Code

The State Duma (one of two chambers of the Russian parliament) adopted the Labor Code on December 21, 2001, and it was signed into law by President Putin on December 30, 2001. The Code entered into force on February 1, 2002. As of the third quarter of 2014, 70 laws have been enacted that have resulted in major changes in the Russian Labor Code.

All major provisions regulating labor and employment are concentrated in the Labor Code. This Labor Code has brought some remarkable changes in labor legislation. For the first time in history it brings Russian labor laws close to market economy standards.

As in all aspects of Russian society, the Labor Code also puts a heavy administrative burden on the employer. Non-compliance with all these rules will put the employer at a disadvantage in its relations with both employees and authorities. It can be said that many of the legal rights of the employer are born and die depending on compliance with administrative rules on documentation. The Labor Code also adds a heavy administrative burden in the form of the provisions on Data Protection (Chapter 14 Labor Code). This chapter has received even more serious support in the special law "On Personal Data"¹. Currently, the topic of protection of personal data is one of the most talked about in the business field and among officials.

As a starting point for this summary of Russian labor legislation, it is worth stating that the basic principles of Russian labor regulations are well suited to a modern market economy. This means that a fair balance has been achieved between legislative guarantees for the employee and provisions that allow for flexibility.

The Russian economy and its legislation have been undergoing a transition to a market economy for 23 years now. The road has certainly been bumpy, but it has taken the country quite far. Basic legislation and practices become clearer each year. Uncertainties in court practices on the part of all participants in the process are being reduced. In some areas the results have been more visible than in others. Think about accounting and tax issues. In the mid-1990s, procedures and laws were still very unclear and non-transparent for most participants in the market. Today, the rules and practices are undoubtedly within the realm of a civilized society. The same development is going on in various spheres, and labor law is certainly one where the development has been fast.

The trend of Russian lawmakers regarding implementation of electronic documents is attractive to business, not only in relations between businesspersons, but also in relations between business and government. In fact, this tendency suggests that in the coming years leading enterprises in Russia will be able to do without burdensome paperwork entirely.

¹ Federal Law dated 27.07.2006 No.152-FZ "On Personal Data" // Collected Legislation of the Russian Federation. 2006. No.31 (Part 1) Art 3451.

In order to ensure the rights granted by law, the employer will, however, have to make sure that the human resources function within a company is capable of managing all aspects of labor in a fair, transparent and secure way. Russian labor law allows that the interests of both employee and employer are served, but calls for a multitude of issues to be considered. This Awara Russian Labor Law Guide is intended to help management cope with these issues on a general level, and the HR manager on a more detailed level.

This Guide lists all the major documents that have to be in place. Among these are labor contracts, company policies and statutory supporting documents. The major provisions of these documents are further elaborated in this Guide.

Being a considerable move toward a modern legal framework for labor issues, the Code is nevertheless flawed and inconsistent on many occasions, as will be shown below. Sometimes it fails to envisage certain contingencies which are usually foreseen by legislation in modern legal systems (this can be exemplified by its total silence on the issue of voluntary work).

Latest Amendments

Since the moment it took effect in 2002, the Labor Code has undergone repeated amendment; however, its main provisions remain unchanged.

One of the largest packets of amendments was adopted in 2006. These amendments do not affect the basic tenets of the system currently at work, but they are numerous and some of them are worth noting in this Guide. For instance, it proposes to deny application of internal rules and contractual provisions which diminish the guarantees provided by law (Art 8 Labor Code). Since previously this was not clearly provided for, employers acquired the habit of issuing internal rules to circumvent particular guarantees. This amendment certainly requires judicial interpretation, because it is often open to doubt whether a particular internal rule would improve or diminish the position of workers. For instance, the Labor Code requires that salary be paid at least twice a month. But in real life it is often paid once. Sometimes it is done with the employee's consent, sometimes without it. Can such a practice always be viewed as a diminishing of workers' rights or not?

Among other changes, the following could be highlighted:

Starting on October 6, 2006², rules in the Labor Code relating to the protection of personal data have repeatedly been introduced and amended.

² Federal Law dated 30.06.2006 No.90-FZ "On Amendments to the Labor Code of the Russian Federation, Recognizing as Invalid Some Normative Legal Acts of the USSR on the Territory of the Russian Federation and the Annulment of Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation" // Collected Legislation of the Russian Federation. 2006, No. 27, Art 2878.

Most of the rules applicable to the employer, however, are governed by a separate law on personal data³.

On September 1, 2007, a law went into effect introducing into the Labor Code provisions on minimum wage in the regions of Russia⁴.

Taking effect on March 30, 2008, Chapter 54.1, regulating the labor of athletes and coaches, was introduced into the Labor Code⁵.

A law⁶ that took effect on May 1, 2009 had serious implications for the regulating of audits of compliance with labor legislation. The law defines basic guarantees of the rights of businesses regarding their compliance audits.

On January 7, 2011, a law⁷ took effect requiring an employee beginning a new job to present to the employer a certificate as to whether he has or hasn't ever been criminally convicted or prosecuted. This requirement applies only to certain types of positions, such as teachers.

On March 31, 2012, amendments to Chapter 51.1 of the Labor Code took effect, which established certain details in the regulation of labor relations with employees working underground⁸.

Amendments⁹ came into force on April 8, 2013 introducing into the Labor Code a new chapter governing the labor of those working on a remote basis. These new rules are intended to regulate workers who use the Internet in their work and are not in the office of the employer.

³ Federal Law dated 27.07.2006 No. 152-FZ "On Personal Data" // Collected Legislation of the Russian Federation. 2006, No. 31 (Part 1), Art 3451.

⁴ Federal Law dated 20.04.2007 No. 54-FZ "On Amending the Federal Law "On the Minimum Wage" and Other Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation. 2007, No. 17, Art 1930.

⁵ Federal Law dated 28.02.2008 No. 13- FZ "On Amending the Labor Code of the Russian Federation" // Collected Legislation of the Russian Federation. 2008, No. 9, Art 812.

⁶ Federal Law dated 26.12.2008 No. 294-FZ "On Protection of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control" // Collected Legislation of the Russian Federation. 2008, No. 52 (Part 1), Art 6249.

⁷ Federal Law dated 23.12.2010 No. 387-FZ "On Amendments to Article 22.1 of the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs" and the Labor Code of the Russian Federation" // Collected Legislation of the Russian Federation. 2010, No. 52 (Part 1), Art 7002.

⁸ Federal Law dated 30.11.2011 No. 353-FZ "On Amendments to the Labor Code of the Russian Federation" // Collected Legislation of the Russian Federation. 2011, No. 49 (Part 1), Art 7031.

⁹ Federal Law dated 05.04.2013 No. 60-FZ "On Amendments to Certain Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation. 2013, No. 14, Art 1668.

On the same day, an amendment¹⁰ to Chapter 55 of the Labor Code, relating to the management of employees of public corporations and public companies, took effect.

On May 19, 2013, one of the most talked about and yet one of the shortest laws in the history of modern Russian law went into effect, introducing in Russia the possibility of creating works (industrial) councils¹¹. This initiative was launched by President Putin and is based on a public hearing, which was attended by German jurists. However, despite this, following discussions the law was passed, but was fated not to be implemented. Article 22 of the Labor Code provides workers the right to establish works councils. The supposition is that the rules of this body will be determined by internal rules of the employer. However, in the absence of any experience of activities of such bodies in Russia, it is doubtful that this will be applied in practice.

On June 30, 2013, a law took effect restricting employment opportunities of some former government officials for two years after leaving public office¹². The list of such public positions is set out in separate regulatory enactments.

On July 2, 2013, an amendment to the law "On Employment in the Russian Federation"¹³, took effect extending the concept of discrimination and establishing administrative responsibility for the dissemination of information about vacancies that contain discriminatory restrictions. Besides administrative responsibility for discrimination, the new law imposes liability for the placement of information about vacancies containing "discriminatory restrictions".

On September 1, 2013, changes to supplement the provisions of the Labor Code on safeguards associated with combining work and study¹⁴ entered into force. These changes are associated with the passing of reforms in

¹⁰ Federal Law dated 29.12.2010 No. 437-FZ "On Amending the Federal Law "On Non-Profit Companies" and Other Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation. 2011, No. 1, Art 49.

¹¹ Federal Law dated 07.05.2013 No. 95-FZ "On Amending Article 22 of the Labor Code of the Russian Federation" // Collected Legislation of the Russian Federation. 2013, No. 19, Art 2322.

¹² Federal Law dated 21.11.2011 No. 329-FZ "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Improvement of Public Administration in the Field of Anti-corruption" // Collected Legislation of the Russian Federation. 2011, No. 48, Art 6730.

¹³ Federal Law dated 02.07.2013 No. 162-FZ "On Amending the Federal Law "On Employment in the Russian Federation" and Certain Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation. 2013, No. 27, Art 3454.

¹⁴ Federal Law dated 02.07.2013 No. 185-FZ "On Amendments to Certain Legislative Acts of the Russian Federation and Invalidating Legislation (Certain Provisions of Laws) of the Russian Federation in Connection with the Adoption of the Federal Law "On Education in the Russian Federation" // Collected Legislation of the Russian Federation. 2013, No. 27, Art 3477.

Russian higher education. The same law introduced amendments relating to the labor of teachers.

On January 1, 2014, a law on special assessment of working conditions¹⁵, which made significant changes to the Labor Code, went into effect. With this law the procedure of certification of workplaces has been replaced by a special assessment of working conditions. As with the results of certification, the results of the special assessment provide certain guarantees to employees as envisaged in the Labor Code. This law establishes in the Code that it is not allowed to use civil labor contracts to regulate actual employment relations (Art 15 Labor Code). Consequences and ways of requalifying wrongfully entered into civil contracts into labor contracts with employees are in the new Article 19.1 of the Labor Code. Also introduced by this law is Article 67.1, which specifies that if a new contract employee was allowed to work by another unauthorized employee, the employer pays for the labor actually done by the employee for the benefit of the employer, but the labor contract shall be considered not to have been entered into. The absence of this rule until 2014 resulted in contradictory jurisprudence.

On May 5, 2014, the president of Russia signed a law that comes into force on January 1, 2016¹⁶. This law introduces a direct ban on agency work, which refers to work performed by an employee on the orders of the employer but in the interests of and under the direction and control of another entity. The same law introduced the concept of private employment agencies, which are subject to accreditation and the right to conduct activities for the provision of temporary workers to perform work for the benefit of and under the management and control of another entity. This innovation will be discussed in more detail in the section "Different Forms of Employment".

As of September 1, 2016, a law¹⁷, goes into effect which requires companies that collect and otherwise process personal data of Russian citizens, including in employment relations, to use databases on the territory of Russia. The new law applies even to foreign companies which are not registered in Russia and do not have representative offices (branches) in Russia.

Other changes are noted below in the appropriate sections of the Guide. Generally, this Guide draws upon the latest version of the Labor Code of the Russian Federation. When necessary, it explicitly refers to the preceding regulation as well.

¹⁵ Federal Law dated 28.12.2013 No. 426-FZ "On the Special Assessment of Working Conditions" // Collected Legislation of the Russian Federation. 2013, No. 52 (Part I). Art 6991.

¹⁶ Federal Law dated 05.05.2014 No. 116-FZ "On Amendments to Certain Legislative Acts of the Russian Federation" // Rossiyskaya Gazeta. No. 101, 07.05.2014.

¹⁷ Federal Law dated 21.07.2014 No. 242-FZ "On Amendments to Certain Legislative Acts of the Russian Federation with Regard to the Clarification of the Processing of Personal Data in Information and Telecommunications Networks" // Collected Legislation of the Russian Federation. 2014. No. 30 (Part 1). Art 4243.

2. Basic Principles of Russian Labor Law

Compulsory Law and Minimum Standards

From a Western, or at least a European, reader's perspective, Russian labor legislation does not come as a big surprise. It allows for freedom of agreement between the parties, but provides for additional protection of the employee. This protection comes in the form of setting **minimum standards** for employment.

There is a general rule in the Russian Labor Code that the terms of employment in an individual labor contract must not be worse than those set out in the Labor Code and other related legislation, collective agreements, contracts and internal regulations. Some provisions of the law are mandatory and cannot be altered by agreement between the parties. A contract where the employee would have agreed to terms below these minimum standards of the mandatory law would be void, and the provisions of the law would apply instead (Art 57 Labor Code).

Presumption in Favor of the Employee

Apart from the **minimum standards** and the mandatory rules, the law contains one more mechanism for the protection of the worker. This comes in the form of presumptions in favor of the employee in certain cases, most notably in cases when the term of the contract is not stated or when there is no written agreement. At the same time, it is important to stress that there is no general comprehensive presumption that all doubts in every case should be interpreted to the employee's benefit, contrary to the beliefs of some labor law professors who tried in recent times to advance such a doctrine. In reality, any labor dispute in Russia is decided according to the rules of civil procedure which apply to civil disputes (based on civil law), just as they apply to labor disputes. These rules, in particular, state that each side must prove the circumstances on which it relies in its demands or its objections¹⁸.

A labor contract has to be entered into in written form. When there is no written contract, it is presumed that a labor contract has *de facto* been entered into from the moment a worker has actually started working with the knowledge of the employer or upon his order or the order of his representative (Art 16 Labor Code), and the employee would enjoy all the rights provided by the law (this comes very close to **implied contract** in British employment law). In the absence of a written agreement, there emerges a risk that the actual intents of the parties would be disregarded, and instead the employee would receive protection under the most favorable

¹⁸Part 2 Art 56 of the Civil Procedure Code of the Russian Federation dated 14.11.2002 No. 138-FZ // Collected Legislation of the Russian Federation. 2002, No. 46, Art 4532.

conditions of the labor laws. For example, such an agreement between the employer and the worker can be interpreted as being an indefinite contract instead of a fixed-term one (Art 58 Labor Code).

Amendments that went into effect on January 1, 2014¹⁹ introduce clarifications to this rule that protect an employer from wrongful acts of his employees. Thus, Article 67.1 of the Labor Code provides that if a new worker was allowed to work by another unauthorized employee, the employer shall pay the new worker for the work he does for the benefit of the employer, but a labor contract will not be deemed to have been entered into.

A labor contract which has not been properly documented is considered to be entered into if the employee has started working with the employer's (or his representative's) knowing about it and allowing it. Nevertheless, the employer has a duty to enter into a written contract with him within three days after the actual admittance to work and thus formalize the relationship (Art 67 Labor Code).

Freedom to Choose Work. Non-Competition Clauses

The Russian Labor Code proclaims the **freedom to choose the place of work**. This means that the employer cannot restrict the employee in any ways other than those offered by the law. In practice, this implies that the so-called "**non-competition clauses**" (prohibition to join a competitor, etc.), used in the West and frequently introduced in contracts between Western employers and their employees in Russia, may be deemed invalid. In practice, such conditions are commonly used by employers. The risk that such a condition may be declared invalid does not entail any negative consequences for the employer, except for the possibility of being held administratively liable (Art 5.27 Labor Code).

An employee also has an explicit right to take up a second job for another employer (Art 282 Labor Code; see Combining Jobs). However, in regard to top management this right may be removed by a provision in the labor contract (Art 276 Labor Code).

The law allows the retaining of an employee in the company for a fixed term agreed in advance in connection with providing training at the expense of the employer (Arts 57, 249 Labor Code). The law does not give any time frames as to how long such an obligation can exist. It is therefore up to the courts to rule on what is reasonable. However, in the case of dissolution of a contract before the end of its term, an employee who received training at the

¹⁹ Art 15 of the Federal Law dated 28.12.2013 No. 421-FZ "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law "On Special Assessment of Working Conditions"// Collected Legislation of the Russian Federation. 2013, No. 52 (Part 1), Art 6986.

employer's expense must pay compensation in proportion to the remaining period (Art 249 Labor Code).

Non-Discrimination and Equal Opportunity

Together with the principle of freedom to choose work the law establishes a **non-discrimination requirement**. This is realized at the stages of seeking employment, being offered employment and during the employment (Art 3 Labor Code).

The law prohibits all forms of discrimination based on sex, race, nationality, language, descent, property, social or family status, age, place of residence, religion, views, unions affiliation, social groups membership, and other circumstances unrelated to the professional qualities of the employee.

Only the professional qualities of the candidates may be taken into account in the selection process. A job candidate could in principle take legal action upon being refused employment in favor of another candidate. At the request of the candidate the employer must give him a written explanation of the motives for his not being chosen for the job (Art 64 Labor Code).

On July 2, 2013, amendments to the law "On Employment in the Russian Federation", extended the concept of discrimination and established administrative liability for the dissemination of information about vacancies that contain discriminatory restrictions²⁰. So, in addition to administrative liability for discrimination, the new law provides for liability for the dissemination of information about vacancies that contain discriminatory restrictions.

Refusal to hire a woman cannot be based on pregnancy or existence of dependent children (Art 64 Labor Code).

Courts no doubt have broad discretion when determining which qualities matter as a ground for refusal to hire. Since the Labor Code itself sheds no light on the issue, the Supreme Court gave some clarification in its decree of March 17, 2004 (Item 10)²¹. In the Court's view, such qualities may include professional education, job experience and state of health. Clearly, this explanation is not particularly helpful. Perhaps future precedents will serve as better guidance. At present, such disputes are extremely rare in Russia. The new law we have mentioned, establishing additional liability, could possibly increase the number of disputes connected with discrimination.

²⁰Federal Law dated 02.07.2013 No. 162-FZ "On Amending the Federal Law "On Employment in the Russian Federation" and Certain Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation. 2013, No. 27, Art 3454.

²¹ Decision of Plenum of the Supreme Court of the Russian Federation dated 17.03.2004 No. 2 "On Application of the Labor Code of the Russian Federation by the Courts of the Russian Federation" // Rossiyskaya Gazeta. No. 297. 2006.

The salary of each employee shall depend on his qualifications and the complexity, quantity and quality of the work done. All discrimination in setting or changing salary and other remuneration is prohibited (Art 132 Labor Code).

Along with a non-discrimination requirement, the law extends special protection to certain **social groups** in the form of mandatory provisions affecting the employment of women, students, minors, single parents, disabled persons, retired people returning to work, war veterans, etc. Below this Guide will deal in greater detail with these provisions. It is advisable to consider the applicability of special rules when deciding on employment issues affecting employees belonging to these social groups.

Administration Issues and Form Requirements

In spite of the gradual improvement of legislation in this sphere, in Russian law and administrative practice **forms** are very important. Often rights and obligations are created or lost with forms, wrong forms or lack of forms. The labor law makes no exception to this rule; quite the contrary, forms often reign in matters regulating Russian human resource (HR) issues. Despite the fact that the form of documents²² since 2013, as a rule, is a recommendation²³, there continue to exist in legislation a number of mandatory conditions for certain documents. The requirements of forms call for a great deal of attention on the part of management, and the necessity to use the services of experienced HR managers or HR consultants. Any omissions in the correct drafting of documents or lack of them can lead to the employer's losing some of its intended rights, as well as an increased taxation burden and potential liability for damages.

The Russian Labor Code establishes strict and detailed rules and regulations for the management of staff and payroll issues (**human resources administration**). Non-compliance with these rules may lead to consequences, including:

- Invalidity of a contract;
- Increased tax burden;
- Loss of rights and legal protection of the employer.

There exists a myriad of procedures to comply with, as well as rigid requirements for forms.

²²For example, Resolution of Goskomstat dated 05.01.2004 No. 1 "On Approval of Unified Forms of Primary Records for Accounting and Remuneration" // Bulletin of the Ministry of Labor. No. 5. 2004.

²³In connection with the introduction of the new Federal Law dated 06.12.2011 No. 402-FZ "On Accounting" // Collected Legislation of the Russian Federation. 2011, No. 50, Art 7344, Russian Ministry of Labor also writes about this in the Letter of the Russian Ministry of Labor dated 14.02.2013 No. 14-2-291.

Internal Policies and Instructions

According to Russian law, employment is regulated by compulsory and optional provisions of the law, other legislation and governmental instructions, as well as policies and instructions (internal regulations) issued by the employer, alongside the labor contract. The law frequently refers to such policies and instructions, and, therefore, in order to comply with the law and enjoy legal protection, the employer should make sure that all needed policies and instructions are on hand.

Scope of Russian Law

It should be noted that Russian labor laws apply to all labor relationships in Russia, regardless of the legal status or origin of the employer and the employee. Thus, a labor relationship involving a foreign company and a foreign individual working in Russia is primarily regulated by Russian law (if in some cases an international treaty of the Russian Federation would not require otherwise). Even the employment of a foreign chief executive (CEO or General Director) would fall under Russian rules.

The employment of a Russian citizen or even a foreigner sent to Russia would fall under Russian law, even if the foreign employer does not have a Russian presence (Art 11 Labor Code).

Trade Unions and Collective Bargaining

The Russian Labor Code foresees participation of **trade unions** in matters relating to the organization of and compensation for work, as well as entering into of collective agreements and collective contracts.

With the new Labor Code the role of trade unions at different levels has been clarified, and some of the abusive rights of the trade unions have been withdrawn.

The law (Chapter 7 of the Labor Code) foresees two types of documents in which the results of collective bargaining are consolidated: the **collective agreement** (“*soglasheniye*”) and the **collective contract** (“*kollektivny dogovor*”) (Chapter 7 Labor Code). The **collective agreements** are made between representatives of the employers and workers at the federal, regional and territorial level, as well as at the level of a particular industry. A collective agreement within a particular industry can also be made at the federal, regional and territorial level. The collective agreement sets the working conditions not only within the industry, but also between state (and regional) employees and employers.

The collective agreement, as a general rule, does not affect those employers that did not participate in the negotiations through their representatives

(non-members of corresponding associations). However, there is a mechanism whereby an unwilling employer might become a party to the agreement "through silence". This happens when the employer does not react to an officially published announcement offering non-participating employers to adhere to a collective agreement. Such an announcement may be made only by the Minister of Labor and Social Development of Russia and only concerning industry-wide agreements entered into at the federal level. The employer would have to inform of non-acceptance of the offer within 30 days from the date of publication. The refusal should be well-grounded and in writing. Only thus he can avoid joining the agreement.

Collective agreements may be entered into for a term up to 3 years. The parties may agree to extend this term up to 3 more years. But the law permits only one extension (Art 48 Labor Code).

The **collective contracts** are entered into at the level of a particular company (or its subdivision) or individual entrepreneur. The employer does not have an obligation to ensure that there is a collective contract in force. However, the employer is obliged to participate in negotiations to enter into such a contract, if said negotiations are initiated by the representatives of the employees (Art 36 Labor Code).

The Labor Code removes the challenge previously put before the employer to negotiate with several trade unions at the same time. The law now states that the legal representative of the employees is a body (or group of people), which has received support from the majority of all employees of the employer. These representatives may be the official trade union, but they may also be any unorganized agents enjoying the majority support of the employees.

A valid collective contract requires mandatory observance by the employer and all employees. Unlike a collective agreement, it can be extended by the parties repeatedly (the maximum period of extension is 3 years). It remains in force for 3 months if the form of ownership of the entity changes (strict interpretation suggests that this rule means not sale by one private owner to another, in which case it is considered to be a change within the same form of ownership, i.e., private, but, rather, cases of nationalization, privatization, conversion from federal into regional property, and the like).

Some kinds of employment guarantees are extended to persons participating in the negotiations on the collective contracts. These employees are not necessarily the representatives of trade unions. The law also contains special employment guarantees for trade union members (e.g., in certain instances an opinion of a trade union is to be requested prior to dismissal; extended protection for the leader of the union and his deputies; etc.).

The trade unions or the other representatives of the employees may also have additional functions provided for by the law. These are, for example:

- to give its consent regarding certain matters as detailed in the law;
- to give opinion and recommendations on the enactment of policies and instructions;

- the right to receive information on matters directly affecting the employees;
- to discuss the activities of the company and to give recommendations on improvements.

The employer does not have the obligation to ensure that such representative body of the employees exists. When there is no representative body, then there is no obligation to request the opinion in those matters where the law would otherwise require it.

The employer should consult the detailed provisions in the Labor Code regarding trade unions whenever there is a trade union or other representative body of the employees, or when the formation of one is anticipated.

A trade union at the superior level (above company level) may send its trade union inspector to supervise the working conditions in any company where a union member works. The rights of such trade union inspectors are detailed in the law (Art 370 Labor Code).

Trade Unions and Industrial Conflicts ("Collective Labor Disputes")

Currently Russia's trade unions and labor movement do not seem to be strong compared with those of some Western countries. Prior to 2007, the effect of their activities was difficult to notice. In 2007, however, a number of important strikes took place, especially in the North-West of Russia.

The Labor Code (as of July 2006) repealed the 1995 Law "On the Procedure for Solving Collective Labor Disputes"²⁴ and to some degree changed the legal regulation of strikes. Under current rules the demands of employees are set forth during a meeting or a conference of employees. In the meeting employees take part themselves, whereas the conference includes their elected representatives. A meeting is legitimate if more than half of employees take part; a conference is legitimate, if more than two-thirds of delegates participate.

The Code provides for preliminary stages of solving a conflict, called "conciliation procedures" - consideration of demands by conciliation commission, mediation and labor arbitration. The first stage is mandatory. If these procedures prove to be ineffective, the employees may go on strike (Art 409 Labor Code).

²⁴ Law of the USSR dated 20.05.1991 No. 2179-1 "On the Procedure for Settling Collective Labor Disputes (Conflicts)" // Vedomosti SND and the USSR Supreme Soviet. 1991, No. 23, Art 654.

The decision as to whether to go on strike must be made by the trade union or a meeting (a conference) of employees. Of those present, at least half must vote for the strike in order to make it legal.

Employees in some fields are not allowed to go on strike. In particular, strikes are not allowed in the armed forces or in organizations engaged in rescue operations and fire-prevention work and the like (for the full list see Art 413 Labor Code). Under martial law and states of emergency strikes are not permitted as well.

There is an important question of the mandatory minimum of work and services which must be performed during a strike. The list of such work and services is produced first on the federal level for every industry and then specified at the regional level. At both levels, it must be the result of the joint effort of respective trade unions and authorities. Finally, in case of strike similar lists must be agreed upon between the employer, local government and employees. It cannot be expanded in comparison with the regional list.

Some experts believe that the Labor Code in its present version patently disfavors labor movement and industrial action. But, in our view, the Labor Code per se strikes a good balance between conflicting parties. The real defect of the legislation lies elsewhere. The Code of Administrative Offences provides very light punishments for employees or their representatives who evade conciliation procedures, or do not fulfill the agreements achieved as a result of negotiations, or dismiss workers who are involved in a labor dispute or put them under pressure to force them to give up the idea to go on strike. The punishments consist of fines not exceeding RUB 5000 (USD 126²⁵). While these ridiculous sanctions remain, there can be no healthy balance in such matters.

²⁵ Here and below, to calculate the exchange rate, the Central Bank of Russia rate on 03.10.14 is used.

3. Different Forms of Employment

Employee or Civil Contractor

The services or work of an individual in Russia can be legally hired either by entering into a labor contract according to the labor law or a contract under the civil law, referred to as a civil law contract. A labor contract is regulated by the Labor Code. Civil law contracts are regulated by the Civil Code and thus fall beyond the scope of the labor law regulations. Civil law contracts are not the main subject of this Guide and we will only briefly discuss this type of work arrangement.

The concept of a civil law contract refers to an agreement whereby a company hires the services of an individual without the intention to enter into a labor contract. The main distinction between a labor contract and a civil law contract is that the hired person does not under the latter construction enjoy the safety guarantees envisioned by the labor law (such as protection against termination at will, overtime and sick leave compensation, and vacations), and is not subordinated to the staff management rules of the contracting organization.

Civil law contract arrangements are used when engaging a freelancer for temporary projects or auxiliary work which is performed from time to time and is of a nature usually performed by contractors instead of staff. A typical situation is when using the services of non-staff translators.

Under these types of contracts, the parties are subject to civil law rules, which provide for equality of the contracting parties and freedom of agreement. The Civil Code imposes, however, certain mandatory conditions that such agreements must meet (Chapters 37 and 39 Civil Code). In particular, the parties must agree upon a specific subject matter of the contract, which must be described in detail in the contract, specifying its scope and quality. The date of completion of work must also be specified, as well as the starting and ending dates for performance of the work. And the price of the contract and the settlement terms must also be provided for. Often the main motivation to use such civil law contracts is the intention of the contracting company to avoid the regulations of labor law. But it should be noted that a court may requalify a civil law contract into a labor contract when the real circumstances of the work relationship meet the criteria of the labor law (Art 11 Labor Code). Court practice has shown that, when actual labor relations are those of employer-employee (an employment relationship governed by the Labor Code, which provides greater protection for workers) rather than customer-independent contractor (a civil contract relationship governed by the Civil Code, which provides fewer protections for workers), courts are apt to rule in favor of the worker in disputes.

Court practice reveals that courts stress the following kind of criteria:

- 1) Such a contract has been systematically renewed or extended²⁶.
- 2) The contractor is de facto managed as an employee subject to the company's internal regulations²⁷.
- 3) A pattern of regular payments for staff members is detected²⁸.
- 4) When the terms of compensation de facto point to the nature of employment, for example, when no term has been agreed for completion of work and a connection between completion of work and payment is not set²⁹.

Naturally, civil law contracts may also be entered into with persons registered as individual entrepreneurs. When such entrepreneurs in reality are engaged in the given line of business, there is less risk of such requalification.

An agreement with an individual who conducts business as an individual entrepreneur is viewed as a business-to-business relation regulated by civil law. This, however, does not preclude such individual entrepreneur from entering a labor contract as an employee.

Agency Work

In Russia, there has long been a common business practice in the labor market of companies providing their employees for permanent work under the control and management of their clients. The employee would be hired at the company provider, receiving wages there, but actually was subordinate to and under the control of another company - the client of the service provider. This scheme allowed customers to significantly minimize any risks associated with the demands of government officials and employees with respect to the labor of the employee for a fee to the provider.

However, this practice has been recognized by the legislature as flawed. It considered unacceptable the division of the figure of employer into two companies (provider and client), because the employee was not protected

²⁶ Ruling of the Territorial Commercial Court of Moscow Region No. KA-A40/7019-08 dated 28.08.2008 // ATP ConsultantPlus.2014

²⁷ Ruling of the Territorial Commercial Court of Moscow Region No. KA-A40/5330-09 dated 19.06.2009 // ATP ConsultantPlus.2014; Ruling of the Territorial Commercial Court of the Moscow Region 13.11.2008 No. KA-A40/10488-08 // ATP ConsultantPlus.2014

²⁸ Ruling of the Territorial Commercial Court of the Moscow Region No. KA-A40/5330-09 dated 19.06.2009 // ATP ConsultantPlus.2014

²⁹ Ruling of the Federal Arbitration Court in the Moscow Region No. KA-A40/5330-09 dated 19.06.2009 on case N A40-66166/08-76-271 // ATP ConsultantPlus.2014

from failure by the client and the provider to fulfill all the obligations of an employer provided by the Labor Code of Russia.

Indeed, the Russian Labor Code did not provide for such an employment arrangement previously, although it did not directly prohibit it either.

On May 5, 2014, the President of Russia signed a law that comes into force on January 1, 2016³⁰. This law introduces a direct ban on agency work, which refers to work performed by an employee on the orders of the employer but in the interests, and under the direction and control of another entity (the client of the provider). The same law introduced the concept of private employment agencies, which are subject to accreditation and the right to conduct activities for the provision of temporary workers to perform work for the benefit of, and under the management and control of, another entity.

As of January 1, 2016, only the following entities will be entitled to provide exclusively temporary staffing:

- Private employment agencies with a special state accreditation;
- Other companies, including foreign ones, when employees are sent temporarily to:
 - ✓ a legal entity affiliated with the party sending employees (so-called secondment);
 - ✓ a joint stock company, if the sending party is a party to a shareholder agreement for exercising the rights certified by the shares of such joint stock company;
 - ✓ a legal entity which is a party to a shareholder agreement with the sending party.

Other entities are not entitled to send their staff to work at third parties. The maximum period for which temporary staff can be provided by a private agency in a number of cases is 9 months. Because the law is worded rather imprecisely, in practice there is a risk that the period for secondment may be limited to 9 months also.

Private employment agency

Private employment agencies are understood to mean legal entities registered in Russia that are accredited to conduct staffing. Such agencies must have charter capital in excess of 1,000,000 rubles and a qualified head with experience in that sphere of work.

³⁰ Federal Law dated 05.05.2014 No. 116- FZ "On Amending Certain Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation. 12.05.2014, No. 19, Art 2321.

A private employment agency may send its employees to work temporarily for another party only in the following cases:

- If employees are sent to an individual for personal care and provision of domestic services;
- If employees are sent to an individual entrepreneur or a legal entity for temporary performance of duties which are usually performed by employees who are currently absent, but for whom their jobs are held open to them while they are absent;
- If employees are sent to an individual entrepreneur or a legal entity to perform work related to the temporary (up to 9 months) expansion of production or services rendered.

Cases where use of staffing is not allowed

The law provides for cases where the use of staffing is prohibited. Among such cases is the use of staff to replace employees taking part in a strike.

Negative consequences for companies using staffing

The law envisages that the receiving party bears subsidiary (additional) liability for the obligations of the sending party arising from the employment relationship with the provided staff, including the obligation to pay wages, vacation pay, severance pay and other amounts due to employees. This means that if the party providing staff fails to pay salaries to the employees sent to work at a receiving party, the receiving party may be required to pay the unpaid salaries.

The law also establishes additional obligations for the parties providing staff. For example, the law requires that companies providing staff pay the social contributions for the staff provided based on the rates applicable to the operations of the receiving party. This obligation is likely to result in an increase in agency expenses, and, consequently, an increase in the cost of their services.

The law states that, for the obligations of the employer arising from employment relationships with employees sent to work temporarily in the host company under an agreement for the provision of employees, including the obligations to pay wages and other sums due to the employee, the payment of monetary compensation for violation by the employer of deadlines in respect to wage payments wages, vacation pay, severance pay, and (or) other payments due to the employee, the client of the provider bears subsidiary liability. This means that if the provider fails to pay wages or make other payments to employees, this obligation can be attributed to its client.

Special Types of Labor Contracts

The typical labor contract presumes that the employee comes daily to an office or other premises of the employer, and that work is performed in or on such premises as the sole employment of the employee. However, there

are various situations where work is conducted in a different setting or under different circumstances. Such circumstances are, for example:

1. Domestic work;
2. Remote Work;
3. Apprenticeship agreement;
4. Work at remote places in long-term shifts;
5. Combining jobs;
6. Seasonal jobs;
7. Other special forms of employment.

Domestic Work

The Russian Labor Code contains special provisions regarding **domestic workers**, i.e., persons who are employed by a company, but perform the work at home (Chapter 49 Labor Code). The rules of “domestic work” regulate a quite peculiar labor relationship with a person who works in the capacity of a contractor-manufacturer producing light consumer and artisan goods from materials and instruments provided by the employer or purchased by the domestic worker at his own expense. Thus, those provisions have not been applicable to organizing remote work for a broad category of workers.

Domestic work is regulated by the general rules of the law, but a certain amount of flexibility is allowed. The domestic worker can involve his family members in the work, but no labor relationships emerge between them and the employer (Art 310 Labor Code).

In the case of domestic work, the employer and the employee agree separately on which party will provide the equipment and supplies (materials) needed for the work. If the domestic worker uses his own materials or equipment, then the employer has an obligation to pay for such use.

Health and safety rules must be followed even if work is organized as domestic work.

The provisions regarding domestic work call for determining separately in the labor contract the grounds for termination of the contract (Art 312 Labor Code). Here, it seems that the parties may go beyond the general provisions of the law by agreeing individually on the grounds for termination.

Remote Work

On April 8, 2013, the president of Russia signed into law amendments to the Labor Code introducing a new Chapter No. 49.1 "On Remote Work".

This new law represents a significant change and modernization of the Russian labor laws, for it will now for the first time be legal to arrange work on a remote basis at an employee's home. There remain in the Labor Code

prior provisions about so-called “domestic work”, but these provisions have had limited effect and have not in fact regulated the situation where employers hire people to work at their homes or otherwise remotely outside the office. The old rules of domestic work, which will stay in force, regulate a quite peculiar labor relation with a person that works in a capacity of a contracting manufacturer producing light consumer and artisan goods from materials and instruments provided by the employer or purchased by the domestic worker at own expense. Those provisions have not been applicable to organizing remote work for a broad category of employees. There has been a great need in Russia to apply a regime of remote working for categories of employees like IT specialists, sales representatives, consultants, translators, etc. Now, with the change, it finally becomes possible to properly regulate such work practices.

Under the new law, remote work (referred to in Russian as distance work) is understood to be work outside the employer's place of business, its branch office, representative office, or other site beyond the employer's control. The new law stresses the need to organize communication through means of modern IT telecommunication facilities by making it a necessary condition for remote work to use the facilities of various channels of IT telecommunication networks, including the Internet, to perform the work and to interact with the employer.

The provisions on remote work introduce a lot of possibilities for flexibility in the labor contract; most importantly it allows setting the conditions for termination of employment more freely without being restricted by the closed list of grounds for termination as per the general provisions of law.

Below we will discuss in more detail the new provisions on remote work.

Remote work is understood to be work outside the employer's place of business, its branch office, representative office, or other site beyond the employer's control. A necessary condition for distance work is the use of IT telecommunications networks, including the Internet, to perform the work and to interact with the employer (Art 312.1 Labor Code).

An important provision of the law is that it is explicitly stated that the hiring of a person for distance work does not constitute an obligation for the employer to register a branch or any kind of subdivision (no tax registration necessary). This conclusion can be drawn from the fact that according to the law a separate structural subdivision must be registered with the tax authorities if the employer organizes a stationary workspace at a separate geographical location (Tax Code Art 83(1) and 11(2)), whereas a remote worker's workplace is by definition not stationary for the employer. The law on remote work contains a number of provisions that are specific to this kind of a working regime. According to the law, the remote worker (or a candidate for a vacancy) and the employer shall exchange electronic documents by means of enhanced qualified electronic signatures. But this is necessary only when so agreed between the parties. If there is no such agreement, then the parties need to ensure physical signature when such signature is required by law (Art 312.1 Labor Code).

The contract with the remote worker must explicitly stipulate the condition that the working regime is that of remote work. The contract may stipulate that the remote worker must utilize for the performance of the agreed work equipment, hardware and software, means of protecting information, and other technical means provided by or recommended by the employer.

The employment contract must foresee conditions regarding the following:

- procedures and terms for providing equipment, hardware and software, means of protecting information, and other such technological means delivered by or recommended by the employer;
- procedures and terms for reporting on work performed;
- terms of compensation for use of the equipment, hardware and software (etc.) belonging to (or rented by) the distant worker;
- the procedure for reimbursing other costs connected with the performance of remote work.

The employer's duties to guarantee labor protection and workplace safety apply to remote workers only if applicable to the nature of the working arrangement. If otherwise not specified by the employment contract, the remote worker decides at his own discretion on the daily working regime and time of rest.

A labor contract and addenda to it may be entered into via exchange of electronic documents. In that case, the employer's location is indicated as the location where the employment contract was entered into. No later than three calendar days after the conclusion of the labor contract, the employer must send to the remote worker a duly executed hard copy of the labor contract by registered mail with delivery confirmation. The dispatch of the documents required to be submitted in connection with entering into a labor contract (Art 65 Labor Code) must be carried out by sending copies of them as electronic documents. However, when required by the employer, the job seeker must send such documents as notarized copies by registered mail with delivery confirmation.

An employee may be familiarized with work-related documents, including local normative acts and orders of the employer specified by the Labor Code, through exchange of electronic documents. In cases when the employee, in accordance with the Labor Code, is entitled or obligated to file an official request or provide the employer with an official explanation, etc., the remote worker may do so in the form of an electronic document. When so agreed between the parties, data on the remote worker are not entered into the labor book, and a labor book is not issued to a first-time worker.

Likewise, the parties are entitled to enter into a labor contract for remote work without using electronic documents in the traditional manner. In that case, the contract indicates the place where the contract was actually entered into. The job seeker submits original documents to be presented when entering into a labor contract. Furthermore, in that case the employer must

provide for the certificate of state pension insurance for a remote worker who is taking up a job for the first time in his life. In this case, the worker is also entitled to demand that a labor book be properly issued.

In a range of cases, remote work requires due execution of written documents which are sent through the postal service as registered letters with delivery confirmation. An employer, even in a case where a labor contract has been entered into via exchange of electronic documents, is obliged to send the remote worker a duly executed hard copy of the labor contract. For provision of mandatory insurance, coverage for mandatory social insurance in the event of temporary incapability, and in connection with maternity leave, the remote worker sends the employer the originals of required documents. In the event of termination of the labor contract, even if it is specified that one should become familiar with the dismissal order in the form of an electronic document, the employer must, on the termination day of that labor contract, send the remote worker a duly executed hard copy of that order. In other cases, the use of hard copies is not mandatory.

The parties may in a remote work labor contract (as with domestic workers) set the terms of termination of employment more freely, without being restricted by the closed list of grounds for termination as per the general provisions of law.

Apprenticeship Agreement

An Apprenticeship Agreement for professional on-the-job training may be entered into with job candidates and current employees (Chapter 32 Labor Code).

The mandatory provisions to be included in an **apprenticeship agreement** are:

- Names of the parties;
- Specialization and the qualifications received;
- Obligation on the part of the employer to provide the agreed training;
- Time of apprenticeship;
- Employee's salary during the apprenticeship;
- Obligation of the apprentice to participate in the training;
- Obligation of the apprentice to work for an agreed time period with the employer upon completion of the training.

The **apprenticeship** can take the form of individual or group training, and it can be organized either on a full-time or part-time basis.

Through the agreement apprentices may be fully exempt from their main job or they may perform their main job on the basis of reduced working hours (Art 203 Labor Code). During the apprenticeship an **apprentice** cannot be asked to work overtime or be sent on business trips which are not connected with the subject of the training (Art 203 Labor Code).

Upon successful conclusion of the training, an apprentice shall join the company as an employee without undergoing a trial period (Art 207 Labor Code).

If the apprentice does not accept the agreed job without a legitimate reason after the apprenticeship agreement is over, he will be liable to return the compensation received during the apprenticeship as well as other expenses incurred by the employer. In light of Russian court practice, we would want to raise doubt regarding the possibility of enforcing this provision.

Long-Term Shifts at Remote Places

Long-term shifts at remote places is a form of employment under which the employee is sent to work at a place distant from his usual place of residence so that he cannot return every day to his home (Chapter 47 Labor Code).

This form of employment is meant for situations where work has to be done in scarcely populated places or areas with extraordinary constraints set by nature.

Workers under the regime of long-term shifts at remote places have to be returned home at least once a month or in exceptional cases once every three months (Art 299 Labor Code).

Working time under this form of employment is calculated according to special rules relating to recording of work time on a summarized basis. Thereby, the whole time spent at the location of the remote work and for traveling thereto is taken into consideration in calculating the working time (Art 300 Labor Code). At any rate, the working time has to fall within the general rules set out in the Labor Code.

An employer who organizes work under this regime is advised to clarify the details in advance. The procedure for implementation of the long-term shifts at remote places regime is defined by the local regulations of the employer (Art 299 Labor Code).

Combining Jobs and Professions (Offices)

In Russia, employees are permitted to take an additional job(s) with the same or another employer. The Labor Code contains special and detailed provisions regulating the situation where an employee is performing regularly paid work when he is free from his main occupation.

This situation is that of combining jobs. It is regulated by Article 60.1 and Chapter 44 of the Labor Code.

The law draws a clear line between the **main job** and the **supplementary job**. The supplementary job must not interfere with the duties at the main job. Moreover, it should be separate from the main one (in another profession or office). The practicability of the latter requirement is dubious.

There can be two sorts of combining jobs: if the employee simultaneously takes another job with the same employer, exceeding the limits of his regular working time, it is considered as an internal combining of jobs. External combining of jobs means working for another employer outside the work hours devoted to the main job. Any combining of jobs requires entering into a special labor contract.

An employee in Russia is now allowed to take employment with as many employers as he wishes. It should be noted that this freedom makes the restrictions regarding the maximum duration of working time (per day or per week) virtually useless. Now such restrictions look like mere lip-service to trade unionism and the “social state”.

It is mandatory to include in the labor contract a provision confirming that the supplementary job is conducted under the rules of **combining jobs** (Art 282 Labor Code).

Other issues regulated separately in regard to **combining jobs** are:

- Regular working hours for a person combining jobs may not exceed 4 hours a day (Art 284 Labor Code). This restriction does not apply to the days when worker is not busy with his main job. The length of time at the supplementary job for the month should not exceed half of the monthly norm of working time. Working hours in excess of these limits are compensated separately.
- Salary for combining jobs is paid in proportion to the salary for a full-time job (Art 285 Labor Code).
- The employer at the supplementary job has an obligation to grant annual leave at the same time as the leave is granted at the main job. Such annual leave, if needed, will have to be granted before fulfilling the first six months which would give the vacation right under normal conditions (Art 286 Labor Code).
- The employee also has a right to extra vacation days without compensation in order to match the leave at the supplementary job with the leave at the main job.

Work under the rules of combining jobs entitles the employee to full vacation rights.

Combining of jobs is not permitted in respect of minors or work in harmful or hazardous conditions, provided that the main job is connected with the same conditions.

The employee combining jobs may ask his main job employer to make all necessary records concerning his supplementary job in the labor book (Art 66 Labor Code).

Hiring of a new person on conditions of a main job may serve as a reason to dismiss the employee for whom this position is a supplementary job (Art 288 Labor Code). The employer must notify the employee of the termination of the labor contract not later than 2 weeks in advance (Art 288 Labor Code).

The employer may not legally forbid an employee to take a supplementary job. However, in relation to top management the law sets an obligation to require permission from the employer for the right to have a supplementary job (Art 276 Labor Code).

Combining of professions (offices) is envisaged by Arts 60.2 and 151 of the Labor Code. This means additional work for the same employer in another position within the limits of usual working hours. Unlike the case of combining jobs, a new labor contract is not required, but employee's consent in writing is necessary.

Apart from combining professions (offices), an employee can be assigned additional work of the same nature as his regular work (that is, the office and working time is the same, but the volume of work is increased). Such situations are defined by the Labor Code as 1) an expansion of zones of service, 2) increase of the workload, or 3) the performance of job duties of an absent employee without release from the work envisaged by the labor contract (Art 60.2 Labor Code).

Any kind of additional work entails additional remuneration which amount is to be defined by the employer and employee (Art 151 Labor Code).

Casual and Seasonal Jobs

Casual jobs are those that last no longer than two months (Art 59 Labor Code). They are regulated by Chapter 45 of the Labor Code. A probationary period is not set for employees in such contracts (Art 289 Labor Code). The holiday entitlement under this form of work is two days of paid leave for each month of work (Art 291 Labor Code). As a rule, casual workers are not entitled to severance pay. A labor contract entered into to fulfil a particular job is terminated upon the completion of that work (Art 79 Labor Code). Employees may terminate the labor contract early by giving 3-day notice (Part 1 Art 79 Labor Code). The employer may terminate the labor contract early only in those cases specified in the law, and must give the employee notice of not less than 3 days.

Seasonal jobs may comprise only jobs which, as a rule, last for a period of up to 6 months and which can be performed only during a certain time of the year due to the conditions of the climate or other special conditions of

nature (Art 293 Labor Code). The work of seasonal employees is regulated by Chapter 46 of the Labor Code.

The Labor Code has delegated the right to specify the nomenclature of such seasonal jobs which may exceed this 6-month limit, as well as their maximum duration, to the level of the federal industrial agreements entered into between employers and employees (or, usually, their representatives).

The labor contract must spell out the seasonal nature of the work (Art 294 Labor Code).

In the event of liquidation of the entity or downsizing, the employer has to give notice seven calendar days in advance for dismissal of employees doing seasonal jobs.

In the event of liquidation of the entity or downsizing, the severance pay will be equal to two-weeks of salary for an employee who is doing a seasonal job (Art 296 Labor Code).

If the labor contract is terminated before its expiration at the initiative of an employee who was doing a seasonal job, the employee must notify the employer not later than 3 calendar days in advance.

An employee doing a seasonal job is granted 2 vacation days for each month of work.

Other Special Forms of Employment

In addition to the above-described situations of **special types of employment** (see Special Types of Labor Contracts), the Labor Code provides special regulations for particular jobs or professions. These affect:

- Drivers (Chapter 51 Labor Code);
- Employees engaged in work underground (Chapter 51.1 Labor Code);
- Teachers and public education employees (Chapter 52 Labor Code);
- Russian diplomats and employees at diplomatic missions and other Russian state missions abroad (Chapter 53 Labor Code);
- Religious employees (Chapter 54 Labor Code);
- Athletes and coaches (Chapter 54.1 Labor Code);
- Defense employees (Art 349 Labor Code);
- Employees of government corporations and government companies (Art 349.1 Labor Code);
- Employees of organizations created by the Russian Federation on the basis of the law in accordance with a special procedure (Art 349.2 Labor Code);
- Medical employees (Art 350 Labor Code);
- Staff of the film industry, theater, orchestras, circuses (Art 351 Labor Code);

- Those who work with children (Art 351.1 Labor Code);
- Employees engaged in work connected with the preparation for and conducting of the World Cup FIFA 2018 and FIFA Confederations Cup 2017 in the Russian Federation (Art 351.2 Labor Code);
- Experts in the field of special assessment of working conditions (Art 351.3 Labor Code).

Pursuant to the Labor Code, the Federal Government and relevant ministries have issued more detailed regulations affecting the work of some industries and particular professions.

Due to the special geographical and climatic conditions of the **Russian Far North Regions**, the Labor Code includes special provisions for work in those regions and other regions with similar conditions. Employees in these regions receive extra compensation in salary, severance pay, pension and social rights, including extended vacation, etc.

The Labor Code regulates separately situations where a natural person is an employer (Chapter 48).

Special Protection for Certain Social Groups

Women

Certain conditions of employment of **women** are regulated by special provisions (Chapter 41 Labor Code). We give here an overview of these issues.

Women enjoy special protection against dismissal (Art 261 Labor Code). We refer to the section Termination of Employment with Women for details of this issue.

Women may also enjoy other special rights such as:

1. Right to reduced working hours (reduced workweek) (Art 93 Labor Code)
 - Applicable to pregnant women, one of the parents of a child under 14 (invalid child under 18), and those taking care of a sick family member, among others.
2. Prohibition against nighttime work (Art 96 Labor Code)
 - Applicable to pregnant women and women with children under 3 years of age), among others.
3. Overtime regulations (Art 99 Labor Code): pregnant women are exempt from overtime work. Women having children under 3 can be engaged in overtime work only by their consent, and if their health allows it.
4. Prohibition against work during holidays (Art 259 Labor Code).

5. Special privilege with regard to scheduling of annual vacation (Art 260 Labor Code): annual paid leave is granted before or after maternity leave, irrespective of the time the woman has worked for the employer.
6. Prohibition to recall a pregnant woman from maternity leave early and prohibition for annual leave to be compensated in money (Arts 125-126, Labor Code).
7. Protection from hazardous labor conditions. This comes, *inter alia*, in the form of setting limits on weight which a woman must lift during work: e.g., women must not lift more than 10 kilogram at once when they alternate heavy lifting with other work and more than 7 kilogram when this is their main occupation (as established by the Decree of the Government of the Russian Federation dated February 6, 1993³¹).
8. Assignment of easier tasks to pregnant women (Art 254 Labor Code).
9. A break for infant's feeding (Art 258 Labor Code). These breaks are provided to women who have children under 1.5 years of age.
10. Other special regulations detailed in the law.

A number of privileges for women with under-aged children are also extended to single fathers, tutors and guardians of minors (Art 264 Labor Code).

Maternity Leave

Maternity leave may encompass time:

- Before child delivery
 - 70 days (84 days when expecting twins)
- After child delivery
 - 70 days (after complications with giving birth – 86 days, after giving birth to twins or more – 110 days).

Payment for **maternity leave** is compensated through the Federal Social Insurance Fund (Art 255 Labor Code).

A woman may choose to prolong maternity leave until the child reaches 3 years (**child-care leave** – Art 256 Labor Code). Also, the father, grandparents and even other relatives may be granted child-care leave if they actually take care of the child. In practice, this rule is treated as an alternative, that is, only one parent (either of them) may be on child-care leave at the same time.

During the whole period of child-care leave the employee retains the right to his/her work (keeps the job) according to the Labor Code. Employees who

³¹ Government Decree dated 06.02.1993 No. 105 "On New Standards of Maximum Permissible Loads for Women to Lift and Move by Hand" // Collected Acts of the President and the Government of the RF.1993, No. 7, Art. 566.

receive the right to child-care leave also have the right to work on part-time terms or from home during this period. The law is unspecific as to the extent of this right. It seems that the employer cannot refuse arrangements proposed by the employee having this right, however inconvenient a particular arrangement might be for the employer. Moreover, when working part-time or from home such employee cannot be dismissed for any fault because Art 81 of the Labor Code forbids dismissing workers who are on leave, except in cases of liquidation of the company. So the employer is in fact at the mercy of the employee – the latter can do a very poor job without the risk of dismissal. These theoretical conclusions, unfortunately, are confirmed by court practice that recognizes the illegality of dismissal during the period of child-care leave³². This issue was investigated separately by the Constitutional Court, but it remained unresolved³³.

Maternity leave is also extended to women adopting a child (70 days from birth of adopted child, adoption of twins – 110 days – Art 257 Labor Code).

One of the parents adopting a child also receives the right to extended child-care leave until the child turns 3 years old.

Youth Labor

At the age of 16, a person may legally enter into a labor contract. Foreign nationals in the territory of Russia are entitled to enter into a labor contract only at the age of 18.

A 15-year-old may enter into a labor contract if he received or is receiving a general education and enters into a contract to perform light work which is not harmful to health

A 14-year-old may enter into a labor contract with the consent of one of the parents and relevant authorities on the condition that the employment will not affect his attendance and good performance in school. Such employees may perform light work which is not harmful to their health.

A minor under 14 can be involved in cultural and artistic work (cinema, theater, circus) with the consent of parents and relevant authorities.

Underage employees are subject to mandatory medical examination on entering into a labor contract (Art 69 Labor Code). Such an employee may not be given a trial period (Art 70 Labor Code).

Employees under 18 can bear full material liability only in exceptional cases (for intentional damage, damage caused in a state of alcoholic, narcotic or another intoxicated state, and as a result of committing a crime or an administrative offence (Art 242, Art 243 Labor Code).

³² Ruling of the Primorsky Territory Court dated 03.05.2012 in the case of No. 33-4035 // ATP ConsultantPlus. 2014.

³³ Ruling of the Constitutional Court of the Russian Federation dated 19.04.2007 No. 248-OO // ATP ConsultantPlus. 2014.

There are restrictions for employment of minors for hazardous or harmful work and in certain industries such as gambling, tobacco and alcohol. Minors may not be sent on business trips, and they are exempt from overtime, nighttime and holiday work. The law also establishes other restrictions on child labor.

Minors are granted 31 days of vacation at any time suitable for the employer.

If an employer initiates the termination of a labor contract with a minor, consent must be obtained beforehand from the State Labor Inspectorate and the Commission for Protection of Minors' Rights (Art 269 Labor Code). The only exception is the case of liquidation of the company or termination of activities by an individual entrepreneur.

Reduced Working Hours for Minors

The **weekly working hours** are reduced to 24 hours for minors under 16 and to 35 hours a week for minors under 18. For students under 18 years the working hours are further reduced to half the above-mentioned norms (Art 92 Labor Code).

In addition to the restrictions in weekly working time there are restrictions in the **daily working hours**. For minors at the age of 15 and 16 the maximum workday is 5 hours, for 16- to 18-year-olds the maximum working hours during a day is 7 (Art 94 Labor Code).

For 14 to 16 year-old students in elementary and intermediary vocational schools the workday is restricted to 2.5 hours, and to 4 hours for students between 16 and 18.

Students

Employees who study at state-accredited schools have the right to paid and unpaid leaves as detailed in the Labor Code (Art 173). The duration of the leave and the amount of compensation from the employer vary in accordance with the **level of education** received and the form of study (day-time school or evening school). The law differentiates between the following levels of education:

- Higher professional education for educational programs for bachelors, specialist, masters and other special types of postgraduate degrees;
- Intermediate level of professional education;
- Starting level of professional education;
- Evening schools of secondary education.

These benefits are available to those employees who do not yet have a degree of the relevant level (first-time students) (Art 177 Labor Code).

The benefits are available only for studies for one degree at a time.

The example below is for benefits in regard to employees studying for higher professional education. This level of studies carries the maximum benefits. Each level downward gives fewer of these benefits (we advise consulting the law for details).

Students in evening schools for higher education:

- Students successfully conducting their studies receive the right to paid leave and unpaid leave for studies between 15 days to 4 months a year according to detailed provisions in the law.
- Students also have the right to a weekly working schedule reduced by 7 hours for a period up to 10 months prior to taking the state final attestation (with partial payment for the non-worked hours).

Top Management

In the Labor Code **top management** of a company is legally distinct from other employees in relation to many rights and obligations.

For management, this means that rewards of a management position will correlate more clearly with the extended responsibilities. It is now possible to enter into contracts with top management, whereby top management will be legally dependent on enjoying the trust of the board of directors and the shareholders (Art 278 Labor Code).

Definition of Top Management

The Labor Code does not give a clear definition of which positions are to be included in the concept of top management. At the same time, the law expressly *confined* the application of special provisions regarding management to a fairly limited number of positions (Arts 273, 281 Labor Code). The employer may not widen the applicability by a liberal interpretation of the law. In order to clearly make the point that the applicability is restricted to the top management of the entity, we have decided to employ the concept of **top management** in this Guide.

We advise that the employer define the group of positions included in top management separately for each issue, keeping in mind the provisions of the law regarding top management.

The positions that may be included in the definition of top management (depending on the actual situation) are:

- Head of entity;
- Deputy head of entity;
- Chief accountant;
- Other executive directors (who in Russian corporate law are among the members of the collegial executive body).

Head of Entity

The determination of positions that fall under the definition of **head of entity** in Russian law is restricted to formal criteria. The Labor Code defines a head of entity as a person who manages the organization (including the fulfillment of the functions of the chief executive officer, or CEO) in accordance with the laws, regulations, founding documents, internal policies and instructions of the entity. In some cases, the Labor Code extends the regulation of the labor of a head of an organization to the heads of branches and representative offices of the organization (e.g., special grounds for dismissal under Art 81 Labor Code). However, the Labor Code considers the head of an organization to be the sole head of the organization, the position of which can have different names depending on how they are specified in the founding documents of the organization (e.g., President, General Director, Managing Director). Court practice also adheres to a literal interpretation of the provision of the Labor Code and does not recognize the application of the rules regarding the head of an organization in relation to the heads of branches and representative offices³⁴. Rules on the regulation of the labor of heads of organizations are spread throughout the text of the Labor Code and are also concentrated in a separate chapter, Chapter 43.

³⁴ For example, Ruling of the Supreme Court of the Republic of Karelia dated 06.03.2012 in case No. 33a-204/2012 (No. 33-804/2012) // ATP ConsultantPlus, 2014.

Deputy Heads of Entity

A deputy head of an entity (deputy) may fall under the definition in regard to certain concrete provisions. In order to enjoy the same legal status as the head of entity, the deputy head who fulfils the head's functions must occupy a position clearly named as "deputy head" or "zamestitel" (no free interpretation is allowed). such deputies would have to occupy positions that are officially registered under the procedures set forth in the Russian law as deputies (again, a loose interpretation is not possible). Judicial practice holds to the opinion that the actual performance of the functions of the deputy head of an organization without documenting employment in the position of deputy head does not invoke the application of guarantees provided by the Labor Code for the deputy head of an organization³⁵. In order to subject a deputy to all the same provisions as a head of entity, we recommend that a deputy be appointed to the position of other executive director (see below).

Chief Accountant

A **chief accountant** can be the chief of the accounting department of the main entity as well as the chief of the accounting department of a branch or subdivision. Sometimes even deputy chief accountants are included.

Other Executive Directors

Other executive directors are those who hold a position in a company executive body in accordance with the company's charter (statute) and the law. These are, for example, the members of the directorate in accordance with the laws on joint stock companies and limited liability companies. Since, in practice, employees are often appointed to positions which for prestige are given titles of foreign analogues, for example, "Executive Director", we would like to point out that such a title without an official inclusion of the position in the founding documents by members of the collegial management body does not entail the application to them of norms for the head of an organization³⁶. In addition, most of the rules for heads of organizations do not automatically apply to his deputies, even if all the above conditions are met. Appropriate provision for their application must be made in the founding documents of the company (Art 281 Labor Code).

For all these positions it is necessary to properly record the titles and their definition in the staff list and the corresponding job descriptions.

Below we list some of the issues in which the position of top management is distinct from other employees.

³⁵ For example, Ruling of the St. Petersburg City Court dated 04.04.2012 No. 33-4683/2012 // ATP ConsultantPlus. 2014.

³⁶ Ibid.

Fixed-Term Labor Contract

A fixed term labor contract is allowed in regard to top management, including (Art 59 Labor Code):

- Head of Entity;
- Deputies;
- Chief Accountant.

Trial Period

The trial (probationary) period can be extended up to 6 months for top management, including (Art 70 Labor Code):

- Head of Entity;
- Deputies;
- Chief Accountant;
- Deputy Chief Accountant;
- The Heads of branches, representative offices and other subdivisions.

Termination of Labor Contract

Grounds for dismissal: Miscalculation leading to losses (making an unsubstantiated decision) (Art 81(1(9)) Labor Code). The following persons included in the definition of top management are dismissible on this basis:

- Head of Entity;
- Deputies;
- Chief Accountant;
- The Heads of branches and representative offices (does not apply to heads of other structural subdivisions);
- Deputies of Heads of branches and representative offices (although the Labor Code does not explicitly name these entities, court practice includes them among those who can be dismissed on this basis³⁷).

Grounds for Dismissal: Single serious violation of responsibilities by a top manager (Art 81(1(10)) Labor Code).

The following employees may be dismissed based on this ground:

- Head of Entity;
- Deputies;
- The Heads of branches and representative offices (does not apply to heads of other structural subdivisions);
- Deputies of Heads of branches and representative offices.

³⁷ Appeals Ruling of the Moscow City Court dated 10.09.2012 in the case of No. 11-20026/12 // ATP ConsultantPlus. 2014.

Grounds for Dismissal: Change of the owner of the entity's property (Arts 75(4) and 81(1(4)) Labor Code).

The Supreme Court has decreed that, even though 100% of shares in a company have been sold to different persons (or person) it does not fall within the scope of Art 75(4) because the owner of the property remains the same, that is, the organization itself (Item 32 of the decree of the Plenum of the Supreme Court dated 17.03.04). This is because under Russian law shareholders do not have a right to an organization's property. They only have a right to demand from the company the discharge of obligations based on the fact of their having shares in the company (paying dividends, for example).

What amounts to a change of ownership then? The Supreme Court opined that it is cases of privatization or nationalization of the property of the organization in question or the transfer of property (for instance, an enterprise) among federal and regional or local governments. So, investors should be aware that the acquisition of the majority of stocks or even the entire shareholding does not enable them to dismiss top managers on this basis.

The following persons may be dismissed on this basis:

- Head of Entity;
- Deputies;
- Chief Accountants.

Such a termination has to be made within 3 months from receipt of right of ownership. The minimum amount of severance pay in connection with such dismissal is the equivalent of 3 average monthly salaries (Art 181 Labor Code). As the law defines only the minimum amount of compensation, the parties are advised to spell out this provision in more detail in the labor contract.

Grounds for Dismissal: Other grounds set out in the labor contract.

Applies to:

- Head of Entity.

Grounds for Dismissal: Bankruptcy proceedings.

A head of entity may be dismissed in connection with bankruptcy procedures (Art 278(1) Labor Code).

Grounds for Dismissal: Shareholders' (owners') decision.

In addition to all the specific provisions regarding dismissal of the head of entity, the Labor Code (Art 278) states as a ground for termination simply a decision taken by the shareholder (owner, its proper management bodies or other legal representative). If this power is assigned by law to the board of directors, it is this body that may terminate the contract with the head of

entity (Art 69(4) of the Federal Law on Joint-Stock Companies³⁸, Art 32(2.1(2)) Federal Law on Limited Liability Companies³⁹). Otherwise, the decision must be taken by the general meeting.

As to the compensation for the head of entity in case of dismissal, it can be provided for in the contract. The minimum amount of the severance pay is three times the average monthly salary (Art 279 Labor Code).

Special Regulations Concerning Salary Payments

Special regulations concerning salary payments are allowed in regard to top management, including:

- Head of Entity;
- Deputies;
- Chief Accountant.

The law does not clearly spell out the meaning of Article 145 of the Labor Code which says that the amount of payments for heads of entities, their deputies and chief accountants shall be determined by agreement of the parties to the labor contract, i.e., between these managers and the employer.

Full Material Liability

Top management may be subjected to full material liability for damage if this is provided for in their labor contracts (Art 243 Labor Code). For these purposes, top management includes:

- Deputies of Head of Entity;
- Chief Accountant.

A head of an entity, by virtue of his office, and regardless of the terms of the labor contract, bears full material liability for any direct real damage caused to the entity (Art 277 Labor Code). In certain cases provided in the legislation, he must indemnify the entity for the losses caused by his actions.

Non-Competition and Supplementary Jobs

A head of entity may take a supplementary (or second) job only upon due authorization by the employer. Previously, consent was required only for part-time work in other paid positions, but since October 6, 2006, the rule applies to work in any position. It is recommended to indicate the prohibition of supplementary work in the labor contract with the employee.

The head of entity has the right to terminate the labor contract by giving 1-month notice.

³⁸ Federal Law dated 26.12.1995 No. 208-FZ "On Joint Stock Companies" // Collected Legislation of the Russian Federation.1996, No. 1, Art 1.

³⁹ Federal Law dated 08.02.1998 No. 14-FZ "On Limited Liability Companies" // Collected Legislation of the Russian Federation. 1998, No. 7, Art 785.

A Natural Person As an Employer

Special provisions apply to labor contracts when the employer is a natural person. Until October 6, 2006, this chapter was devoted exclusively to the employment circumstances of individual entrepreneurs. Currently, however, a natural person employer might not be an individual entrepreneur⁴⁰.

A natural person employer must: pay insurance premiums and other mandatory payments, and process insurance certificates of state pension insurance for people coming to work for the first time. If the employer is not an individual entrepreneur, the contract must be registered with the appropriate local authorities (Art 303 Labor Code). Termination of the contract must also be registered (Art 307(3) Labor Code).

A contract with a natural person who is not an individual entrepreneur may be entered into either for a fixed term or for an indefinite term (as a permanent contract) (Art 304 Labor Code).

The employer (a natural person) and the employee may agree on the working hours, holidays, vacation and other provisions of the working regime individually without consideration to the general provisions of the law. However, the total hours worked, as well as the length of vacation, will have to follow the general rules (Art 305).

An individual employer must give written notice to the employee of any change in the essential conditions of the labor contract not later than 14 calendar days in advance (Art 306 Labor Code). In the event an employer is a natural person and is an individual entrepreneur, the contract can only be changed when these conditions cannot be preserved for reasons related to a change in the organizational or technological conditions of the work.

The provisions regarding employment with a natural person call for agreeing separately in the labor contract on the grounds for termination of the contract. That way, the parties can go beyond the general provisions of the law by agreeing individually on the grounds for termination (Art 307 Labor Code).

An employer having the status of an individual entrepreneur must make appropriate entries in the employee's labor book (Art 309 Labor Code). Other natural persons do not have such a right. (Prior to October 6, 2006, only legal entities had a duty to keep labor books).

⁴⁰ Letter of the FSS dated 31.07.2006 No. 02-18/07-7781 "On the Labor Code of the Russian Federation" // ATP ConsultantPlus. 2014.

4. Foreign Employees

Legislation

The Russian labor laws apply to all labor relations on the territory of Russia, regardless of the legal status or origin of the employer and the employee. Thus, a labor relation involving a foreign company and a foreign individual working in Russia is primarily regulated by Russian law. Exceptions may be provided for by international treaties of Russia or by special laws. Most bilateral treaties providing for such exceptions have been entered into with the countries of the CIS⁴¹. The most significant of special laws is the Federal Law On Legal Status of Foreign Citizens in the Russian Federation⁴². Even the employment of a foreign chief executive (CEO or General Director) would come under Russian law (Art 11 Labor Code).

It should be noted that the employment of a Russian person or even a foreigner sent to Russia would be governed by Russian law, even when the foreign employer does not have a Russian presence.

There are some restrictions with respect to the kinds of jobs which foreign citizens may perform in Russia (see Art 14 of the Federal Law On Legal Status of Foreign Citizens in the Russian Federation, and also the Decree of the Russian Government dated 11.10.2002 N 755). In some organizations foreigners cannot be employed. These are:

- Establishments and organizations of the Russian Armed Forces;
- Those units of State bodies and organizations whose work involves access to State secrets;
- Organizations which involve radioactive and dangerous nuclear work.

Laws provide for other positions for which the employment of foreign nationals is limited.

In addition to permanent restrictions which are directly defined in legislation, the government of Russia has the right, under Article 5, paragraph 18.1 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation", to annually establish a permissible share of use in Russia (or the territory of a single political subdivision of Russia) of the

⁴¹ Such treaties, for example, have been entered into with the Republic of Moldova, the Republic of Armenia, the Kyrgyz Republic, the Republic of Lithuania, the Republic of Tajikistan, Republic of Uzbekistan, the Republic of Poland, the Czech Republic, the People's Republic of China, the Democratic People's Republic of China, the Socialist Republic of Vietnam, the French Republic, and the Republic of Korea.

⁴² Federal Law dated 25.07.2002 No. 115-FZ "On the Legal Status of Foreign Citizens in the Russian Federation" // Collected Legislation of the Russian Federation.2002, No. 30, Art 3032.

labor of foreign nationals in a particular sphere of the economy. In 2014, this proportion is set for retail trade and sports by Decree of Government of the Russian Federation dated 19.12.2013 N 1191.

The Russian government also annually approves quotas for issuing invitations to foreign citizens for work permits and entry of workers (the maximum number of work permits). As a work permit is a document required for employment, the total number of foreign workers in Russia is directly dependent on what quota is set for a given year. For 2014, such quotas were established by the Regulation of the Government of the Russian Federation dated 31.10.2013 N 977. A list of occupations that are not covered by the quota currently is set by the Order of the Ministry of Labor of Russia dated 20.12.2013 N 768n⁴³.

The above limitations can be a serious obstacle for hiring foreign workers. However, they for the most part do not apply to a special category of workers – highly qualified foreign specialists - for which the law imposes special requirements.

Secondment

A foreign company may assign its employees to work in Russia in a partner-company or a subsidiary (**secondment**). The obligation to receive a corresponding **work permit** also applies to seconded employees.

The tax laws contain specific rules for secondment, in accordance with which secondment is not deemed to form a permanent taxable presence for the sending entity.

As of October 1, 2016, severe restrictions will go into effect on the use of Secondment in Russia. Read more about this in the section "Agency Work".

Work Permits

In order to hire a foreigner in Russia, two kinds of permissions are needed:

- 1) General permission for the employer (a company or individual entrepreneur) to use foreign workforce, and
- 2) Personal confirmation for the foreign citizen to work in Russia, i.e., the work permit proper.

The process of receiving these permissions is regulated by the rules of the Federal Law On the Legal Status of Foreign Citizens in the Russian Federation dated 25.07.2002 No. 115-FZ and Order of the Federal Migration Service of Russia N 1, Russian Health and Social Development N 4, the Ministry of Transport of Russia N 1, Russian State Fisheries Committee N 2 dated 11.01.2008.

This procedure applies not only to labor contracts with foreign workers for work in Russia, but also to civil contracts for work and services (Art 2 of the

⁴³ Order of the Ministry of Labor of Russia dated 20.12.2013 No. 768n // Rossiyskaya Gazeta, No. 21, 31.01.2014.

Federal Law on the Legal Status of Foreign Citizens in the Russian Federation).

Before hiring a foreigner, the employer must obtain a permit to use foreign workforce. It cannot be transferred to another employer, and foreign workers employed on this basis cannot be given up to another employer. The employer is entitled to use foreign workers only in the capacity and the area which were indicated in the permit. It can invite foreign workers and enter into a labor contract with them only after receiving the permit.

In some cases, an employer may not receive such authorization, for example, if an employee arrived in Russia under a simplified procedure not requiring a visa (Art 13 of the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation).

It is also important to receive an appropriate visa corresponding to the purposes of stay in Russia. The visa issue is governed by the Federal Law dated 15.08.96 No. 114-FZ "On the Procedure for Entering and Exiting the Russian Federation", and subordinate legislation, primarily the Decree of the Russian Government dated 09.06.03 No. 335. As a rule, a foreign worker needs a work visa or (in some cases) business visa.

It is not always easy to receive a work visa, which is why foreign businessmen often seek multiple business visas (for a period up to 1 year) instead. However, a Decree adopted by the federal government on October 4, 2007 No. 635, laid down a rule that a foreigner on a business visa cannot spend more than 90 days in Russia during a 180-day period. This new regulation effectively means that during one year the holder of business visa cannot spend more than 185 days on Russian territory.

As for the work visa, the law provides that it is given to a foreigner for a period of 3 months with the possibility of its subsequent extension by the local subdivision of the Ministry of Internal Affairs at the place of registration of the foreign citizen by way of issuance of a multiple entry visa for the period of contract of employment (whether a labor law or civil law one), but not longer than 1 year for each subsequent visa. Extensions are granted by the territorial office of the Federal Migration Service. In order to obtain a visa one must receive in advance an invitation to enter Russia, which, depending on the purpose of the visit, can be issued by various State bodies. For instance, the Federal Migration Service and its local subdivisions issue invitations to enter the Russian Federation upon the application of Russian citizens and interested legal entities, as well as foreigners having a residence permit.

A business visa may be issued to a special category of workers – highly qualified foreign specialists - and only for the purpose of negotiations on further work for up to 30 days upon written request of the employer (paragraph 29.1 of Government Decree dated 09.06.2003 N 335). In the event of a successful negotiation, a work visa can be issued, which is required to work on the territory of Russia for the duration of the labor contract, but no more than three years, with the possibility of extension for a period not exceeding three years.

Nationals of some states may enter Russia without a visa (Azerbaijan, Armenia, Belarus, Kazakhstan, Kirghizia, Cuba (up to 30 days), Uzbekistan and Ukraine). Below we shall call them “non-visa” foreigners. However, such foreigners are obliged to obtain a migration card (on the migration rules, see below). The procedure and timing for migration registration of foreign citizens in Russia are defined by the Federal Law "On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation"⁴⁴.

The law on the legal status of foreign citizens makes provisions for three statuses of foreigners legally residing in Russia:

- 1) Temporary stay;
- 2) Temporary residence;
- 3) Permanent residence.

These statuses confer unequal rights on their holders. In particular, the periods of a foreigner's living in the country may vary depending on his status.

As a general rule, the period of temporary stay of foreign citizens is determined by the validity period of their visa.

The period of temporary stay in Russia of foreigners who do not need a visa cannot exceed 90 days (for some categories the Government may establish different terms).

If such a citizen has entered into a Labor Contract under which he must work in Russia, his period of stay shall be extended up to the term of such a contract, but not longer than one year from the entry of the foreign citizen into Russia. The right of “non-visa” foreigners to temporary stay is confirmed by their migration card.

The period of temporary stay in Russia for foreigners who do not need a visa, being highly qualified specialists, and the period of temporary stay in the Russian Federation for members of their family, is determined by the period of validity of the work permit.

In order to obtain the right to permanently reside, a foreigner must first be given the status of temporary resident. Temporary residence permits are

⁴⁴ Federal Law dated 18.07.2006 No. 109-FZ "On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation" // Collected Legislation of the Russian Federation. 2006, No. 30, Art 3285.

issued within the quota annually established by the Russian government with attention to demographic and other factors and distributed among political subdivisions of the Federation. The procedure for determining the quota is set out by Decree of the Government of the Russian Federation dated 04.04.2003 N 193⁴⁵. Some people can be issued such permits outside the quota – for example, those who have made certain investments in Russia or married a Russian citizen (Art 6 of the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation). The temporary residence permit can be annulled in many cases indicated in Art 7 of the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation, too, such as if the foreign citizen was abroad for more than 6 months (it is not quite clear from the law – 6 months in a row or during the period of the permit's validity), or if the foreign citizen repeatedly violated the migration registration rules.

The period of a temporary residence permit is 3 years. During this term, but not earlier than one year after its start and not later than 6 months before its end, the foreigner may apply for a permit to reside **permanently** (Art 8 of the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation). This permit is issued for 5 years, and can be subsequently extended for the same period an unlimited number of times. It can be annulled for a number of reasons, including absence from Russia for 6 months (Art 9 of the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation). In practice, until recently it was very difficult to become a permanent resident.

Foreign citizens having the right to temporary residence may work only if they have a work permit. They can only work in the territory of the political subdivision of Russia in which they have the right to reside. Moreover, foreigners who have the right of temporary stay may work only within the borders of the region where they received permission to work (parts 4.2, 5, Art 13 of the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation). Therefore, only those who have the right of permanent residence do not have such territorial restrictions. The law, though, permits authorized state bodies to provide for exceptions, that is, cases when foreigners who have the right of temporary residence or stay are allowed to work outside the respective regions. Such exceptions are set out by the Order of the Health Ministry of the Russian Federation dated 28.07.2010 N 564n).

According to the general rule in the law, a work permit (confirmation) is needed when a foreign national enters Russia for the purposes of working (conducting professional activity). There are a number of exceptions to the rule concerning work permits, for the following categories of foreign employees:

- Permanent residents on the territory of Russia;
- Temporary residents on the territory of Russia;

⁴⁵ Decree of the Government of the Russian Federation dated 04.04.2003 No. 193 // Collected Legislation of the Russian Federation. 2003, No. 15, Art 1364.

- Members of a government program to assist the voluntary resettlement to the Russian Federation of compatriots living abroad and their families migrating together with them to the Russian Federation;
- Officials of diplomatic representative offices, employees of consular services of foreign countries, employees of international organization and their domestic servants;
- Employees of foreign legal entities (manufacturers or suppliers), hired for assembly (chief assembly) work, service and warranty work and also post-warranty repair work on technical equipment delivered to Russia;
- Journalists accredited in Russia;
- Students of professional educational organizations and educational institutions of higher education in Russia doing work (services) during holidays;
- Students of professional educational organizations and educational institutions of higher education in Russia working outside class time as personnel of such education institution or in organizations established by such educational organizations;
- Teachers/lecturers invited to Russia to work in educational institutions, excluding those invited to educate in religious education centers;
- Invited to the Russian Federation for business or humanitarian purposes or purposes of labor and hired in addition to teach classes in scientific organizations and state-accredited institutions of higher education, excluding those invited to educate in religious education centers;
- Employees of representatives of foreign legal entities duly accredited in the Russian Federation in certain circumstances;
- Professional athletes under 18 years old;
- Persons who have not attained the age of 14 years, working as artists (cinema, theaters, theater and concert organizations, circuses);
- Persons who are recognized as refugees on the territory of the Russian Federation - before their loss of refugee status or deprivation of refugee status;
- Persons who have been granted temporary asylum on the territory of the Russian Federation - before the loss of their temporary asylum or deprivation of their temporary asylum.

Work Permits for Each Company Separately

In many countries work permits are issued as rights for the individual to work in that country. It should be noted that in Russia this is not the case. The work permits and the corresponding confirmations pertain to the company in whose name they are issued. They are non-transferable and allow for only one employment. If a person takes up positions in two or more separate legal entities, then a separate work permit and confirmation is needed for each one.

Work Permits Even When No Salary Is Paid

The obligation to receive a work permit is not tied to the question of salary payment. A work permit is needed regardless of whether salary (or other compensation) is paid or not. Appointment of a foreigner to a position in a Russian company leads to the need to obtain a work permit.

Patent System

The patent system to hire foreigners to work in Russia was introduced in July 1, 2010⁴⁶. Russian citizens have the right to enter into employment contracts or service contracts with foreigners in Russia in a manner not requiring a visa for personal, household and other similar purposes not related to business activities. In this case, the foreign citizen does not require a work permit, but is obliged to obtain a patent for a job in Russia.

The patent system involves a more simple procedure of employing foreign employees, as well as a special procedure of taxation of the labor of these employees (Art 227.1 Tax Code).

Highly Qualified Specialists

The law that introduced a Russian patent system also supplemented the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation Art 13.2, which establishes a special procedure for hiring foreign employees who are highly qualified specialists (HQS).

This category of employees is entitled to obtain a work permit and work visa for up to 3 years (with the possibility of an unlimited number of renewals for 3 years each time). Employers hiring HQS are not required to obtain permission to engage and use foreign employees. Such employees are not subject to quotas.

Russian legislation establishes the following requirements for foreign workers for them to fall under the category of highly qualified specialists:

1. The employee must have experience, skills and achievements in a particular field of activity. These qualities are evaluated by the employer.
2. Conditions of work in Russia must provide for a certain amount of wages (per year):
 - not less than RUB 2 million (USD 50,569) is the general rule;
 - not less than RUB 1 million (USD 25,284) for foreign employees who are invited to engage in research or teaching in higher education, state

⁴⁶ Federal Law dated 19.05.2010 No. 86-FZ "On Amending the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation" and Certain Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation.2010, No. 21, Art 2524.

academies of sciences or their regional offices, national research centers or public research centers;

- not less than RUB 1 million (USD 25,284) for foreign workers who are invited to work by residents of industrial production zones, tourism and recreation zones, ports of special economic zones;

- not less than RUB 1 million (USD 25,284) for foreign workers who are invited to work by organizations operating in the field of information technology and which have received a document on the state accreditation of organizations operating in the field of information technology;

- not less than RUB 700,000 (USD 17,699) for foreign workers invited to work by residents of a technical-innovation special economic zone.

Wage criteria do not apply to foreign nationals involved in the "Skolkovo" project.

Rules on highly qualified specialists do not apply to employees engaged in religious activities, and servicing customers in retail trade.

Upon their application, highly qualified specialists, as well as their family members for the duration of the agreement, may be issued a residence permit confirming the right of permanent residence in Russia (Art 13.2 (27) of Federal Law on the Legal Status of Foreign Citizens in the Russian Federation).

A foreign citizen can independently declare himself to be a highly qualified specialist, and apply to the FMS or consular office. This information is posted on the FMS site, so that potential employers can have access to it. If an employer expresses an interest in such a specialist, he can receive a business visa for the negotiation of employment.

Legislation provides for special conditions that must be included in an employment contract with a highly qualified specialist.

Sanctions

There are a number of sanctions that can be applied in the event a person is working at a company or a holding without a valid work permit, patent or permission to hire foreigners. These are, *inter alia*:

- Imposition of fines on the employer (the head of the company, company officers, as well as individuals independently hiring foreign employees), or administrative suspension of activity (Arts 18.15, 18.16 Code of Administrative Offences).
- Imposition of fines on the employee with deportation from Russia of the employee in question (Art 18.10 Code of Administrative Offences).

The amount of the fine for legal entities can reach RUB 1,000,000 (USD 25,284).

It has been said that some tax inspectorates have raised the issue of deductibility of expenses made regarding an employee without a valid work permit. It has even been claimed that the authority of a head of an entity can be cast in doubt when he does not possess a proper work permit (confirmation).

5. Terms of the Labor Contract

As a rule, under the Russian labor laws a person is hired without a set term, i.e., as a permanent employee. A specific term (a fixed term) can be agreed upon only under circumstances allowed by the law. A fixed term contract entered into without legally valid grounds is considered as one of indefinite duration, and the employee would hence receive all the job security beyond the fixed term contract in accordance with the law (Art 58 Labor Code).

Fixed Term

The maximum length of a fixed term contract is 5 years (Art 58 Labor Contract). In addition to this general rule, the law contains shorter time limits for special situations (see details below).

The fixed term may also be set without direct reference to a time period by making the term dependent on the occurrence of another event (Art 79 Labor Code). Such an event might be:

- Completion of the agreed work;
- Return of an employee who is being substituted;
- End of the season for which seasonal work has been agreed upon.

The general rule for the provision of a fixed term contract is that the job in question or working conditions exclude the possibility of agreeing upon permanent employment (Art 58 Labor Code). Fixed term contracts may not be used with the intention of circumventing the rights granted to the employee by law. Such rights are, for example, protection against staff reduction and minimum standards on severance pay. In case of violation of these rules a court may reinstate the original rights.

A fixed term contract will turn into a permanent contract if the employee continues the work after the term has elapsed. Therefore, the employer has to follow the procedures in the law on the requirements, including notification no later than 3 days prior to the day of termination, and making written records in connection with termination of a labor contract (see Formal Procedures at Termination).

In addition to the general rule on fixed term contracts, there are certain conditions under which such a term is specifically allowed for certain categories of employees and under special circumstances relating to the work to be performed.

Art 59 Labor Code stipulates that the conclusion of a fixed term contract is optional in some cases and mandatory in others.

Categories of employees with whom a fixed term contract may be entered into:

1. Head of entity, his deputy and chief accountant of an entity (optional; see Top Management);
2. Employees who are sent to work abroad;
3. Job trainees;
4. Daytime students(optional);
5. Persons working a supplementary job (optional; see Combining Jobs);
6. Persons confined to temporary work in accordance with a doctor's certificate (optional by law, although it should be mandatory);
7. Retired persons (optional);
8. Staff members of press, film industry, theater, orchestras, circuses (optional);
9. Professional athletes (optional);
10. Persons assigned to temporary or public work by employment agencies;
11. Crews on ocean-going ships, ships traveling internal waterways, and ships of mixed travel registered in the Russian international registry of ships.

Conditions relating to work allowing a fixed term contract:

1. Employment in a small enterprise (optional; see details below);
2. Employment for a physical person who is not an individual entrepreneur (optional);
3. Substitution of a temporarily absent Employee;
4. Seasonal jobs (see Seasonal Jobs);
5. Temporary casual work (up to 2 months) (Chapter 45 Labor Code);
6. Emergency works (optional);
7. Work that is not connected with the direct business activities of the company (maintenance, etc.);
8. Work in connection with a temporary increase of production or services of the company (for a period of up to 1 year);
9. When the entity is set up for a specific period and/or a specific function;
10. Employment for performing a specific job when the date of conclusion of work cannot be set;
11. Workers in the Far North Regions (optional);
12. Vacancy is filled by way of competition held in accordance with labor law (optional);
13. Elected office or an office connected therewith (i.e., auxiliary to an elected office);
14. Alternative civil service;
15. Other conditions set by law.

For the purpose of this provision a small enterprise is one that has a maximum of 35 employees (for retailers and consumer services – maximum of 25 employees).

If a fixed term has been set, then the labor contract will have to spell out the legally valid reason for setting such a term (Art 57 Labor Code).

6. Entering Into of the Labor Contract

At the moment of hiring and entering into the labor contract the employer has to take the following actions:

- receive from the employee all the documents necessary for entering into the labor contract;
- sign a written labor contract in two copies;
- issue an administrative order of hiring (“*Prikaz*”) in accordance with the conditions of the labor contract;
- familiarize the employee with the administrative order of hiring not later than three days after signing the labor contract;
- make a corresponding record of employment in the employee’s labor book, or to start a new labor book if the employee has never been employed before;
- obtain a state pension insurance certificate for the employee if the employee has never been employed before;
- familiarize the employee with the internal working rules, collective contract, and other local regulations relating to the employee’s duties;
- create a personal card for the new employee.

The entering into of a labor contract is strictly regulated as to the contents of the agreement. Non-compliance with the requirements can lead to the contract being considered invalid. This could have negative consequences for employers, because if a court finds the existence of labor relations, it will apply the general conditions of the employment contract in accordance with the Labor Code and the terms of the labor contract will not be considered (see also the section Written Form).

Documents to be Presented In Entering into a Labor Contract

In addition to the written form, the employer must verify certain documents, which the employee shows (**it is recommended to make copies of these documents**). These are:

- Passport or other personal identification;
- Labor book (except for when the employee has never been employed before);
- Insurance certificate from the state pension insurance office;
- Military records (for persons of draft age);
- Educational diplomas or certificates of specialization (when taking up work which requires special knowledge or special training);
- Medical certificate (job candidates under 18 years and some other categories under special provisions).

Special laws or decrees may require submitting additional documents (Art 65 Labor Code).

It is prohibited to demand from the job candidate documents other than those set out by the Labor Code or other legislation.

When a person takes up a supplementary job on terms of combining jobs, only the passport (or other identification) is presented, upon the employer's demand, together with documents verifying special skills and professional training, if the employer so requests. When the work is performed under hazardous conditions, the employer may also request information on the work conditions at the main job (Art 283 Labor Code).

An employer has the obligation to issue a labor book and an insurance certificate of state pension insurance for an employee who has never been employed before (Art 65 Labor Code).

Drivers must pass a medical exam and receive a medical certificate before being hired. The same requirement is extended to some other categories, including persons under 18, people working in hazardous conditions or performing heavy labor, or working in the food industry (Arts 69, 213, 266, 328 Labor Code).

Formal Procedure for Enrolling a New Employee

In addition to the above actions of the employer, to enter into an employment contract the employee in turn needs to present a written formal request to be hired for the job.

The employer has an obligation to present to a new employee the internal working rules and other policies and instructions (hereinafter: policies and instructions), as well as any collective contract in force in the company to the extent that they relate to the employee's job functions.

Written Form

A labor contract must be entered into in written form, and two original copies of the contracts must be signed by the employer and the employee, one for each party (Art 67 Labor Code). In some cases, the employment contract must be made in 3 copies (for example, in the employment of foreign highly qualified specialists a third copy is submitted to the Migration Service).

When there is no written form, then there is a presumption that a contract has *de facto* been entered into, and that the employee would enjoy all the rights provided by law. In the absence of a written contract, there would emerge a risk that the agreement would not be considered according to the actual initial understanding of the parties and the employee would receive protection under all the favorable provisions of the labor laws.

A labor contract which has not been documented properly is considered entered into if the employee has started working with the knowledge of the

employer. Upon actual admittance of the employee to work, the employer has an obligation to enter into a written contract with him not later than three workdays after the actual admittance to work.

Contents of the Labor Contract

In addition to the written form, the labor contract has to comply with other mandatory requirements as to form. These requirements are listed in the below table (Art 57 Labor Code).

Mandatory Content of a Labor Contract

- Name of employee and employer;
- Employee's passport data;
- Taxpayer Identification Number of employer;
- Information about the representative signing contract;
- Date and place contract is entered into;
- Place of work and organizational unit;
- Description of special working conditions (nature of work);
- Description of workplace conditions;
- Date of commencement of work;
- Position, specialization, profession in accordance with the position list of the company;
- Working time and leisure time for the employee (or reference to internal working rules);
- Salary and other terms for compensation;
- Terms of mandatory social security applicable to the employment;
- Fixed term (if applicable);
- Reference to hazardous and harmful conditions of work (if applicable), including appropriate compensations;
- Other mandatory terms as may be required by law.

The labor contract may contain other provisions as long as they do not worsen the legal protection of the employee in comparison with those provided by law and any applicable collective contract. The parties, in addition to the mandatory provisions, may consider other issues to be included in the labor contract. Such issues could include, for example:

- Rights and obligations of the employee;
- Rights and obligations of the employer;
- Clarification of place of work;
- Provision of trial period (if applicable);
- Confidentiality clause;
- The obligation to work for a certain period of time for an employer who has paid for employee training;

- Types and terms of supplementary insurance of employee
- Improvement in the social welfare of the employee and his family;
- Supplemental private pension insurance for the employee.

See also the section on Top Management for special regulations regarding labor contracts with members of top management.

Catalogues of Qualifications

It is recommended that the Official Catalogues of Qualifications should be applied to upgrade the system of HR management as well as when making decisions on conformity of staff with the positions occupied during the attestation.

The Official Catalogues of Qualifications contain the names of positions, qualification requirements and knowledge of employees and the list of functions for each position. These Catalogues of Qualifications are adopted in regulations based on the Decree of the Government of the Russian Federation dated 31.10.2002 N 787⁴⁷. The Catalogues are recommended for companies of various legal forms.

The changes that went into force on December 15, 2012⁴⁸, introduced in Russia a system of professional standards which contain descriptions of the skills needed by an employee to perform a certain kind of professional activity. They are used together with the Official Catalogues of Qualifications. In fact, these professional standards are an abridged version of Official Catalogues of Qualifications.

According to the law, a particular position, profession or specialization sometimes earns the right to additional benefits guaranteed by the state. Therefore, the labor law requires that for those positions, professions and specializations the names and descriptions of the qualifications correspond with this Official Catalogue of Qualifications or Professional Standards (Art 57 Labor Code).

Salary (Remuneration for Work)

Among essential terms of a labor contract salary is of special importance, because it is the price at which the employee sells his work to the employer. Although salary must be fixed in the contract, the amount and terms of payment of wages must comply with internal policies and instructions. Wage conditions of the labor contract cannot be worse than those set out in legislation, collective contracts, collective agreements, policies and instructions (Art 135 Labor Code).

The Labor Code does not list all forms of remuneration for work which are used in practice. For example, there is no mention of share options

⁴⁷ Decree of the Government of the Russian Federation dated 31.10.2002 No. 787 // Collected Legislation of the Russian Federation 2002, No. 44, Art 4399.

⁴⁸ Federal Law dated 03.12.2012 No. 236- FZ "On Amendments to Labor Code of Russian Federation and Article 1 of the Federal Law "On the Technical Regulation" // Collected Legislation of the Russian Federation.2012, No. 50 (Part 5), Art 6959.

arrangements – in fact, a widely recognized form of remuneration for top managers. Other forms of remuneration are regulated sparsely (e.g., piece-work pay).

As was indicated above, salary must be paid not less than once every 15 or 16 days (half-month). Upon payment of the first part of the salary (advance), the employer is obliged to take into account the time the employee actually worked prior to the advance payment⁴⁹. Therefore, the formal imputation of a minimal amount of money separately from the basic wage is a violation of the Labor Code.

Salary can be paid in monetary and non-monetary form, but its non-monetary part may not exceed 20% of the total sum. Art 131 of the Russian Labor Code expressly prohibits paying salary in the form of stocks, coupons, and other debt instruments or money substitutes.

The amount of salary in labor contracts is often shown in foreign currency (most frequently USD or EUR), not rubles, but is paid in rubles in accordance with applicable exchange rate. Relevant Russian authorities are disapproving of this practice. For instance, the Federal Service for Labor and Employment (officially abbreviated as Rostrud) issued a letter⁵⁰ in which it upheld the view that fixing the amount of salary in USD (and, presumably, any other foreign currency) in a labor contract is contrary to the Labor Code. Rostrud indicates that the establishment of an employee's salary in foreign currency makes real wages dependent on the ruble exchange rate. Therefore, if the exchange rate rises, the employee may receive a smaller wage for their labor than prior to the rise. According to Rostrud, this violates the rights of the employee.

In our opinion, the position of Rostrud is not correct and is an unreasonably broad interpretation of the provisions of the Labor Code. Art 131 means just this: the *real* payment of salary must be in rubles. This does not *per se* outlaw indicating the amount of salary based on foreign currency in particular contracts, provided that subsequent payment is made in rubles. Besides, such letters are not normative acts, that is, they do not make law, however important they might be in the eyes of lower officials.

It is interesting to note that Art 167 of the Labor Code states that during business trips the employee is entitled to his *average earnings*. The procedure for calculating average salary (or earnings) is based on the employee's income from work during the last 12 months. Therefore, due to increase of salary, inflation etc. average earnings are often substantially smaller than the employee's current salary. However, Rostrud insists (in a letter of February 5, 2007) that the employer is legally in the wrong if he pays current salary instead of average earnings. If in some cases the size of your current salary is higher than the average wage, in others, which is also quite possible, the average earnings may be higher because it takes into account not only the salary of the employee, but also all the payments to

⁴⁹ Letter of Rostrud dated 08.09.2006 No. 1557-6 // Official documents. No. 38, 03.10.2006.

⁵⁰ Letter of Rostrud dated 11.03.2009 No. 1145-TZ // ATP ConsultantPlus. 2014.

him (for example, bonuses). Therefore, this logic of Rostrud is justified. Details on how to calculate the average salary is defined in the Decree of the Government of the Russian Federation dated 24.12.2007 N 922⁵¹.

A special mechanism of calculation of average salary was introduced for a number of cases, such as annual leave (vacations), payments for the period of involuntary down-time as a result of unlawful dismissal, etc. It should be noted that the average salary for the period of enforced down-time cannot be reduced by the amounts of salary received from other employers (regardless of whether the employee was working for it on the day of dismissal) and statutory benefits for sickness paid to the employee within the term of enforced down-time, and also by the amount of the unemployment benefits. Only severance pay can be set off against this amount (see item 62 of the Decree of the Supreme Court of the Russian Federation dated March 17, 2004).

As for paid vacations, they must be pre-paid not later than 3 days before the vacation starts (Art 136 Labor Code).

The Russian Labor Code has a very short list of grounds for having money withheld from wages (Russian *uderzhanie*). It includes cases when the employee has not worked off an advance payment or the days of vacations which he already had prior to dismissal, miscalculation, etc. (Art 137). But under no circumstances can the amount of money withheld exceed 50% of salary. It should be emphasized that Russian legislation does not permit the employer to impose fines or make deductions from workers' wages for disciplinary faults. But it is possible to resort to deprivation of bonuses, provided that it is made according to the procedure and on the grounds which are accurately described in company regulations, particularly the bonuses system.

It should be remembered that the amount of salary cannot be less than the statutory minimum wage, i.e., RUB 5554 (since January 1, 2014)⁵². This legal level applies throughout Russia, but political subdivisions of Russia can set higher minimum wage levels. (Art 133.1 Labor Code).

Since the CEO (general director or an analogous top manager of the company) is legally an employee (even if he is simultaneously the owner of the business), it is impossible to start payment of salary to the CEO who is a foreigner before a work permit is obtained and a labor contract is entered into. Moreover, it is not advisable to pay him less than the statutory minimum wage (RUB 5554) or not to pay at all, because the requirement to pay salary is mandatory and does not depend on circumstances. Accordingly, any departure from this requirement can be considered a violation of labor law and may result in adverse consequences, particularly

⁵¹ Decree of the Government of the Russian Federation dated 24.12.2007 No. 922 "On the Specifics of the Procedure for Calculating Average Wage" // ATP ConsultantPlus. 2014.

⁵² Federal Law dated 02.12.2013 No. 336-FZ "On Amendments to Article 1 of the Federal Law "On the Minimum Wage"// Collected Legislation of the Russian Federation.2013, No. 49 (Part 1), Art 6337.

administrative fines (Art 5.27 Code of Administrative Offences). It should be noted that the real threat is not the amount of fine (which is relatively small), but the rule of the Russian migration law according to which the foreigner can be prohibited from entering Russia if he has committed two or more administrative offences on Russian territory within three years⁵³.

Company directors (members of the Board) who have no labor contracts do not necessarily need to be paid even minimum wage.

⁵³ Art 26(4) of the Federal Law "On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation" dated August 15, 1996 No. 114-FZ // Collected Legislation of the Russian Federation.1996, No. 34, Art 4029.

7. Trial Period

A labor contract may contain a provision regarding a trial period (probation period). The trial period provision has to be explicitly entered into the written contract; otherwise the employee is considered to be hired without a trial period.

However, it is not sufficient merely to enter the provision into the contract. The trial period can be set only for the purpose of testing the employee's suitability for the assigned work. The contract has to spell out in written form what the object of the trial is, i.e., which qualities and skills are being tested (Art 70 Labor Code). Without such a definition of the objectives a provision regarding the trial period is considered invalid, and the employee automatically receives the rights of a permanent employee.

As a rule, the trial period cannot be longer than 3 months. However, a 6-month trial period can be set for top management (see Top Management). In concluding a labor contract for a term of two to six months, the trial period may not exceed two weeks. Rostrud believes that the trial period can be set only when hiring and cannot be extended later⁵⁴.

Time of sick leave and other time of actual absence are not included in the calculation of the time of trial period.

A trial period set for a longer term might lead to invalidity as an unlawful provision. In such case a risk could even arise that a court will completely disregard the provision of the trial period and consider that the contract was entered into without a trial period.

The employer may terminate the contract during the trial period, if the results during the trial period are not satisfactory (Art 71 Labor Code). This has to be done in written form a minimum of three days before the term of the trial period runs out. The employer is obliged to indicate in writing the reasons why the employee failed the trial in accordance with the objectives of the trial. The employee has the right to challenge the dismissal and seek redress in court.

If upon expiration of the term of notice the contract was not terminated and the employee continues to work, then the employment will automatically continue on terms of a permanent contract. If the employee continues to work after the end of the trial period, the employer may not later refer to the trial period as grounds for dismissal.

The employee has the right to terminate the labor contract during the trial period by giving the employer written notice three days in advance. Termination of the labor contract during the trial period does not entitle the employee to any severance pay.

⁵⁴ Rostrud Letter dated 02.03.2011 No. 520-6-1 // ATP ConsultantPlus. 2014.

A trial period may not be set in regards to pregnant women and certain other categories of employees mentioned in Art 70 of the Labor Code.

No trial period can be set in a fixed term contract with a maximum term of 2 months (casual work).

8. Changes in the Labor Contract

A change in the job description or the actual work functions, or an essential change in the labor contract requires, as a rule, written consent of the employee. Written consent is also required for a permanent transfer to another entity or to another geographic location together with the whole entity (Art 72 Labor Code).

A transfer within the same entity to another vacancy or other subdivision in the same geographic area is not considered as such a change that requires consent unless it involves a change in employee's scope of responsibilities or substantial changes in the labor contract. If a transfer to another subdivision has been part of the labor contract previously made, then any change therein will be considered substantial.

A transfer within the same entity to another vacancy or other subdivision in the same geographic area is not considered as such a change that requires consent (Art 72.1 Labor Code).

The law provides explicit rules concerning certain kinds of changes in the labor contract (Chapter 12 Labor Code). These are:

- Changes due to medical reasons;
- Changes due to organizational or technological reasons;
- Reduced working hours;
- Temporary transfer to another position within the same employer under the terms specified in the Labor Code.

Changes Due to Medical Reasons

Due to **medical reasons** an employee may request to be transferred to a job that is more compatible with his condition of health. Upon receipt of a corresponding medical certificate the employer has the obligation to make such a transfer. If the employee rejects the offered transfer, or no appropriate work is available in the company, then the labor contract can be terminated (Art 73 Labor Code).

Changes Due to Organizational or Technological Reasons

In connection with periods when the entity is undergoing organizational changes or changes affecting the production process, the employer may introduce changes to the labor contract without changing the working functions of the employee (Art 74 Labor Code). Such changes may mean, for example, a reduction in pay, a change in the working time, etc.

The Labor Code sets no substantial limits on the changes introduced by the employer to the labor contract. Such changes, however, must not be worse than those provided by the collective contract or collective agreement.

The employer has to give 2-months' notice before introducing such changes.

If the employee does not agree to continue work under the new conditions, then the employer has an obligation to propose in writing another position which corresponds to the employee's qualifications and state of health.

If no such positions are available, the employer will have to propose a position with lower qualifications. When no lower positions are available, or the employee refuses the offered work, then the labor contract will be terminated on the ground of staff reduction (Art 81 (1(2)) Labor Code).

Reduced Working Hours

Under the above described circumstances of organizational or technological changes affecting the conditions of work the employer may, in an effort to avoid mass redundancy, introduce a regime of **reduced working hours**. Such reduced working hours may be in force for a maximum of **six months**. Under reduced working hours salary would be paid in proportion to the time worked.

If an employee does not agree to the regime of reduced working hours, then the contract with such employee could be terminated (Art 74 Labor Code).

Temporary Transfer to Another Position Within the Same Employer

An employer, due to reasons dictated by the necessities of production, may temporarily, for a period of one month, transfer an employee without his consent to another position not stipulated by the labor contract within the same entity. In such case, compensation for work shall be done in accordance with the temporary position, but not in a lesser amount than the average salary at the permanent job (Art 72.2 Labor Code).

Such a transfer may be permitted for reasons of preventing a catastrophe or accidents, or in order to eliminate the consequences of such catastrophes. The transfer may also be done in connection with preventing economic misfortunes in the form of temporary suspension of work due to economic, technological, technical or organizational reasons or to prevent destruction or damage to property. The list of these reasons for a temporary transfer is exhaustive and may not be changed by the employer at will.

By mutual consent between the employer and employee the latter may be transferred to another job for a one-year period. In exceptional cases, a

transfer may be made without time restriction in order to replace an absent worker.

Transfer to work that requires less professional qualifications may be made only with the written consent of the employee (Art 72.2 Labor Code).

9. Termination of the Labor Contract

Grounds for Termination

Termination of a labor contract can be carried out only under the circumstances set forth in the law.

Termination of a labor contract may not take place during the employee's sick leave or vacation, except under liquidation or closure of activities by an individual entrepreneur.

The termination grounds may be divided into the following groups:

1. Termination upon mutual agreement of employer and employee;
2. Completion of a fixed term contract;
3. Termination due to grounds relating to employer;
4. Termination due to grounds relating to employee;
5. Termination due to grounds independent of the will of the parties.

1. Termination upon mutual agreement by employer and employee (Art 78 Labor Code)

The employer and the employee are always free to mutually agree upon termination of a labor contract.

2. Completion of a fixed term contract (Art 79 Labor Code)

A fixed term contract terminates when the agreed term runs out.

The employee must be given a dismissal notice not later than three calendar days prior to the dismissal date set forth in the corresponding labor contract.

However, if the agreement regarding a fixed term has been made against the provisions of the law, then such agreement is considered invalid. Invalidity of the provision of the fixed term would mean that the agreement would be considered under the general rules for permanent contracts.

See also sections Fixed Term and Casual and Seasonal Jobs.

3. Termination due to grounds relating to the employer (Art 81 Labor Code)

Liquidation of company.

Closure of business activities of an individual entrepreneur.

Downsizing.

See also section on Combining Jobs and Professions (Offices).

Termination of activities of a branch or other subdivision which forms a separate subdivision according to Russian law is considered liquidation for the purposes of this provision.

In case of terminating the labor contract due to downsizing, the employer has the obligation to offer the employee an alternative job.

4. Termination due to grounds relating to the employee

1. Employee-initiated termination (Art 77 (1(3)) Labor Code).
2. Refusal by employee to agree to changes under certain conditions (Art 77 (1(7)) Labor Code).
3. For health reasons after refusal by employee to accept proposed alternative job or the lack of such a job (Art 77 (1(8)) Labor Code).
4. Refusal by employee to move together with the employer to a new location (Art 77(1(9)), Art 72.1 (2) Labor Code).
5. When employee's professional skills do not correspond to the position as determined by a job evaluation (here the employer has an obligation to offer another position (Art 81 (1(3)) Labor Code).
6. Repeated non-performance of job duties (Art 81 (1(5)) Labor Code)
 - Requires that disciplinary sanctions have been recorded earlier (see Disciplinary Issues).
7. Single serious violation of job duties (Art 81 (1(6)) Labor Code).
 - For example, the commission of embezzlement at the workplace.
8. Loss of trust as a consequence of a proven violation (Art 81 (1(7)) Labor Code) in relation to cashiers and other employees managing cash or bank issues (other valuables)⁵⁵.
9. Loss of trust due to special restrictions established by laws (Art 81 (1(7.1)) Labor Code, in effect since January 1, 2013). For example, the failure to prevent a conflict of interest to which he is a party.
10. Committing an immoral offence by an employee performing educational functions (Art 81(1(8)) Labor Code).
11. Employee's refusal to continue to work with a change of ownership of the property of the employer (Art 81(1(4)) Labor Code).
12. Miscalculation leading to losses (making an unsubstantiated decision) (Art 81(1(9)) Labor Code).
13. Single serious violation of responsibilities by a top manager (Art 81(1(10)) Labor Code).
14. Deliberate submission of false documents in connection with conclusion of labor contract (Art 81(1(11)) Labor Code).
15. If employee does not take up employment on the commencement date (Art 61 Labor Code).
16. Other grounds set out in special legislation.

⁵⁵ It should be noted that the concept of the "loss of trust" as a ground for dismissal of an employee has been expanded by the Supreme Court so as to cover cases of theft or embezzlement even if these offences have been committed without any relationship to the job of the offender (Decree of March 17, 2004, item 45).

A serious violation of job duties comprises the following (Art 81(1(6)) Labor Code):

1. Absence from the workplace without justifiable reason for more than 4 hours or during the whole workday (if the latter is less than 4 hours). The “workplace”, as a general rule, means the immediate desk or place of performance of job duties. Therefore, presence in the building is not a justifiable reason if the employee is absent from his workplace. Such an interpretation follows from Item 35(a) of the Decree of March 17, 2004 (Item 10)⁵⁶;
2. Presence at work in a state of alcoholic or narcotic intoxication;
3. Disclosure of confidential information (state, official, trade or other secret protected by the law);
4. Theft, embezzlement, intentional destruction or damaging of property at work (upon corresponding legal verdict);
5. Violation of safety rules (with serious or potentially serious consequences).

A one-time violation of the above mentioned job duties may form sufficient grounds for dismissal.

Termination Due to Grounds Independent of the Will of the Parties (Art 83 Labor Code)

A labor contract may under certain conditions be cancelled regardless of the will of the parties. Such cases are:

1. The labor contract has been entered into in violation of the law (Art 84 Labor Code).
2. Conscription into the military or alternative civil service.
3. When employee has taken the place of another employee who has been dismissed, and a court requires the employer to reinstate the predecessor.
4. The reversal of a court or administrative decision concerning reinstatement to a job.
5. Death of employer (individual entrepreneur) or an employee (as well as being declared dead or missing).
6. The employee’s access to state secrets has been terminated (in cases where access is needed for performance of job duties).
7. Non-election to an elective office (this most frequently means cases where the holder of the office has not been re-elected or the results of elections were revised, etc.).
8. Administrative or criminal punishment which makes the continuation of work impossible.
9. Expiry or suspension for a period of more than two months or cessation of a certain special right (e.g., driver’s license) which the job was conditioned upon.

⁵⁶ Decision of Plenum of the Supreme Court of the Russian Federation dated 17.03.2004 No. 2 "On Application of the Labor Code of the Russian Federation by the Courts of the Russian Federation" // Rossiyskaya Gazeta. No. 297. 2006.

10. Under force majeure conditions which are recognized by a decision of the executive bodies of the state.
11. Recognition of employee as completely unfit for work in accordance with a medical report.
12. Bringing the total number of foreign workers to the allowable number set by the government.

Termination of Employment of Women

Women enjoy special protection against dismissal. A labor contract with a pregnant woman can only be terminated due to reasons of liquidation of the entity or termination of the activity of the employer who is an individual entrepreneur. Termination under all other grounds in the law is forbidden (Art 261 Labor Code).

Pregnant women also enjoy additional protection under a fixed term agreement. Even when a fixed term has been agreed, the employer will have an obligation to extend the contract until the woman receives the right to maternity leave.

With respect to a woman with a child under 3 years old or a single mother until the child turns 14 years old (or when the child is disabled, until the child turns 18), a woman with a child under 3 (or when the child is disabled, until the child turns 18), if the child's father does not work and the family has 3 or more children, dismissal can only be effected under the grounds specified in the law.

Such grounds for dismissal include:

1. Liquidation of the company (or closure of the branch or other subdivision; termination of business by an employer who is an individual entrepreneur) (Art 81(1(1)) Labor Code).
2. Dismissal due to health reasons (Paragraph 'a' Item 3 Art 81 Labor Code).
3. Repeated non-performance of job duties (Art 81(1(5)) Labor Code).
4. Serious violation of job duties (Art 81(1(6)) Labor Code).
5. Loss of trust (in relation to cashiers and other employees managing cash, bank issues or other valuables) (Art 81(1(7)) Labor Code).
6. Loss of trust due to special restrictions established by laws (Art 81(1(7.1)) Labor Code, in effect since January 1, 2013).
7. Commission of an immoral offence by an employee who performs educational functions (Art 81(1(8)) Labor Code).
8. A one-time gross violation of duties (restricted to top management; see Top Management) (Art 81(1(9-10)) Labor Code).
9. Deliberate submission of false documents in connection with entering into the labor contract (Item 11 Art 81 Labor Code).
10. Act of physical or psychological violence towards a pupil on the part of a teacher (Art 336(2) Labor Code).

The same protection can also be extended to a single father or other legal custodian (Art 264 Labor Code).

Additional Requirements to Be Met When Dismissing Certain Categories of Employees

An employer cannot dismiss trade union leaders (as defined by Art 374 Labor Code) without consent of a superior trade union organization on the grounds of redundancy, insufficiency of their professional skills or repeated non-performance of job duties. Moreover, they enjoy this privilege for two years upon their resignation from a trade union office (Art 376 Labor Code). This privilege was, however, significantly restricted by courts. On December 4, 2003, the Constitutional Court⁵⁷ held that a trade union must substantiate its refusal to give consent to dismissal, and this refusal can be examined in a judicial proceeding. If the trade union agency fails to prove that the actual reason for dismissal was discriminatory, the court examining the case can find in favor of the employer. The Supreme Court, in its turn, decreed that it is an abuse of the law on the part of the employee if he intentionally hides the fact of his being a trade union official in order to escape dismissal on lawful grounds (Decree dated March 17, 2004, item 27).

Additional Grounds to Terminate a Labor Contract with Top Management

The Labor Code provides for additional reasons for terminating a labor contract with members of top management. We refer to the section on Top Management for discussion of the relevant provisions.

Employee's Notice of Termination

An employee may recall the notice of termination if an application was filed for voluntary resignation at any time within two weeks after the receipt of his notice by the employer, except if a new employee has been officially invited to occupy the vacancy, so his/her labor contract may not be lawfully cancelled (Art 80 Labor Code).

Formal Procedures At Termination

On the last day of employment the employer has an obligation to pay all monies due on salary, other compensations and reimbursements. On the last

⁵⁷ Ruling of the Constitutional Court of the Russian Federation dated 04.12.2003 No. 421-O // Collected Legislation of the Russian Federation. No. 5. 2004, Art. 404.

day the employer also must return to the employee the labor book and other documents relating to employment (Arts 80, 84.1 Labor Code).

In the case of dismissal following a liquidation or downsizing, the employer has to give notice to the employees not later than two months prior to dismissal date (Art 180 Labor Code). The trade union must be notified two months in advance in case of downsizing (Art 82 Labor Code). If there is a mass dismissal, the employer must give three months' notice to trade union and labor authorities (Rostrud), as required by the Law "On Employment of the Population in the Russian Federation"⁵⁸ dated April 13, 1991. What amounts to "mass dismissal" is to be established by industrial or territorial agreements.

Severance Payments

The amount of severance payments is set out in the law and varies with the reason for termination of the contract (Art 178 Labor Code).

Severance Payments at Termination Due to Liquidation and Downsizing

At dismissal due to liquidation and downsizing the employee shall receive (Art 178 Labor Code):

- 1 month severance pay;
- 2 months' salary during the period of job search;
- A possible additional 1 month of salary if the person is duly registered as a job seeker, but has not been hired.

The salaries due are calculated on the basis of the average monthly salary.

After giving notice of dismissal due to liquidation or downsizing, the employer and employee may agree to terminate the contract with immediate effect with simultaneous compensation in the amount of two average monthly salaries (Art 180 Labor Code).

Upon downsizing, employees with higher labor productivity and qualifications have a priority right to remain at work. If it is impossible to establish which worker has better qualifications, then the priority rights are set in accordance with the family and social conditions of the employee (Art 179 Labor Code). Upon downsizing, the employer has an obligation to offer the employee another suitable job.

When terminating the labor contract with a seasonal worker by reason of liquidation of the company or downsizing, the dismissal wage shall be paid at the rate of a two week average monthly salary (Art 296 Labor Code).

⁵⁸ Art 21 of the Law "On Employment of the Population in the Russian Federation" No. 1032-1 dated 13.04.91 // Collected Legislation of the Russian Federation, No. 17.1996. Art 1915.

Severance Payments at Termination Due to Other Reasons

Severance pay in the amount of a **2 week average monthly salary** is granted under the following other reasons for dismissal (Art 178 Labor Code):

1. Medical reasons.
2. Military drafting (or civil service).
3. Return of a substituted employee.
4. Refusal to move to a new location together with the employer or to another job due to medical reasons.
5. Recognition of employee as completely unfit to work.
6. Refusal to work on the grounds of change of conditions of labor contract.
7. Possible other reasons set in the labor contract or collective contract.

See section on Top Management for special provisions regarding severance pay for members of top management under certain conditions.

**Compensation for
Annual Leave at Termination**

In case of dismissal, an employee has the right to monetary compensation for all unused days of annual leave (annual vacation).

The employee can agree with the employer that all unused days of the annual leave can be granted to him with subsequent dismissal. In this case, the date of dismissal is the last day of the annual leave (Art 127 Labor Code).

Change of Ownership

Change of ownership does not, as a rule, affect the continuation of labor contracts.

The positions of members of top management are regulated separately in connection with the change of ownership. We refer to the section on Top Management for details.

In connection with change of ownership, downsizing may be effected only after proper state registration of the transfer of ownership rights (Art 75 Labor Code).

10. Working Time

General Information On Working Time

A specific regime for working hours, days and holidays (working time) can be set individually for each company or entity within the 40-hour workweek. The working time is set out in the internal working rules (rules). The law makes a direct reference to these rules, therefore it becomes mandatory to have such rules in force. In entering into an employment contract with a particular employee, the employer has the right to include in it a reference to the working time specified in the rules, or directly specify the working hours in the contract, if different from what is contained in the rules. The employer is obliged to indicate directly in the employment contract working hours for employees for whom a maximum permitted length of the workday is established (Art 94 Labor Code).

An employer has an obligation to record the actual **working hours** of each employee (Art 91 Labor Code).

A company can set a 5-workday or a 6-workday weekly schedule, a system with rolling schedule of days off, or a partial workweek.

Shortened Day Ahead of Official Holidays

The working hours are reduced by **1 hour** ahead of official holidays. When the production process does not allow for such a reduction, the employer has to pay monetary compensation or provide additional time off in the future (Art 95 Labor Code).

Night Time Work

Work between 10 PM and 6 AM is considered to be nighttime work (Art 96 Labor Code).

The workday is reduced by 1 hour during nighttime work. However, the reduction does not apply to employees who have been especially hired for nighttime work, or to whom reduced working hours apply for other reasons. Nor does nighttime reduction apply to work where the production process calls for a normal length of work time, and when work is conducted in shifts in a 6-day workweek. The list of work may be determined by a collective agreement or local regulation.

Nighttime work is prohibited for pregnant women and youths under 18 (with the exception of those involved in the creation and execution of works of art), as well as other persons mentioned in the Labor Code and other special laws.

In other cases with certain social groups (women who have children younger than 3 years old, and those who take care of sick or disabled family members, etc.), nighttime work requires written consent of employees, provided that they are not prohibited from such work due to health reasons. Moreover, the employer must inform them in writing of their right to refuse nighttime work (Art 96 Labor Code).

Every hour of nighttime work is paid at a higher rate compared to work under normal conditions, and not less than the rate provided by labor laws (Art 154 Labor Code). However, there are no mandatory rules establishing specific rates of payment for nighttime work. The Labor Code provides for increased rates and confers the power to establish the minimal increased rate upon the federal government. Currently, according to Decree of the Government of the Russian Federation dated July 22, 2008 No. 554 "On the Minimum Wage Increase for Night Work"⁵⁹, the minimum rate is 20% increase of base salary, calculated per hour, for each hour of night work. The previously effective paragraph 9 of Resolution of the CC of the CPSU, the Council of Ministers of the USSR and the Trade Unions dated 12.02.1987 N 194, which provided for adding of surcharges for work during the evening and night shifts for workers engaged in multi-shift operation, in an amount not less than 20% and 40% of the base rate (salary) for each hour of work in the relevant shift, is recognized as invalid⁶⁰. Surcharges for work on evening shifts are not currently provided for.

Specific amounts of higher wages for night work may be established by a collective agreement, a local regulation, or the labor contract.

Reduced Working Time

The law provides for a **reduced workweek** (less than 40 hours a week) for some groups of employees (Art 92 Labor Code). In addition, there are provisions regarding **reduced work hours** during the day (Art 94 Labor Code). The groups in question are: youths (see Youth Labor), students in general education programs and vocational education programs, disabled persons, and workers in hazardous conditions.

According to the law, some other categories of workers are also eligible for reduced work hours, namely: teachers, medical staff, etc. (see Arts 333, 350 Labor Code).

⁵⁹ Decree of Government of the Russian Federation dated 22.07.2008 No. 554 "On the Minimum Wage Increase for Night Work" // Collected Legislation of the Russian Federation.2008, No. 30 (part 2), Art 3640.

⁶⁰ Determination of the Supreme Court dated 12.11.2008 No. GKPI08-2113 // ATP ConsultantPlus. 2014.

Special Regulations

The duration of day work may follow special regulations as envisaged by Art 94 of the Labor Code. Such special rules are established by collective agreement, local regulation, or labor contract and may affect:

- Artistic staff of mass media, film and television industry;
- Artistic staff of theaters, orchestras, circuses.

Part-Time Work

The employer and the employee have the freedom to agree that the employee will only work part-day or part-week. A part-time work schedule can be established by agreement or supplemental agreement and can be for a particular term or indefinitely.

The employer has an obligation to agree to part-time work hours upon application by a pregnant woman, a parent (guardian, trustee) who has a child under 14 years of age or a disabled child under 18 years of age, and when the employee is taking care of a sick family member.

The law is not specific enough as to the extent of this privilege and the role of employer in determining the concrete conditions of part-time work. It appears that the employee may determine the duration of work unilaterally and the employer must agree to any duration asked for. Likewise, it seems that the law does not preclude the employee from changing unilaterally his schedule upon new application.

At the request of a child's father, grandmother, grandfather, other relative or guardian who is actually caring for the child while on leave to take care of the child, the employer is obliged to establish a part-time work schedule (Art 256 Labor Code).

The salary for **part-time work** must be paid in proportion to the worked hours or depending on the volume of work done. However, part-timers receive the full right to vacation and other rights that are calculated in accordance with the length of the employment (Art 93 Labor Code).

We wrote earlier on the establishment of part-time work by the employer, in the section Changes Due to Organizational or Technological Reasons.

Irregular Work Hours

An employer may establish a regime of **irregular work hours** for certain positions in the company. The list of positions subject to irregular work hours is set forth by the collective contract, collective agreements or internal working regulations (Art 101 Labor Code). Conditions of an irregular workday must be indicated in the employment contract with the employee, as they differ from generally established working time in the organization

(Art 57 Labor Code). The possibility of establishing irregular work hours is provided for, along with special rules⁶¹.

Establishment of irregular work time does not relieve the employee from compliance with the work schedule established by the employer, but allows the employer to have employees work outside of normal work hours⁶². Also, the employer can summon an employee who has been assigned irregular work hours to work, either before the start of the workday or after it ends⁶³. An irregular workday can also be set for part-time employees⁶⁴.

Working irregular hours does not mean the same as unlimited work hours, but rather the possibility for the employer from time to time to call in the employee for work in excess of the normal work hours as set by the law without regard to the strict rules of overtime work⁶⁵. Systematically requiring an employee who has irregular work hours set may be considered by the court as requiring overtime work.

In establishing irregular work hours it is not required to obtain the employee's consent to work this schedule for each instance he is asked to work such hours.

Employees under irregular work hours receive the right to a minimum of 3 days extra vacation (Art 119 Labor Code). The employer and the employee may agree in writing on paid compensation instead of these additional days (Art 126 Labor Code). The employer has an obligation to record the work time according to the general rules for those employees who are under the regime of irregular work hours. Such extra vacation is provided to an employee who works on the terms of irregular work hours, regardless of the actual work time outside of normal business hours.

Flexible Work Hours

Flexible work hours means a system where the commencement, termination and total duration of the workday can be established freely by an agreement between employer and employees (Art 102 Labor Code). Flexible work hours will, however, have to follow the normal cumulative restrictions set by the law (the 40-hour workweek and other restrictions). When using flexible work time recording of working time on a summarized basis applies. The employer must ensure availability of the total number of hours to be worked during the relevant accounting periods.

The condition of flexible work hours must be included in the labor contract with the employee, as it usually is different from the general rules of the employer (Art 57 Labor Code).

⁶¹ For example, paragraph 14 of the Order of the Ministry of Transport of Russia dated 20.08.2004, No. 15, paragraph 37 of the Order of the Russian Ministry of Railways dated 05.03.2004, No 7 // ATP ConsultantPlus. 2014.

⁶² Decision of Moscow City Court dated 30.11.2011 No.33-38948// ATP ConsultantPlus.

⁶³ Letter of Rostrud dated 07.06.2008 No. 1316-6-1 // ATP ConsultantPlus. 2014.

⁶⁴ Letter of Rostrud dated 19.04.2010 No. 1073-6-1 // ATP ConsultantPlus. 2014.

⁶⁵ Letter of Rostrud dated 07.06.2008 No. 1316-6-1 // ATP ConsultantPlus. 2014.

Work in Shifts

The Russian Labor Code allows work to be organized in two or more shifts (Art 103 Labor Code). The law contains more detailed provisions on **work in shifts**.

Shift work must be specified in the local regulations of the organization and in the labor contract with the employee.

An employee is prohibited by law from working two shifts in a row. When using shift mode the employer conducts summarized accounting of work time, which is determined according to the procedure set out in internal working rules (Art 104 Labor Code). Shift work is carried out on the basis of a shift schedule, approved under a special procedure, in accordance with Art 103 of the Labor Code. If the next shift does not come to work, the employee who has just finished his shift, with his consent, may be called to work overtime (Art 99 Labor Code).

The maximum duration of a work shift is not established by legislation. However, for some categories of workers, it is governed by separate regulations⁶⁶.

Recording of Working Time on a Summarized Basis

Sometimes the peculiarities of the work (e.g., working conditions) make it impossible to follow a regular weekly or daily work schedule. For such cases, the employer and the employee may agree upon a system of calculation of work time without a set schedule. This system is called Recording of Working Time on a Summarized Basis. However, the summarized work hours for a specific period of time which is called an "accounting period" (not more than one year) may not exceed the normal number of work hours (Art 104 Labor Code). This means that an employee working on a Summarized basis, at the end of the accounting period has to have worked the same number of hours as an employee working in normal mode.

The procedure for introducing Summarized mode is established by internal working rules (Art 104 Labor Code).

Summarized mode can be instituted for both an organization as a whole and for individual employees or organizational subdivisions.

When implementing Summarized mode, the employer adopts under a special procedure a schedule of shifts for workers and acquaints employees with it no later than 1 month prior to its entry into force.

⁶⁶ For example, the Order of the Ministry of Transport of the Russian Federation dated 16.05.2003 No. 133 "On Approval of the Regulation on Work Time and Rest Periods for Workers on Vessels of Inland Waterway Transport" (Registered in the Ministry of Justice on 01.09.2003 No. 5036) // ATP ConsultantPlus. 2014.

Division of Workday into Parts

The Labor Code allows setting a work schedule whereby the workday is divided into 2 or more parts. This means a system where, for example, the employee comes to work in the morning, leaves before lunch, and comes back after lunch for the second part of the day.

Such a work regime is allowed when the nature of activity or business calls for unequal intensity of work during the day.

The total duration of the work day may not, however, exceed the regular work hours as set by law (Art 105 Labor Code).

The division of the day into parts is conducted based on local regulation. The number of parts into which a business day may be divided, and the time intervals between these parts, is not set out in the Labor Code. Therefore, the employer independently determines the working conditions for the workers for whom the workday is divided into parts. The terms of the division of the day into parts, the number of parts of the day, their duration and other characteristics of work time and rest periods is specified in employment contracts with employees (Art 57 Labor Code). For certain categories of workers division of the day into parts is governed by special regulations⁶⁷.

Breaks for Rest and Meals

During the workday the employee has the right to a break for rest and meals. The maximum duration of the break is 2 hours, and the minimum is 30 minutes. The time for the break is not included in the work time. Rest breaks and lunch are not divisions of a workday divided into parts in the sense indicated in the section above.

Each company should establish in its internal working rules or the labor contracts with each employee the details for time and duration of breaks.

The law foresees the possibility that a break may be granted due to individual circumstances of work. In particular cases, when due to the conditions of production, providing a break for rest and eating is impossible, the employer will have to arrange the possibility to eat and rest during the time of work in the working premises. The internal working rules should include detailed instructions regarding such cases (Art 108 Labor Code).

The employer may be under the obligation to arrange the opportunity and facilities for special breaks (e.g., for those working in the cold season or in the open air), for warming and recreation, and have specially-equipped premises to this end. The time of the breaks shall be included in the work

⁶⁷ For example, the Order of the Ministry of Transport of the Russian Federation dated 18.10.2005 No. 127 "On Approval of the Regulation on Working Time and Rest Periods for Drivers of Trams and Trolleys" (Registered in the Ministry of Justice on 25.11.2005 No. 7200) // ATP ConsultantPlus. 2014.

hours (Art 109 Labor Code). The types of such work, and the duration and procedures for granting such breaks are established by rules in the internal working rules.

The **minimal duration of rest in one job** is 42 hours every week (Art 110 Labor Code). The practicality of this is dubious because many people work in two or more jobs; therefore, this limitation falls short of its purpose and is usually neglected. We have found no cases of applying sanctions for its violation. Nevertheless, this rule is worth taking into account whenever possible.

11. Holidays and Weekly Break

Sundays and National Holidays

Sunday is a general holiday for all employees in Russia. The other weekly holiday (in a 5-day week) can be set locally in the internal working rules or collective agreement. Both holidays should, *as a rule*, be granted in a row one after the other (Art 111 Labor Code). The working schedule will have to foresee a **weekly break** of a minimum uninterrupted duration of 42 hours (Art 110 Labor Code).

If suspension of work on the weekend is impossible due to production and technical-organizational conditions, days off can be made available on different days of the week for each group of employees under the rules of the internal working rules.

Certain categories of workers, according to law, must be given extra days off. For example, 4 additional paid days off per month for the care of children with disabilities are provided one of the parents; one unpaid day off per month is given to women working in rural areas (Art 262 Labor Code). One unpaid day off per month may also be granted to one parent working in the Far North and comparable areas, who has a child under the age of 16 years (Art 319 Labor Code). Additional days off can be provided in the main job, and in combined work⁶⁸.

The National Holidays (Art 112 Labor Code)

National holidays (Non-Working or Bank holidays) in Russia are:

January 1-6 and 8	New Year Holidays
January 7	Orthodox Christmas
February 23	Day of the Defender of the Country
March 8	International Women's Day
May 1	Springtime and Labor Day
May 9	Victory Day
June 12	Day of Russia
November 4	Day of People's Unity

When a national holiday occurs on a Saturday or Sunday, those days are compensated by extra holidays on the following day after the national holiday.

⁶⁸ Resolution of the Federal CC of the North-West District dated 03.03.2011 in case No. A13-1168/2010 // ATP ConsultantPlus. 2014.

The Russian Government has the right, which it frequently exercises, to announce a Saturday and Sunday (two days) as workdays and to compensate this by announcing any workdays as a holiday in order to allow for longer leaves in connection with a national holiday. This decision of the Government to move days off to other days in the next calendar year shall be officially published not later than one month before the relevant calendar year (Art 112 Labor Code).

Moving days off applies to all workers, regardless of various modes of work schedule and time off. However, for employers for whom the suspension of work on non-working holidays is not possible for production and technical-organizational reasons (e.g., continuously operating production, daily servicing of the population, etc.), moving of days off is not carried out⁶⁹.

For employees receiving salary, full payment of salary is preserved, regardless of the number of public holidays in the month, while under another system of labor remuneration employees receive additional compensation for non-working public holidays in which they were not required to work.

Work on Sundays, national holidays and other regular days off is prohibited according to the general rule. In exceptional cases, the employer is entitled to require the employee to work on weekends and public holidays without his consent (for example, to prevent a disaster), or with his consent in the case of having to perform unforeseen work where the future normal operation of the organization depends on its urgent implementation (Art 113 Labor Code).

Requiring weekend and public holiday work by employees with disabilities, and women with children under the age of three years, is permitted only on the condition that it is not harmful to them for health reasons. Also, they must be informed, against signature, of their right to refuse such work.

Working a weekend day or public holiday is paid at least double the usual amount (Art 153 Labor Code), or can be compensated by giving the employee another day off at the request of the employee. In this case, the employee is provided a full day off, and not time off in proportion to the number of hours of time worked during the weekend or non-working holiday⁷⁰.

For employees who have entered into a labor contract for a period of up to two months, only one form of compensation for work on weekends or non-working holiday is provided for - pay of at least double the usual amount (Part 2, Art 290 Labor Code).

In the case of granting another day off for working on a weekend or non-working holiday, pay is at the normal rate, and the day off is not

⁶⁹ Order of the Health Ministry of the Russian Federation dated 13.08.2009 No. 588n // ATP ConsultantPlus. 2014.

⁷⁰ Rostrud Letter dated 17.03.2010 No. 731-6-1 // ATP ConsultantPlus. 2014.

compensated. A collective agreement, local act, or labor contract may increase compensation for work on weekends and public holidays (Art 153 Labor Code).

The requirement to work is carried out by written instruction of the employer.

12. Annual Leave (Vacation)

General Information on Vacation

Vacation or annual leave can be granted to the employee once a year. There are no legislative prescriptions as to the time of the year when the vacation must be granted and used.

The right to full vacation is acquired by working a full year (or, to be more precise, 11 months). It entitles the employee to 28 vacation days. Weekends are included in this number. National holidays during the vacation are not included, nor are they paid for, thus extending the actual vacation period (Art 120 Labor Code).

Additional vacations may be granted voluntarily by the employer or under special mandatory provisions of the law (Arts 116, 120 Labor Code). Under such special provisions additional time off is granted to:

- Employees working under harmful (level 2-4 of harmfulness) or hazardous conditions, determined as a result of special evaluation of the workplace, Art 117 Labor Code. The minimum number of additional days off is 7;
- Special categories of workers (list of eligible professions and length of additional vacation is set by the federal government), Art 118 Labor Code;
- Employees with irregular working hours (Arts 116, 119 Labor Code) The minimum number of additional days off is 3;
- Employees working in the Far North and regions with similar conditions have the right to 24 and 16 additional days off, respectively;
- In other cases provided for by the Labor Code and special legislation.

The procedure for granting additional time off should be set out in the internal working rules.

If an employer independently and voluntarily establishes additional holidays, the procedure and terms of their provision are determined by collective agreements or local acts (Art 116 Labor Code).

Despite the general rule that an annual paid vacation can only be granted after six months of work, the employee is entitled to 2.33 vacation days for every month of work. So, if a labor contract is terminated before the

vacation starts, compensation for the unused vacation must be calculated and paid to the employee.

Employees who have entered into a labor contract for a term of up to two months, as well as seasonal employees, receive two days of paid leave for each working month (Arts 291, 295 Labor Code).

The right to take paid annual leave for the first year of work is granted to the employee after six months of continuous work. The employer, with the consent of the employee, may grant vacation earlier (Art 122 Labor Code). In certain cases, the employer even has an obligation to grant vacation before completion of the 6-month period upon request by the employee (see sections on Women and Youth Labor).

As the vacations of all employees for each calendar year are determined by a vacation schedule adopted according to a special procedure (Art 123 Labor Code), an employee who began working for the employer during the calendar year, in practice, is often deprived of a vacation. In accordance with Art 123 Labor Code, the employee is entitled to request leave after 6 months of work, regardless of the vacation schedule.

Vacation in subsequent years may be granted anytime during the year, even before the vacation days have been formally earned, according to a vacation schedule set by the employer.

The right to vacation is calculated in accordance with all actual workdays. The law provides some additional clarifications regarding what time is to be included in the calculation (Art 121 Labor Code):

1. Time of actual work.
2. The time when the employee did not work, but his position was reserved for him, including the time of his annual paid leave and other appropriate leisure time.
3. Absence due to disputed termination of the labor contract after reinstatement of employee to his job.
4. Periods of the employee's suspension from work as a result of his failure to pass mandatory medical inspection, but not through his own fault.
5. Time provided at the request of the employee for leave without pay not exceeding 14 calendar days during the work year.

The law also gives specific guidance as to which time does not count towards cumulative right to vacation. Such time includes:

1. Absence without a valid reason.
2. Time for parental leave until the child reaches the age set by law.

Postponement and Prolongation of Vacation

Under Art 124 Labor Code, the annual vacation (vacations) can be shifted to the following year in "exceptional cases" when the regular vacation may be

detrimental for the work of the organization. The employee's consent for this is necessary. The vacation shifted thus must be granted during the next work year, not later (work year is individual for every worker and starts with the beginning of his work in the company).

It is prohibited not to grant a vacation for two years in a row. But this means that the vacation from the 1st year can be shifted to the 2nd year, whereas the vacation earned during the 2nd year can be shifted to the 3rd, and so on. The situation, in fact, is the same as if the week from the first year was shifted directly to the third. In this manner, the employer may transfer the days of vacation and enjoy greater flexibility, but the employee's consent is necessary at every step. The resulting rule is this: the employer may transfer and accumulate days up to a certain level, but he must be careful that in the current year the employee would have no fewer the number of actual vacation days than the number of days which had been saved from the previous year. In this case, the employer would always be in a position to claim that the days saved in the previous year have been used by the employee in the current year. Evidently, under this system the total number of days saved from previous years cannot exceed the statutory number (28) without risk of finding oneself on the wrong side of the law.

An employee under 18 years old and employees working in harmful and hazardous conditions must be granted annual vacation in any event - no transfer is possible.

The employer has an obligation to prolong or transfer the vacation time taking into account the wishes of the employee under certain circumstances. These are:

1. Sickness during vacation. The vacation time shall be extended automatically depending on the number of days shown in the medical certificate.
2. When the employee carries out state duties during vacation, if it involves exemption from work in accordance with the Labor Code.
3. Other instances according to special provisions of law or internal rules.

In the case of illness of an employee who is on vacation with subsequent dismissal, leave is not extended⁷¹.

If an employee was not paid timely during annual paid leave (three days prior to its beginning) or the employee has been advised of the start of the holiday later than 2 weeks prior to its beginning, the employer upon written request of the employee is required to move the paid annual leave to another period agreed upon with the employee (Art 124 Labor Code).

The employee may be recalled from vacation only with his consent (Art 125 Labor Code). The following categories of employees may not be recalled:

⁷¹ Letter of Rostrud dated 24.12.2007 No.5277-6-1 // ATP ConsultantPlus. 2014.

persons under the age of 18, pregnant women, and persons working in harmful or hazardous conditions. The unused part of the vacation must be offered, at the choice of the employee, at a convenient time during the current business year, or added to the vacation of the next business year.

Employee's refusal to comply with employer's demand to discontinue the vacation irrespective of the reason may not be regarded as a violation of labor discipline.

If the employee is not satisfied with the timing of the vacation set in the vacation schedule, he or she may request the employer to change the date of the vacation by submitting a written request. However, the provision of vacation on a different date is a right of the employer, not an obligation⁷².

An employee who left work without obtaining the consent of the employer and before the issuance of an order granting leave may be subject to disciplinary action up to dismissal for absenteeism⁷³ even if the leave was provided for in the vacation schedule⁷⁴.

Administrative Rules – Vacation Schedule

The employer has a duty to publish a vacation schedule, setting the dates of paid annual leave for all employees. The vacation schedule must be published not later than two weeks before the end of the calendar year (Art 123 Labor Code). Both the employer and the employee will have to adhere to the vacation schedule.

As a rule, the employer creates the vacation schedule after polling employees as to convenient times for them to take leave, but the law does not provide for such an obligation. In the absence of a vacation schedule for an organization the employer may be subject to a penalty in accordance with Art 5.27 Code of Administrative Offences.

The employer has an additional obligation to remind the employee of the start of regular vacation two weeks in advance by issuing an Order and acquainting the employee with it (Art 123 Labor Code). Common Russian practice of an employee's writing an additional application for regular leave immediately before going on such a leave is a bureaucratic custom, not a requirement of labor law.

The Labor Code specifies certain categories of workers who may choose their vacation time irrespective of the time they have worked for the employer. The vacation is to be granted to:

⁷² Ruling of the St. Petersburg City Court dated 13.09.2010 No. 33-12647/2010 // ATP ConsultantPlus. 2014.

⁷³ Appellate Ruling of the Moscow City Court dated 20.02.2013 in the case of No. 11-5857 // ATP ConsultantPlus. 2014.

⁷⁴ Appellate Ruling of the Moscow City Court dated 22.06.2012 in the case of No. 11-11089/2012 // ATP ConsultantPlus. 2014.

- A husband whose wife is on maternity leave (Art 123 Labor Code);
- A woman prior to her maternity leave or following her childcare leave (Art 260 Labor Code);
- An employee under 18 years old (Art 122 Labor Code);
- An employee who has adopted a child under 3 months old (Art 122 Labor Code);
- In the case of being offered a vacation after having been called back from vacation early (Art 125 Labor Code);
- In the case of vacation from combined jobs, the employee shall be offered vacation to coincide with vacation from the main job.

Federal laws may grant to some other employees the right to choose by themselves the time of vacation. For example, for spouses of military personnel leave shall be granted simultaneously with the release of the military personnel⁷⁵.

The employer has an obligation to pay vacation salary no later than 3 days prior to the beginning of the vacation (part 9, Art 136 Labor Code). Failure to pay in time and to remind of the start of the vacation gives the right to the employee to change the date for his annual leave.

Division of Vacation Time

By agreement between the employer and the employee the time of the annual leave may be divided into parts. However, at least one part of the vacation must be of a minimum duration of 14 calendar days (Art 125 Labor Code). Although this rule is often neglected without consequences (sometimes at the employee's initiative), it is advisable not to depart from it. For violation of this obligation the employer may be subject to administrative proceedings (Art 5.27 Code of Administrative Offences).

The law does not contain clear rules as to how Sundays and Saturdays should be taken into consideration in connection with granting vacation periods consisting of less than a whole week. We recommend that the employer consider this in the internal working rules.

Compensation for Unused Annual Leave

Unused vacation may be compensated in money for the part that exceeds the normal 28 vacation days. This can be done only upon written application of the employee if the employer agrees to this. However, in respect to pregnant women, youth (regarding the principal paid leave and additional annual paid leave) and persons working in harmful and hazardous conditions (regarding

⁷⁵ Art 11(11) of Federal Law dated 27.05.1998 No. 76-FZ "On the Status of Military Personnel" // ATP ConsultantPlus. 2014.

additional annual paid leave) no commutation of unused vacation into financial compensation is possible (Art 126 Labor Code).

In the case of summation of annual paid leave or postponement of the annual paid leave to the next business year, monetary compensation may be substituted for the portion of paid annual leave in excess of 28 calendar days, or any number of days of this part (Art 126 Labor Code).

In connection with termination of a Labor Contract the employee has the right to receive monetary compensation for unused vacation. In accordance with paragraph 28 of the Rules of regular and additional leave⁷⁶ for employees who have worked for 11 months, they are entitled to compensation for the full year⁷⁷.

The employee may also request in writing that the accumulated vacation days be granted to him ahead of termination of the contract. In this case the last vacation day will be the day of termination of the employment unless the termination is based on the employee's guilty actions (Art 127 Labor Code). In that case, the last day of work is not the day of discharge (the last day of the vacation), but the day before the first day of the vacation⁷⁸. Provision of such leave is the employer's right, not an obligation.

In regard to fixed term contracts, the vacation may also be granted at termination beyond the period of the fixed term (Art 127 Labor Code).

In granting leave followed by dismissal upon the dissolution of the labor contract by the employee, the employee is entitled to withdraw his resignation before the first day of the leave, if another employee has not been invited to transfer to his position (Art 127 Labor Code).

Calculations of Vacation Salary and Compensations

The salary for vacation time is calculated as a **daily average** of the salary earned during the last 12 calendar months (average daily rate) under Art 139 of the Labor Code (see also the Decree of Russian Government dated December 24, 2007, No. 922, as amended). It is calculated according to the following formula:

Step 1. The total salary during the last 12 calendar months ("accounting period") is divided by 12, thus giving the average monthly salary.

Step 2. The average monthly salary is then divided by 29.3⁷⁹ (the average number of days in a month), giving the average daily rate.

⁷⁶ Rules for Regular and Additional Leave (approved by People's Commissariat of Labor USSR 30.04.1930 No. 169) // Proceedings of the PCL USSR, No. 13, 10.5.1930.

⁷⁷ Rostrud Letter dated 18.12.2012 No. 1519-6-1 // ATP ConsultantPlus. 2014.

⁷⁸ Ruling of the Constitutional Court of the Russian Federation dated 25.01.2007 No. 131-O-O // ATP ConsultantPlus. 2014.

⁷⁹ Until 04/02/2014, this coefficient was 29.4, but was changed by the Federal Law dated 02.04.2014 No. 55-FZ "On Amending Article 10 of the Law of the Russian

Step 3. The average daily rate is then multiplied by the number of calendar days of vacation to give the total amount of compensation for the vacation.

Along with the standard salary, additional payments (bonuses and the like) are to be included in the calculation (see Decree of Russian Government of December 24, 2007 No. 922). The Decree, however, contains special rules on calculating such payments:

- Monthly bonuses and remunerations - only one payment is included for the same activities for each month of the accounting period;
- Bonuses and remunerations for a longer period - only one payment for the same activities in the amount of the monthly part for each month of the accounting period;
- Remuneration following the results of the year, etc. - regardless of the moment of payment.

The average daily salary for the purposes of payment for vacations is measured in workdays and for the purpose of compensating for unused vacation is calculated by dividing the earned salary by the number of workdays according to calendar six-day workweeks (including Saturdays) (Art 139 (5) Labor Guide).

Unpaid Leave

The employer may grant unpaid leave to an employee upon his request in writing because of family or domestic circumstances or other justified reasons. The employer independently assesses how justified the reason is and may refuse the leave. However, in the case of dismissal for absenteeism a court can verify whether a reason was valid⁸⁰. In certain cases according to the law the employer has the obligation to grant such unpaid vacation upon the employee's written request (Art 128 Labor Code).

- War veterans;
- Old-age pensioners still working;
- Working invalids;
- Parents and spouses of civil servants who were killed or died as a result of injury, concussion or maiming suffered in the performance of duties, or because of a disease associated with serving;
- Employees in the events of childbirth, marriage or death of a relative;
- In other cases stipulated by the Labor Code, other federal laws or a collective agreement.

Federation "On State Guarantees and Compensations for People Working and Living in the Far North and Comparable Regions" and the Labor Code of the Russian Federation" // Collected Legislation of the Russian Federation. 2014. No. 14. Art 1547.

⁸⁰ Determination of the Constitutional Court of the Russian Federation dated 19.02.2009 No. 75-O-O // ATP ConsultantPlus. 2014.

In addition, teachers are entitled to twelve months' leave (sabbatical) every 10 years (Art 335 Labor Code). The law does not say whether it is paid or not. In practice, it is usually unpaid and rarely requested.

13. Overtime Work

The Code defines overtime work as being work beyond the duration of the work time “established for the worker”, that is, the duration of his shift or (if there is summarizing of work time mode in place) beyond the normal number of hours during the “accounting period” (which can be up to one year) (Art 99 Labor Code). The “normal” duration of work time cannot exceed and is usually equal to 40 hours per week (Art 91 Labor Code), although there are reduced weeks for some categories of employees. Therefore, if one works during a week more than the number of hours which is applicable to him (40 hours or otherwise), it is to be considered overtime.

The provisions regarding overtime work affect the length of the workday and also the sum total of hours that is allowed during a certain period of time.

The order to work overtime is only permitted under circumstances envisaged by the law; sometimes with the **written consent** of the employee and sometimes without it. Circumstances under which overtime is admissible are:

1. For work which was not completed during the regular working hours due to unforeseen technical problems and if the completion of work is necessary in order to prevent destruction of property or a hazardous situation (written consent is required).
2. Urgent maintenance and repair when non-fulfillment of the work could lead to interruption of work affecting a great number of workers (written consent is required).
3. To continue work in place of an absent employee if the work is of strictly continuous nature. In this case, the employer must take urgent steps by replacing the shift worker with another one (written consent is required).
4. In connection with work in a state of emergency or under martial law and other circumstances deemed to be dangerous for the whole populace or a part thereof (no consent is required), including:
 - the defense of the country;
 - prevention of industrial accident or removal of its consequences;
 - removal of the consequences of a natural disaster.
5. Emergency works, maintenance of public utilities damaged as a result of unforeseeable circumstances (no consent is required).
6. In other cases the order to work overtime requires the opinion of the trade union.

Employees belonging to certain social groups may not be ordered to work overtime. These social groups having greater protection under the law are pregnant women, youth and others in accordance with special legislation.

It is possible to require overtime of women with children under the age of 3 years old and the disabled, guardians, (trustees) of minors with their written consent, provided that it is not prohibited to them according to a medical report, and they were informed against signature of their right to refuse to work overtime (Art 99 Labor Code). This guarantee also applies to mothers and fathers without a spouse raising children under the age of 5 years, employees who have children with disabilities, employees who take care of sick family members, but only with their written consent, provided that it is not prohibited to them according to a medical report, and they were informed against signature of their right to refuse to work overtime (Art 259 Labor Code).

The right to order overtime work is limited to:

- 4 hours within 2 consecutive days;
- 120 hours within a calendar year.

Ordering to work overtime should not be systematic; it should occur sporadically in special cases⁸¹.

If an employee on his or her own comes to work early or stays late in the evening for a few hours, such work will not be considered overtime and, as a consequence, the hours will be neither paid nor taken into account in determining the number of hours worked⁸².

Employees who have an irregular workday schedule are not paid for overtime (Arts 97, 101 Labor Code)⁸³, and neither are those who combine jobs (Art 60.1 Labor Code).

If an employee has agreed to work overtime, was familiar with the corresponding Order, but did not show up and had no valid reason, he can be subject to disciplinary action.

In terms of payment, the law provides that the employer must:

- Accurately calculate overtime hours;
- Pay first two hours of overtime work at a rate of 1.5 (at least);
- Pay subsequent hours of overtime work at a rate of 2.0 (at least).

There is more flexibility for the employer if the company practices summarizing calculations of working time. But such a system is a subsidiary one and it is allowed only if there is no possibility to observe “the daily or weekly duration of working time established for the given category of workers”. Such impossibility depends on the conditions of work. If there are grounds for the summarizing calculation, then it is possible to vary the daily duration of work time within longer periods such as a month, quarter of a year, half-year or a year (Art 104 Labor Code). The work fulfilled beyond the normal hours established for such an “accounting” period is overtime

⁸¹ Rostrud letter dated 7.06.2008 No. 1316-6-1 // ATP ConsultantPlus. 2014.

⁸² Rostrud letter dated 18.03.2008 No. 658-6-0 // ATP ConsultantPlus. 2014.

⁸³ Rostrud letter dated 07.06.2008 No. 1316-6-1 // ATP ConsultantPlus. 2014.

(Art 99 Labor Code). At the same time, Art 99 provides for a general rule that duration of overtime work cannot be more than 4 hours during 2 days in a row and 120 hours during a year. Here the law is self-contradictory, because the system of aggregate calculation makes it impossible to observe this limitation against continuous overtime. There is no way to speak of overtime and correctly assess its amount before the expiry of accounting period (let's say, three months). Only then is it possible to establish the very fact of overtime, determine its scale and pay accordingly.

The concrete rate is to be established by collective contract, internal regulations of the company or labor contract. If the worker wants, there can be compensation in the form of additional time off (not shorter than overtime) instead of additional payments (Art 152 Labor Code).

14. Administration Issues

General on Administration

The Russian Labor Code establishes strict and detailed rules and regulations for the management of staff and payroll issues (Human Resources Administration). Non-compliance with these rules may lead to unpleasant consequences, involving:

- Invalidity of the contract or of a certain clause in an agreement (Art 57 Labor Code);
- Increased taxation burden;
- Employer's loss of rights and legal protection.

There exists a myriad of procedures to comply with as well as requirements for the form of human resources (HR) documents.

Form Requirements

In Russian law and administrative practice, forms are still very important. Wrong forms or absence of forms may cause a range of adverse consequences, including the invalidity of the contract. The labor law makes no exception to this rule; on the contrary, form has a rather elevated position in matters regulating Russian human resources (HR) issues. The requirements of form call for a great deal of attention from management and suggest the advisability of securing the services of experienced HR managers or HR consultants. Any omissions in the correct drafting of documents or absence of documents can lead to the employer losing some of its rights, as well as increased taxation burden and potential liability for damages.

Various mandatory documents (sometimes optional) regulate the employment relationship through its life-cycle.

The necessary documents and records may be divided into the following categories:

1. Documents concerning the whole organization or a division of the organization (branch, subdivision) (including policies and instructions).
2. Documents concerning the individual employee.
3. Accounting documents.

The Administrative Order

Many of the decisions of the management of a Russian entity need to be set out in written form in order to enter into force. Such written decisions are

called *Prikaz* in Russian. In this Guide we will refer to these written decisions as administrative orders.

All administrative orders concerning an individual employee have to be evidenced by the signature of the employee in question.

Policies and Instructions

According to Russian law, employment is regulated by, along with the labor contract, compulsory and optional provisions of the law, other legislation and governmental instructions, as well as policies and instructions issued by the employer. The law frequently refers to such policies and instructions, and, therefore, in order to comply with the law and achieve legal protection of its rights, the employer must make sure to issue the appropriate policies and instructions (Art 8 Labor Code). Internal policies and instructions must be enacted by every employer except natural persons.

When such policies and instructions are not in place, the risk is that a situation would emerge where no rules would apply. This could render meaningless some provisions of the law or the labor contract.

Consider a situation where the employer would need to take disciplinary action towards an employee who is constantly late (See Disciplinary Issues). The law provides that the exact time for commencement, duration and end of the workday is set out in the labor contract or the internal working rules (Art 100 Labor Code). If such provisions are not to be found in those documents, then it may be impossible to take disciplinary actions. As long as there are no documented rules, there cannot be any breach of the rules either.

Policies and instructions properly issued by a company form a part of the labor contract and have to be referred to in it. The policies have to be presented to each employee against signature. This must be done at the time of hiring people and also each time a policy or instruction is changed.

The employer has an obligation to present to a new employee, against signature, the internal working rules and other policies and instructions, as well as any collective contracts in force in the company to the extent that they relate to the employee's job functions.

When policies and instructions are subsequently changed, there may emerge a situation where consent of a representative body of workers is required (Art 29 Labor Code). It is advisable that the labor contract and all policies and instructions contain a provision allowing for their subsequent change.

The policies and instructions and changes to them have to be adopted in accordance with the set procedure for decision-making in the company. If this procedure is not followed, they do not apply (Art 8 Labor Code).

Applicable policies and instructions include (but are not restricted to):

1. The internal working rules (mandatory);

2. Labor discipline policy (mandatory, if not a part of internal working rules);
3. Compensation policy (may be a part of internal working rules);
4. Incentive and bonus policy (mandatory if incentives are paid; can be part of compensation policy);
5. Personal data protection policy (mandatory);
6. Expense reimbursement and travel policy;
7. Car policy;
8. Security policy;
9. IT security policy;
10. Health and safety (including injury and emergency) policies;
11. Job evaluation policy;
12. Limitations of authority of management and officers of the company.

The scope of the internal working rules may be extended to cover most of the mandatory issues and also any other issues that are important for the employer.

The main fact that should be taken into account in the formulation and adoption of local rules is that those which worsen the situation of workers in comparison with the established labor laws and other regulations, collective agreement, and contracts, shall not apply (Art 8 Labor Code).

The Internal Working Rules

The Contents of Internal Working Rules (for example, Article 189 Labor Code) may include provisions on:

- Time of breaks and rest;
- Working hours;
- Holidays, vacations and leave;
- List of positions to which irregular working hours may apply;
- Procedures for hiring and dismissal of employees;
- Main obligations of the parties;
- Forms of compensation (including incentives if a special incentives policy is not in place);
- Payment of salary (dates, liability);
- Commercial secrets, intellectual property rights;
- Disciplinary issues (responsibility for absenteeism, tardiness, smoking, alcohol, drugs, sexual harassment, etc.);
- Dress code;
- Recording of working time;
- Expense reimbursement;
- Trial period;
- Indexation of salary.

In addition to the policies and instructions, certain other administrative records should be kept.

These administrative records concerning the whole organization are:

1. Enrollment (staff) list;
2. Vacation time and planning roster;
3. Time sheets (control of actual working time);
4. Work permits (regarding foreigners).

Expense reimbursement policy could contain details on treatment of, for example, the following types of expenses:

- **Travel expenses**, including
 - Daily allowance (per diem);
 - Transportation costs (airfare, train and bus tickets, etc.);
 - Accommodation;
 - Expenses for transferring to/from airport, station, etc.;
 - Airport fees;
 - Commission charges;
 - Rent of living premises;
 - Communication (telephone, fax, e-mail);
 - Fees for issuing (obtaining) and registration of a foreign passport;
 - Fees for obtaining visas, currency exchange fees.
- **Company car expenses**
- **Telephone and Internet expenses.**

Documents Concerning an Individual Employee

The most common documents for standard use in a Russian organization concerning an individual employee are listed below.

Documents concerning an individual employee:

1. The labor book;
2. Documents presented at signing of the contract (see Entering Into of the Labor Contract);
3. Administrative order of hiring;
4. Personal card of the employee;
5. Job description (if duties are not detailed in labor contract);
6. Written labor contract;
7. Employee performance evaluation (if applicable);
8. Administrative order for business trips (and other related documents);
9. Employee's requests for leave;
10. Administrative orders for leave;
11. Disciplinary documents and employee reprimand record;
12. Employee request for termination of labor contract;
13. Administrative order for termination of employment;
14. Documents needed under liquidation and downsizing procedures;

15. Agreement on material liability (if applicable);
16. Accident investigation reports;
17. Formal documents relating to vacation administration;
18. Confirmation of work permit (for foreign workers).

The above presents a list of the most typical recurring documents. Formal documents and administrative orders may have to be issued in many other situations in connection with deciding matters regarding the individual employee.

The Labor Book

The labor book records the main points of the individual labor history of every employee in Russia (Art 66 Labor Code). It contains information on the employee's places of work, positions and length of work.

Although the labor book is a primary document confirming seniority, it is not the only one⁸⁴.

The Labor Code establishes the keeping of labor books as an absolute requirement for all employees under Russian law. Natural persons are the only employers who are exempt from keeping labor books. In fact, no distinction is made between Russian and foreign employees, which means that in principle labor books must be kept for foreign employees as well.

The system of keeping a labor book dates back to the Soviet administrative practice, where each citizen was under an excessive militaristic control system. In its present form it was introduced by Stalin in 1939. Although the idea of keeping a labor book is both outdated and undemocratic, the new Labor Code has reinforced the rules regarding it. In accordance with the law further details as to the form, the procedures of keeping the labor book and other issues regarding it are set out by the Russian government⁸⁵. Nevertheless, the idea of abolishing labor books is currently under discussion in the government and the Duma.

Employers (their management) that do not comply with the requirements of keeping a labor book may be liable for fines and disqualification.

The requirement that the employer make entries in the labor book applies to every employee who works with the employer for a minimum period of 5 days (Art 66 Labor Code).

⁸⁴ Rostrud Letter dated 18.03.2008 No. 656-6-0 // ATP ConsultantPlus. 2014.

⁸⁵ Decree of the Government of the Russian Federation dated 16.04.2003 No. 225 "On Labor Books", Ministry of Labor Decree dated 10.10.2003 No. 69 "On Approving the Instructions on How to Fill Out Labor Books" // ATP ConsultantPlus. 2014.

The following data is recorded in the Labor Book:

1. Personal data regarding the employee (name, education level, date of birth).
2. Profession or specialization.
3. Name of the employer.
4. Description of position held.
5. Career development.
6. Termination of employment, including the legal reason according to the classification of grounds in the law (reference to Article and paragraphs of the Labor Code).
7. Success records.
8. Information on supplementary jobs if employee desires (see Combining Jobs).
9. Other data specified in the law.

Other disciplinary issues, except for dismissal, are not noted in the labor book.

The labor book is deposited with the employer during the time of employment. At dismissal the employer is obligated to return the labor book on the last day of work (Art 80 Labor Code). If the employee does not come to pick up the labor book, the employer may fulfill his obligation to return it by sending a letter to the employee's address requesting the employee collect the labor book or authorizing the employer to send it by mail (Art 84.1 Labor Code). We advise that such correspondence is done by means of registered mail.

If the employer is at fault for not turning over the labor book on the day of termination of the employment contract, then he must compensate the employee foregone earnings for the whole time of delay in handing over the labor book (Art 234 Labor Code)⁸⁶.

Unclaimed labor books must be kept by the employer for 75 years⁸⁷. The employer is relieved of liability for late issuance of the labor book as of the date notification is sent to the employee of the need for employee to appear at the employer's office to get it or to give consent to the sending of it to employee by mail. Upon the written request of an employee who has not received the labor book after his dismissal, the employer must give it no later than 3 workdays from the date of the employee's request.

There is another important issue in the matter of handing over labor books. It is important when dismissing an employee. In accordance with Art 392 Labor Code, an employee has the right to apply to the court for resolution of an individual labor dispute about the dismissal within one month from the date of delivery of the copy of the dismissal order or the date of return of the

⁸⁶ For example, Ruling of the St. Petersburg City Court dated 02.09.2009 No. 12030 // ATP ConsultantPlus. 2014.

⁸⁷ Para. 43 Decree of Government of the Russian Federation dated 16.04.2003 No. 225 "On Labor Books", Art 22 of Federal Law dated 22.10.2004 No. 125-FZ "On Archives in the Russian Federation" // ATP ConsultantPlus. 2014.

labor book. If the employee has not been given the labor book, and he has not been given a copy of the dismissal order, the preclusive term for filing a claim does not begin to run.

Accounting and Statutory Reporting Documents

In addition to the above-described documents the employer has an obligation to produce documents and records for accounting and statutory reporting purposes (reporting to social funds, for statistical purposes, etc.). Accounting and statutory reporting requirements do not fall within the scope of this Guide. We will therefore not deal here with the details of accounting and reporting issues.

Health and Safety Rules

Health and safety rules are found primarily in chapters 33-36 of the Labor Code. In addition, there are plenty of subordinate regulations which relate to particular questions (procedures, industries, categories of workers and the like). Here we discuss some general or main legal requirements in this area.

For every industrial organization (plant) with more than 50 employees, the employer is responsible for setting up a special unit in charge of labor protection (the labor protection unit). For organizations with fewer workers the decision to set up a **labor protection unit** depends on the nature of the work and remains at the discretion of the employer (Art 217 Labor Code).

Instead of forming such a labor protection unit, the employer can choose to hire a professional labor protection specialist. The employer also has the option of entering into an **outsourcing agreement** with a specialist or company rendering services in the field of labor protection.

A so-called labor protection committee may also be formed in the organization at the initiative of either the employer or the employees. Such a committee would comprise the representatives of the employer, trade unions or other representatives of the employees. The law says that such a committee shall organize “joint efforts” of the employer and employees towards prevention of industrial injuries, compliance with labor protection requirements, and so on (Art 218 Labor Code).

Every employee has the right to a workplace which conforms to the requirements of health and safety rules (Art 219 Labor Code). He may legally quit work if his life or health is jeopardized as a result of the employer’s failure to comply with those rules. The related costs (for training, protection measures and the like) are born by the employer. If the work in the organization is suspended by authorities as a result of violation of health and safety rules by the employer, the worker is entitled to receive the amount of his average earnings for the period of suspension.

As was mentioned above (see "Entering Into of the Labor Contract"), some employees are obliged to pass a medical examination before actually being hired. Additionally, the Labor Code envisages periodical medical tests for some of them (Arts 69, 213, 266 Labor Code). The employee's refusal to undergo such mandatory tests will result in dismissal from work. No salary is paid in such a case (Art 76 Labor Code).

For some restrictions aimed at protecting the health of women, see "Women".

Personal Data Protection

The Labor Code introduces a set of rules regarding the protection of **personal data** concerning each employee (personal data protection) in Chapter 14 Labor Code. The Federal Law "On Personal Data" dated July 27, 2006 No. 152-FZ, which has been in effect since January 26, 2007, is also of significance.

The provisions on personal data protection regulate processing of personal data, which is defined as any act or set of acts carried out with personal data, including the collection, recording, classification, accumulation, storage, update (change), extraction, use, transfer (distribution, provision of access), depersonalization, blocking, deletion, or destruction of personal data⁸⁸. The provisions are very detailed and place a heavy administrative burden on the employer.

The employer may only process personal data that is connected with the statutory administration requirements, assistance in job search, training and career development, ensuring the safety of employees, protection of property, and for the purposes of quality control.

In the context of personal data protection the Labor Code further refers to the relevant provisions in the Russian Constitution and special legislation.

The employer does not have the right to process personal data in relation to race, ethnic origin, political opinions, religious or philosophical beliefs, health, or sexual life, except in cases specified by law⁸⁹.

All such data has to be received directly from the employee. In the event some information can only be received from a third party source, then the employer has the obligation to inform the employee in advance about the intention to approach such third party and receive his written consent. In the request for consent the employer shall indicate the reasons for collection and processing of the personal data, intended sources and means of its collection, as well as the nature of the data to be collected and the

⁸⁸ Art 3 of Federal Law dated 27.07.2006 No. 152-FZ "On Personal Data" // Collected Legislation of the Russian Federation. 2006, No. 31 (Part 1), Art 3451.

⁸⁹ Art 10 of Federal Law dated 27.07.2006 No. 152-FZ "On Personal Data" // Collected Legislation of the Russian Federation. 2006, No. 31 (Part 1), Art 3451.

consequences of employee's refusal to grant permission for its collection (Art 86 Labor Code).

As of September 1, 2016, a law⁹⁰, goes into effect which requires companies that collect and otherwise process personal data of Russian citizens, including in employment relations, to use databases on the territory of Russia. The new law applies even to foreign companies which are not registered in Russia and do not have representative offices (branches) in Russia.

As of the date the law goes into effect, any entities that carry out the processing of personal data of citizens of Russia, including employers who process personal data of employees, must use a server and its database that are located on the territory of Russia for processing personal data of citizens of Russia. Russian companies that process personal data of Russian citizens and use foreign servers for this also fall under the new law and are required to use a server in Russia. For example, if your company uses the services of a foreign parent company for the processing of personal data and gives it personal data of Russian employees, then as of January 1, 2016, you or your parent will need to resort to a server in Russia for processing such data, so as not to violate the requirements of the new law. At the same time, the law does not clarify the conditions of use of the servers in Russia. It follows that, until the issuance of official explanations and the formation of practice in implementation of the law, entities engaged in the processing of personal data of Russian citizens can choose the following options for utilization of a server:

- Purchase, installation and maintenance of a server on the territory of Russia in their own premises;
- Purchase, installation and maintenance of a server on the territory of Russia in the premises of a data center (collocation);
- Rent a physical server in a data center in Russia;
- Rent a virtual server in a data center in Russia;
- Hosting a site at a hosting provider in Russia.

The server in Russia can be used both as a separate and independent server and as a mirror server, where the server in Russia processes personal data of Russian citizens and also interacts with a second server located abroad, and between these servers a continuous exchange of information occurs.

Data Protection Policy

⁹⁰ Federal Law dated 21.07.2014 No. 242-FZ "On Amendments to Certain Legislative Acts of the Russian Federation with Regard to the Clarification of the Processing of Personal Data in Information and Telecommunications Networks" // Collected Legislation of the Russian Federation. 2014. No. 30 (Part 1). Art 4243.

There now also emerges a need to adopt a data protection policy or instruction. The employer has an obligation to notify the employee of all forms, methods and rules used in regard to the collection and processing of personal data, including the procedures for access to data within the processing entity. These provisions are best included in the data protection policy. The due notification has to be verified by the signature of each employee.

Personal data of the employee may not be disclosed for commercial purposes or otherwise to third parties without his written consent (Art 88 Labor Code).

The employee has to be granted access to the protected data and a right to demand correction of data and removal of unauthorized data (Art 89 Labor Code).

The rules of data protection are enforced by possible disciplinary, civil, administrative and criminal liability (Art 90 Labor Code).

Information Security

The employer has the obligation to protect the personal data from unlawful use or loss. Within the entity only specially authorized people may have access to the protected data and only to the extent needed for fulfillment of their job duties (Art 88 Labor Code).

Employees' Rights Related to Personal Data Protection

Employees receive the following rights in connection with the provisions on personal data protection (Art 89 Labor Code):

- Regular and complete information on stored personal data and its processing;
- Unlimited access to their personal data;
- Right to obtain copies of any records containing their personal data;
- Designate representatives for the defense of their rights to personal data protection;
- Access to personal medical records (with the help of a medical specialist selected by the employee, if needed);
- Demand removal or correction of false or incomplete personal data and data collected or processed in violation of the law;
- Supplement personal data containing qualitative assessments with own opinion;
- Demand that the employer notify everyone who has possibly been given false or incomplete data of the results of the corrections and supplemented data;

- Take court action in order to reinstate his rights regarding processed data.

Measures Regarding the Protection of Confidentiality in Labor Relations

Most labor contracts entered into between companies and their employees provide for the latter's duty not to divulge confidential information which became known to them in connection with performance of their labor functions. Some labor contracts provide also for employee's liability for divulgence of confidential information. However, based on the Federal Law "On Commercial Secrets"⁹¹, the employee can be made liable only if the company takes all steps to protect the information it has. Importantly, the company must take measures for preserving both its own data which has the confidentiality status, and that of its clients, contractors, etc.

Art 11 of the Federal Law "On Commercial Secrets" provides that, for the purposes of protection of commercial secrets, the company must take the following measures:

- a) Familiarize the employee with the list of data belonging to employer and its contractors (if the employee needs such information for his current activity). The company must keep a document signed by the employee which confirms that the employee has become familiarized with this list.
- b) Familiarize the employee with the policies adopted by the company with respect to the access to and protection of the information and responsibility for their violation. The company must keep a document signed by the employee which confirms that the employee has been familiarized with such measures.
- c) Create the necessary conditions which enable the employee to comply with information protection policies.

If the duties of the employee do not entail the necessity of dealing with commercial secrets, the company at its discretion may obtain his consent in writing regarding the regime of work with such information.

The special law on commercial secrets uses the term "commercial secret" and the Civil Code - "production secret" and "know-how". Before October 1, 2014 these concepts were considered similar, which was confirmed by the jurisprudence⁹². Currently, know-how (production secret) includes only

⁹¹ Federal Law dated 29.07.2004 No. 98-FZ "On Commercial Secrets" // Collected Legislation of the Russian Federation. 2004. No. 32. Art 3283.

⁹² See, e.g., Resolution of the Plenum of the Supreme Court of the Russian Federation No. 5, Plenum of the Russian Federation dated 26.03.2009 No. 29 "On

information about the results of intellectual activities in science and technology and methods for performing professional activities. Information that constitutes a trade secret includes a larger amount of information. For an owner of know-how (production secret), it suffices to take reasonable steps to observe its confidentiality and it does not necessarily require implementing a trade secrets regime.

Employee's Duties with Regard To Protection of Commercial Secrets

The Federal Law "On Commercial Secrets" (Art 11) imposes upon the employee the following duties with respect to data protection:

- To observe the commercial secrets policies established in the company.
- Not to divulge the information which constitutes a commercial secret belonging to the employer and its partners, and not to use it for personal needs without employer's and its partners' consent, for the entire period the commercial secrets policy is in effect, including after termination of the labor contract.
- To compensate the employer for losses if the employee is guilty of divulging information that constitutes a commercial secret and became known to him in connection with the performance of his employment duties.
- To hand over the information storage media containing the confidential data to the employer or destroy the information or delete it from all media used by the employee upon the expiration or termination of the labor contract.

On October 1, 2014, a law⁹³ came into force which makes the following changes to the law on commercial secrets:

1) Establishes the possibility of recovering damages from employees who received access to information that constitutes a commercial secret in connection with the performance of official duties, in the event of disclosure of such information in violation of the law. The law for the first time

Certain Issues That have Arisen in Connection with the Implementation of Part IV of the Civil Code of the Russian Federation" // Rossiyskaya Gazeta, No. 70.2009.

⁹³ Federal Law dated 12.03.2014 No. 35-FZ "On Amendments to the First, Second and Fourth Parts of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" // Collected Legislation of the Russian Federation. 2014. No. 11. Art 1100

secured the possibility of recovering damages from a person with whom the employment relationship has terminated;

2) Establishes the possibility of recovering damages from the head of the organization in full (including actual damages and, most importantly, loss of profits).

The Duty of the Employee to Observe the Confidentiality of Data After Dismissal

As often happens, the company and the employee during the term of validity of the labor contract may enter into a confidentiality agreement regarding the data constituting a commercial secret, or there is a period indicated in the contract during which the employee must observe this requirement concerning non-divulgence.

Earlier, before the adoption of Part IV of the Civil Code of Russia (before January 1, 2008), the law provided that in the absence of such an agreement, an employee must not disclose the confidential information for three years after the termination of the labor contract (Art 11 (3) of the Law on Commercial Secrets).

Currently, according to the new version of Art 11 (3) of the Law on Commercial Secrets, which went into effect on October 1, 2014, the employer has the right to demand compensation for damages caused to it by the disclosure of information that constitutes a commercial secret by a former employee who obtained this information in connection with the performance of his job duties, but whose employment relationship with the employer has terminated, if the information was disclosed during the period the regime of commercial secrets was in effect.

Also, in Art 1470 of the Civil Code, a new rule has been established providing that an employee who became aware of a production secret (know-how) shall maintain the confidentiality of the information received until the termination of the exclusive right to the production secret (know-how). From this it follows that the obligation of the employee not to divulge production secret (know-how) is not a limited period, but follows from the law.

An employee, among other things, is liable for the disclosure of know-how (production secret) by civil law (Art 1472 Civil Code). The employee is exempt from liability if he had not been informed in advance that the information disclosed constituted a know-how (production secret).

In accordance with the 2004 Law on Commercial Secrets, the heads of companies bear additional responsibilities. For instance, the labor contract with the head of the entity (CEO) must provide for his obligation to ensure

the protection of the confidential information belonging to the company, its business partners, clients and contractors, and that he bears responsibility for the failure to ensure this protection. This clause is mandatory, that is to say, it is an essential term of the labor contract.

Violation by an employee of a commercial secrets policy entails disciplinary, civil, administrative or criminal liability under the law.

15. Disciplinary Issues

Disciplinary Sanctions

The Labor Code expressly imposes an obligation on the employer to ensure the necessary conditions for discipline at work (Art 189 Labor Code). This includes the duty to have a separate written discipline policy or provisions regarding disciplinary issues in the internal working rules.

The disciplinary system should provide for both rewards and penalties in accordance with the law. They range from written announcement of gratitude to warning, reprimand or dismissal.

By law, the employer shall have the right to apply the following disciplinary sanctions (Art 192 Labor Code):

- Warning;
- Reprimand (or reproof);
- Dismissal.

Withholding of salary or a part of it (deductions) as a form of disciplinary sanction is not allowed. However, it is possible to make payment of **incentives and bonuses** dependent on the employee's proper behavior.

The application of any disciplinary measures is strictly monitored in regard to the labor contract, job description and other relevant documents. Before imposing a disciplinary measure, the employer has to show that the employee has violated his duties.

Before adopting a decision to impose a disciplinary sanction, a written explanation must be demanded from the employee. If the employee refuses to give an explanation within 2 days, a corresponding written document is drawn up (Art 193 Labor Code).

The previous version of the Labor Code made it difficult to dismiss an employee who did not answer an employer's request for written explanation, because without such explanation (or the worker's refusal to give it) the dismissal would not be valid. However, the new version of the Code has facilitated the procedure because it enables the employer to dismiss those absentees who ignore its requests.

Taking disciplinary actions is further restricted in time. In general, the time of reaction is limited to 6 months from the date of when the employee committed the violation and 1 month after discovery of the violation (periods of employee's absence are not counted). When the violation has been detected as a result of an audit, the time for reacting is extended to 2 years (Art 193 Labor Code).

Only one disciplinary sanction may be applied for each violation.

Disciplinary actions are also restricted to form. They have to be made in writing (formalized by an order of dismissal) and presented to the employee against acknowledgement of receipt within three days from their issuance.

Although the Labor Code no longer requires that the employer, when deciding whether to apply a disciplinary sanction or not, take into account the gravity of the violation and concomitant circumstances as well as his previous behavior and “attitude to work”, the Supreme Court insists that these requirements are still applicable (Decree dated March 17, 2004, item 53). Therefore, the employer is expected to prove that these facts have been actually considered in making the decision.

The employee may appeal against disciplinary measures to the State Labor Inspection, the Labor Dispute Commission or the courts for consideration of individual labor disputes.

The validity of the imposed disciplinary sanctions is restricted to one year. If, within a year from the date of imposing a disciplinary sanction, the employee is not subjected to a new disciplinary sanction, it is considered that his records are free of any such sanctions.

The employer may also voluntarily remove the disciplinary sanction from the employee earlier (Art 194 Labor Code).

Non-Admission to Work

The employer has not only a right, but an obligation to refuse admission to the place of work for an employee in certain cases of misbehavior, omissions and similar circumstances (Art 76 Labor Code).

Suspension from work may be imposed under the following circumstances:

- Employee arrives at work in a state of alcoholic, narcotic or other intoxication.
- Employee has not undergone required job safety training and tests.
- Employee has not undergone compulsory medical check and mandatory psychiatric evaluation.
- Employee is not fit for the work due to health reasons according to a doctor's certificate.
- Employee loses (for a period of two months or less) a special right (driving license, etc.) which is essential for performance of his job duties.
- Upon request of relevant labor protection authorities.

No salary is paid to the employee during the period of suspension from work (with some exceptions).

16. Liability Issues

The general provisions regarding liability for property damage of the parties under a labor contract, as well as for moral damages caused to employee, are set out in the Labor Code. Within the limits set by the law the parties may further detail the provisions regarding liability in the labor contract. Relevant company policies may also contain rules regarding liability issues.

Liability of the parties to the labor contract can arise for damage caused through guilty and unlawful behavior (including actions and inactions).

Each party has the obligation to prove the amount of the damage incurred (Art 233 Labor Code).

In addition to the general provisions regarding liability, the Labor Code contains specific sanctions for certain types of omissions. The Labor Code introduces a principally new type of liability for delay of salary payment. In case of delays of salary payments the employer may be liable to pay a penalty interest on the delayed payments regardless of his guilt (Art 236 Labor Code). When the delay has continued for 15 days, the employee also receives the right to temporarily postpone performance of work until the date salary is paid (Art 142 Labor Code). The Supreme Court has emphasized that the employee may use this right even if the delay is not the fault of the employer⁹⁴. In addition to the liability provided for by labor law, an employer is also subject to administrative liability for violation of terms of payment of wages (Art 5.27 Code of Administrative Offences) and, under certain conditions, to criminal responsibility (Art 145.1 Criminal Code).

Limits on Material Liability of the Employee

The extent of an employee's liability is restricted in the law. The limits of the full material liability of employees are established by the Labor Code. Certain clarifications are also present in the Decree of the Plenum of the Supreme Court of the Russian Federation dated November 16, 2006 No. 52⁹⁵.

An employee's liability is, as a rule, restricted to the limits of his **average monthly salary** (Art 241 Labor Code).

⁹⁴ Item 57 of the Decree of the Plenum of the Supreme Court of the Russian Federation dated 17.03.2004 No. 2 "On Application by the Courts of the Russian Federation of the Labor Code of the Russian Federation" // Rossiiskaya Gazeta. No. 297. 31.12.2006.

⁹⁵ Resolution of the Plenum of the Supreme Court dated 16.11.2006 No. 52 "On the Application of Legislation Regulating the Material Liability of Employees for Damages Caused to the Employer" // Rossiiskaya Gazeta. No. 268, 29.11.2006.

Full material liability may arise under the circumstances specified in the law (Art 243 Labor Code).

Cases when **full material liability** may arise:

1. When an employee is imposed liability in full for the damage caused to the employer in the exercise of his employment duties:
 - a. Under an employment contract with the head of the organization (Art 277 Labor Code); under labor contracts with communications employees for loss or late delivery of all types of post and telegraph dispatches, damage to postal enclosures that occurred due to their fault (Art 68 of the Federal Law on Communications⁹⁶);
 - b. Other cases provided for by the Labor Code and special laws.
2. Upon causing intentional damage to inventory or assets;
3. Upon causing damage in a state of alcoholic or narcotic or other intoxicated state;
4. Damage caused in connection with an administrative or criminal offence;
5. Upon violation of provisions on confidentiality;
6. Upon causing damage to employer's inventory or assets outside work time;
7. Upon shortage of valuables entrusted to the employee on the basis of a special written agreement or received by him under a one-off document;
8. Under an agreement of full material liability
 - a. with an employee of a religious organization (Art 346 Labor Code);
 - b. with a deputy head of an organization, or the chief accountant (Art 243 Labor Code);
 - c. with employees directly servicing or using money, goods or other property (Art 244 Labor Code).
9. In other cases set by special provisions of the Labor Code or other laws.

A special written agreement on full material liability is allowed by law for certain categories of workers. Such categories have been specially defined in the law and they include employees in charge of cash and other valuables (e.g., cashiers, stock-keepers). The list of employees with whom an agreement of full material liability may be entered into is determined on the basis of a Resolution of the Russian Government⁹⁷, the Ministry of Labor of Russia⁹⁸ (Art 244 Labor Code).

⁹⁶ Federal Law dated 07.07.2003 No. 126-FZ "On Communications" // Collected Legislation of the Russian Federation.2003, No. 28, Art 2895.

⁹⁷ Decree dated 14 November 2002 No. 823 // Collected Legislation of the Russian Federation.2002, No. 47, Art 4678.

⁹⁸ Resolution of Ministry of Labor dated 31.12.2002 N 85 // Rossiyskaya Gazeta, No. 25, 08.02.2003.

The decree of the Supreme Court dated March 14, 2004 (clause 36)⁹⁹ distinguishes between 2 cases: 1) when the employee knew when hired about the duty to enter into the agreement on full liability, and 2) when such duty was introduced by law after he was already hired. In the first case the employee can be dismissed for the failure to fulfill his duties, whereas in the second case the employer must offer him another job. Only if the employee refuses to take such job can he be dismissed. But the cause of dismissal will be different, namely, the refusal to continue with the job as a result of change in certain conditions of the labor contract.

There is also the possibility to enter into an agreement on **collective material liability** with a group of employees entrusted jointly with the performance of certain functions (Art 245 Labor Code).

Employees under 18 years of age will carry full material liability only in exceptional cases (for intentional damage, damage caused in the state of alcoholic, narcotic or other intoxication, and as a result of committing a crime or an administrative offence) (Art 242 Labor Code).

Before deciding on damages compensation by a particular employee the employer is obliged to conduct a verification to determine the amount of damage and its causes. A demand that the employee provide a written explanation to determine the cause of damage is required. In case of refusal or failure of the employee to provide an explanation a written statement to that effect is made (Art 247 Labor Code).

The collection of damages within the limits of an average monthly salary can be executed by a decision of the employer. The decision has to be taken no later than one month from the date of the final determination by the employer of the amount of damage caused by the employee.

If the employee does not consent to reimbursement of the caused damage voluntarily, and the amount of the caused damage to be collected from the employee exceeds his average monthly salary, or the above-mentioned one-month period has expired, then collection may be executed only upon a court ruling (Art 248 Labor Code).

The court (or the Labor Dispute Commission – Art 250 Labor Code) may reduce the amount of damage subject to collection by reason of the circumstances at hand (including the financial position of the employee).

There can be no material liability of the employee if losses were caused as a result of force majeure, normal economic risk, absolute necessity or necessary defense or as a result of the employer's failure to ensure the necessary conditions for preservation of the property entrusted to the employee (Art 239 Labor Code). In the opinion of the Supreme Court, the concept of normal economic risk may cover the actions of the employee which accord with his current state of knowledge and experience, when the

⁹⁹ Resolution of Plenum of the Supreme Court of the Russian Federation dated 17.03.2004 No. 2 "On Application of the Labor Code of the Russian Federation by the Courts of the Russian Federation" // Rossiyskaya Gazeta. No. 297. 2006.

aim could not be achieved in a different way, the employee has fulfilled his duties in a proper way and evinced certain degree of care and caution, has taken measures in order to prevent losses, and the subject of risk was property, not human life and health. Failure of the employer to ensure the conditions mentioned above may justify the dismissal of his claims in court, if it was the cause of harm¹⁰⁰.

A head of an entity bears full material liability for any direct actual damage caused to the entity (Art 277 Labor Code). The Supreme Court has decreed¹⁰¹ that, since full material liability of the CEO for losses caused to the organization is established by law (Art 277 Labor Code), the employer may demand the compensation of damage in full irrespective of whether there is a clause concerning such liability in the contract between the CEO and the entity (employer). In so doing, the court shall decide on the amount of damage (direct real damages, or losses) on the grounds of the federal law which provided for the liability of the CEO (for instance, on the grounds of Art 277 of the Labor Code, of Art 25(2) of the Federal Law "On State and Municipal Unitary Enterprises"¹⁰²). Furthermore, the Court emphasized that in Russia full material responsibility can be imposed upon the deputies of the CEO or upon chief accountant only if it is provided by labor contract (Art 243(2) Labor Code). If it is not set out in the contract and there is no other legal ground for imposing full material liability upon these persons, they can bear liability only within the limits of their monthly salary.

¹⁰⁰ Item 5 of Resolution of the Plenum of the Supreme Court of the Russian Federation dated 16.11.2006 No. 52 "On the Application by Courts of Legislation Governing the Material Liability of Employees for Damages Caused to the Employer" // Rossiyskaya Gazeta, No. 268, 29.11.2006.

¹⁰¹ Item 9-10 of Resolution of the Plenum of the Supreme Court of the Russian Federation dated 16.11.2006 No. 52 "On the Application by Courts of Legislation Governing the Material Liability of Employees for Damage Caused to the Employer" // Rossiyskaya Gazeta, No. 268, 29.11.2006.

¹⁰² Federal Law dated 14.11.2002 No. 161-FZ "On State and Municipal Unitary Enterprises" // Collected Legislation of the Russian Federation. 2002, No. 48, Art 4746.

17. Disputes

On Collective Labor Disputes (i.e., Industrial or Trade Disputes) see more above in “Trade Unions and Industrial Conflicts (‘Collective Labor Disputes’)”.

Individual labor disputes, which are not resolved through negotiations between the parties, may be referred to the Labor Dispute Commission or courts. Employees, former and present, have the right to be claimants in such cases; job seekers who have been denied employment also have the right to file a case.

Labor Disputes Commission

A labor dispute commission is set up individually for each company by the representatives of the employees and the employer. It is not a mandatory requirement of the law to create a labor dispute commission, but if the employer has received a proposal from his employees (or vice versa) to set up the commission, it cannot be refused (Art 384 Labor Code). If such a commission does not exist for a particular company, then the disputes will be taken directly to the courts.

The commission on labor disputes may take up cases of labor disputes which are not assigned to the exclusive jurisdiction of the courts within a particular entity (Art 391 Labor Code).

The employee or employer may appeal for a transfer of the labor dispute to a regular court within 10 days from the date of delivery of the copy of the decision of the commission. If the deadline is missed for valid reasons, it can be restored by the court. If the dispute has not been resolved by the commission within 10 days the employee has the right to transfer it for consideration by the court (Art 390 Labor Code).

A commission's decision which has entered into force shall be executed within 3 days. If it has not been enforced on a voluntary basis, the commission shall issue a certificate to the employee, which is an execution document. The employee may apply for a certificate within one month from the date of the decision of the labor dispute commission. The certificate is submitted for execution to the bailiffs within 3 months from the date of its receipt (Art 389 Labor Code).

Courts

The courts consider individual labor disputes on petitions of the employee, employer or trade union when they disagree with the decision of the labor disputes commission, or when the employee appeals directly to the court without referring the matter to the labor dispute commission, as well as on

application by the prosecutor, if the decision of the commission is not in accord with legislation (Art 391 Labor Code). The duty to consider all kinds of labor disputes is assigned to the courts of general jurisdiction, not commercial (arbitration) courts.

Only a court may solve disputes upon application of:

Employee:

- for reinstatement;
- to change the date and the wording of the reasons for dismissal;
- for a transfer to another job;
- for payment for a period of forced absence, or the payment of the difference in wages during the execution of lower-paid work;
- regarding misconduct by the employer in the processing and protection of personal data of the employee;
- regarding refusal to hire.

Employer:

- - for compensation by the employee for damage caused to the employer;
- by persons working under an employment contract with employers - individuals who are not individual entrepreneurs;
- by employees of religious organizations;
- by persons who believe that they have been discriminated against.

All labor lawsuits beginning after July 30, 2008 are within the domain of district courts. Formerly, some labor disputes could be considered by magistrates (justices of the peace)¹⁰³.

Employees do not have to pay the court duties and expenses on court cases relating to labor disputes (Art 333.36 Tax Code). On the whole, court practice (or at least the published decisions) seems to be heavily biased in favor of the employee. It therefore also seems that the threshold for taking labor disputes to courts seems to be quite low.

The employer should take into account that the violation of employee's "labor rights" may trigger liability for "moral damages" (Art 237, 394 Labor Code; see also Decree of the Plenum of the Supreme Court of the Russian Federation dated December 20, 1994, No. 10, 'Some Questions of Application of Legislation on Contributory Compensation for Moral Damages'¹⁰⁴). It should be noted that the Supreme Court proceeds from the

¹⁰³ Federal Law dated 22.07.2008 No. 147-FZ // Collected Legislation of the Russian Federation. 2008, No. 30 (Part 1), Art 3603.

"On Amendments to Art 3 of the Federal Law "On the Magistrates in the Russian Federation", and Art 23 of the Civil Procedure Code of the Russian Federation" // Collected Legislation of the Russian Federation. 2008, No. 30 (Part 1), Art 3603.

¹⁰⁴ Decree of the Plenum of the Supreme Court of the Russian Federation dated December 20, 1994, No. 10, "Some Questions of Application of Legislation on

“presumption of moral damages”, i.e., in Court’s view the violation of employee’s rights inevitably leads to his moral and/or physical sufferings which entitle him to contributory compensation for moral damages. So, the only thing which can be contested in such cases is the degree of sufferings which may entitle him to a larger or lesser amount of contributory compensation but not the causation of moral damages as such¹⁰⁵.

Contributory Compensation of Moral Damages" // Rossiyskaya Gazeta, No. 29, 08.02.1995.

¹⁰⁵ The ruling of the Supreme Court Civil Division dated 28 November 2000 No. 5-B00-227 // Bulletin of the Supreme Court of the Russian Federation. No. 3, 2003.

AWARA RUSSIAN LABOR LAW GUIDE

The Awara Russian Labor Law Guide is intended for both practical purposes and general orientation in Russian labor law. It gives a description and analysis of major legal issues that may affect those who want to conduct a business in Russia. This publication is particularly timely since by now the 2002 Labor Code of the Russian Federation has been in effect for over 10 years, resulting in many amendments to it, the promulgation of much related legislation and regulations, and court decisions regarding its interpretation and implementation. Now, in practice, the Labor Code is not the only (and in some matters not the main) authority to consider in arranging relations between Employer and Employee. Russian labor law is not easy to apply and understand because it is abundant in both gaps and regulations, whereas administrative and court practices are patchy, uneven, and often unpredictable. This Guide will no doubt serve as a reliable aid in going through this maze of regulative acts and decisions and help the reader to avoid gross mistakes that might result in significant but quite unnecessary losses. It embraces all legislative novelties as of November, 01 2014.



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