THE EMPLOYMENT LAW REVIEW

Eleventh Edition

Editor
Erika C Collins

THE LAWREVIEWS

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PREFACE

For the past decade, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. When updating the book each of the past 10 years, I reread the Preface that I wrote for the first edition in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. I have been practising international employment law for more than 20 years, and I can say this holds especially true today, as the past 11 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 11th edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see this publication grow and develop to satisfy its initial purpose: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

This 11th edition also holds a special place in my heart because it is the first that I have prepared as a shareholder of Epstein Becker & Green, PC (EBG). I joined EBG at this time in part because, in 2019, EBG established an alliance with Deloitte Legal to provide clients with comprehensive and global services relating to employment law and workforce management. The alliance brings together Deloitte Legal's global reach and the strength of its multidisciplinary business approach with EBG's United States labour and employment attorneys and workforce management experience to form a global delivery model. Through this alliance, EBG and Deloitte Legal offer comprehensive employment law and workforce management services to clients. I firmly believe that this alliance is the 'wave of the future', to be able to offer clients integrated professional services, and this notion parallels the mission and purpose of this text.

In 2020 and looking into the future, global employers face growing market complexities, from legislative changes and compliance, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, negotiating collective bargaining arrangements or responding to increasing public attention around harassment or equal pay issues, workforce issues can affect a company's ability to attract and retain talent, or damage its reputation and market value in an instant. These issues have created a confluence of legal and business challenges that no longer can be separated or dealt with in isolation. As a result, every company requires business advisers who can address the combined business and legal issues relating to its multinational workforce. It is my hope that this text provides legal practitioners and human resources

professionals with some guidance, best practices and comprehensive solutions to significant workforce issues that affect a company's market position, strategy, innovation and culture.

Our most recent general interest chapter still focuses on the global implications of the #MeToo movement. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media so as to bring awareness to the prevalence of this behaviour in the workplace. In this chapter, we look at the movement's success in other countries and analyse how different cultures and legal landscapes affect the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

Our chapter on cross-border mergers and acquisitions continues to track the variety of employment-related issues that arise during these transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, and the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2019 in nations across the globe, and one of our general interest chapters discusses this. Many countries in Asia, Europe and South America have continued to develop their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation, and regulations on gender quotas and pay equity, to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals in the workforce remain underprotected and under-represented, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter that focuses on social media and mobile device management policies. Mobile devices and social media have a prominent role in, and impact on, both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement bring-your-own-device programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. Bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work, and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and the chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to them. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these five general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 44 jurisdictions around the world. A special thank you to the legal practitioners across the

globe who have contributed to this volume for the first time, including Sedrak Asatryan, Janna Simonyan and Mary Serobyan (Armenia), Stefan Kühteubl and Martin Brandauer (Austria), Ignacio García, Fernando Villalobos and Soledad Cuevas (Chile), Tingting He (China), Jan Procházka and Iva Bilinská (Czech Republic), Véronique Child and Eric Guillemet (France), Guy Castegnaro, Ariane Claverie and Christophe Domingos (Luxembourg), Jack Yow (Malyasia), Charlotte Parkhill and James Warren (New Zealand), Petra Smolnikar, Romana Ulčar and Tjaša Marinček (Slovenia), Fernando Bazán López, Antonio Morales Veríssimo de Mira, Paloma Gómez López-Pintor and Andrea Sánchez Rojas (Spain) and Caron Gosling (United Kingdom). This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my associates, Ryan H Hutzler and Anastasia Regne, for their invaluable efforts in bringing this 11th edition to fruition.

Erika C Collins
Epstein Becker & Green
New York
February 2020

Chapter 38

RUSSIA

Irina Anyukhina[1]

I INTRODUCTION

The labour relationship between employees and employers of all types (including legal entities, individual entrepreneurs and natural persons) in Russia is governed by the Constitution, the Labour Code, federal laws and other statutory acts containing norms of labour law. The parties to a labour relationship cannot contract out of requirements imposed by Russian labour law.

The Labour Code is the main codified act that regulates labour relationships based on constitutional principles. Additionally, there are federal laws regulating various important aspects of labour relationships.

Cases relating to employment issues are presented before a court of general jurisdiction. Generally, the terms and procedures of trials on employment issues are specified in the Civil Procedure Code. The specific terms and procedures of trials on administrative issues are stipulated in the Administrative Procedure Code.

In addition to the judicial opportunity to protect labour rights, there are other options set forth in the Labour Code. An employee may pursue self-protection of labour rights, protection of labour rights and legitimate interests by labour unions, state authorities' supervision, and control of labour law observance. For instance, the employee may apply to a commission on labour disputes convened on a parity basis by representatives of the employer and employee and settle a labour dispute out of court, if the dispute is not exclusively subject to the consideration of the court of general jurisdiction.

Government agencies have competence in the following areas of employment law and employment relations:

a general issues relating to state supervision and control of labour are the responsibility of the Federal Service for Labour and Employment;

b migration is monitored and regulated by the General Directorate for Migration of the Ministry of Internal Affairs (on the basis of Presidential Decree of 5 April 2016, the functions of the abolished Federal Migration Service of Russia were transferred to the General Directorate for Migration of the Ministry of Internal Affairs);

c processing of personal data is the responsibility of the Federal Supervision Agency for Communication, Information Technology and Mass Communication; and

d sanitary and epidemiological control is covered by the Federal Supervision Agency for Customer Protection and Human Welfare.

1 Irina Anyukhina is a partner at ALRUD Law Firm.

Authorities of the constituent states of Russia, municipal bodies and the Public Prosecutor's Office also oversee the observance of employment law.

II YEAR IN REVIEW

The following are the most significant amendments to the labour legislation and related areas introduced during 2019.

i New obligations for parties inviting foreign citizens to Russia

The Law introducing new types of obligations for 'inviting parties' of foreign nationals was adopted and came into force on 16 January 2019.

The Law introduces new obligations for inviting parties, aimed at preventing violation of Russian immigration laws by foreign citizens. The inviting party shall take measures to ensure the timely departure of an invited individual from Russia upon expiry of his or her stay (as per the issued visa). Moreover, according to the Law, the inviting party must also take measures to ensure that the invited person complies with the declared purpose of his or her entry into Russia.

The Law establishes new administrative liability of inviting parties for non-compliance with the aforementioned obligations in the form of a fine:

a for individuals: between 2,000 and 4,000 roubles;

b for officials of legal entities (e.g., a general director): between 45,000 and 50,000 roubles; and

c for legal entities: between 450,000 and 500,000 roubles.

ii Simplified rules for obtaining Russian citizenship

Starting from 29 March 2019, a new simplified procedure for obtaining Russian citizenship came into force for certain categories of foreign nationals.

According to the amendments, on humanitarian grounds the Russian President can determine categories of foreign nationals who may obtain citizenship status through the simplified procedure. The amendments also provide for a simplified procedure for foreigners who participate in the state programme for facilitating voluntary resettlement in the Russian Federation of ethnic Russians living abroad.

These persons have the right to apply for Russian citizenship under the simplified procedure; in particular, if they have a temporary residence permit or permanent residence permit, they are registered at the place of residence or at the place of stay in a Russian region included in the state programme.

iii Amendments to procedural legislation

Amendments to the procedure for handling labour disputes came into effect in 2019.

In accordance with the new rules, only lawyers and other persons with higher legal education, or a degree in law, can be representatives in court. However, the new requirements do not apply to representatives by virtue of the law (for example, to the general director of a company).

The changes establish new cassation appeal rules. A cassation appeal must be submitted to the cassation court of general jurisdiction, through the court of first instance (previously,

complaints could be submitted directly to the cassation court). The complaint must be filed within three months of the date of entry into force of the contested judicial act (previously, this period was six months).

The law also provides additional requirements for the content of the claim.

iv New retirement age

Starting from 1 January 2019, the retirement age will increase by one year during each year of a transition period until the retirement age reaches 65 years for men and 60 years for women (previously 60 years and 55 years, respectively).

The law also stipulates that men who have reached 60 years of age and have worked for 42 years, and women aged 55 who have worked for 37 years are entitled to retire earlier – 24 months prior to reaching the standard retirement age.

The law lists the categories of employees who are entitled to early retirement, such as:

a women aged 56 who have worked for at least 15 years, and have given birth to four children and raised them until they are eight years old; and

b women aged 57 who have worked for at least 15 years, and have given birth to three children and raised them until they are eight years old.

v New category of employees – persons of pre-retirement age

'Pre-retirement-age' employees are defined as individuals who will reach pension age within five years, making them eligible to the old age pension, including an early retirement pension. Specific dates of commencement and expiry of the pre-retirement age should be determined by the employer, taking into account the date, month and year of the employee's birth.

The Criminal Code of the Russian Federation was supplemented by Article 144.1, which establishes criminal liability for unjustified refusal to hire or unjustified dismissal of a person of pre-retirement age. This liability may apply to a general director of a company or any other officer who is authorised to hire and dismiss employees. These officers may be subject to a fine of up to 200,000 roubles or an amount equivalent to the salary (or other income) of the convicted person for up to 18 months. However, the law does not provide for any criteria of 'unjustified dismissal'.

As of 2019, companies must grant employees of pre-retirement age two working days once a year for a health check-up, with retention of salary and place of work for the period of absence.

vi Companies restricting employees' right to choose bank for payroll accounting

As of 26 July 2019, an employer may be liable to an administrative fine of up to 50,000 roubles if it obstructs an employee in choosing a bank for payroll accounting. In the event of repeated violations, the fine can rise to 100,000 roubles.

The time limit for an employee to provide notice to an employer regarding changes to bank details has been extended to a maximum of 15 calendar days.

vii New forms of migration reports

On 9 September 2019, the Ministry of Internal Affairs approved new forms of notifications and applications to be applied in respect of the employment of foreign nationals. These forms must used by companies engaging new foreign employees (resubmission is not required).

viii New insurance account notification document

The Pension Fund of the Russian Federation has approved a notification form to replace the individual insurance account number (SNILS), which was abolished in April 2019. The new document will include the employee's social insurance number and personal data and may be obtained at the local Pension Fund office or via the website.

III SIGNIFICANT CASES

The Supreme Court made the following significant decisions in 2019:

a Maternity and childcare leave, pregnancy and a current appeal by an employee to the State Labour Inspectorate may be recognised as justified reasons for failure to file a claim with the court on time.

b The State Labour Inspectorate is not authorised to impose an administrative fine on an employer for a violation of the procedure for imposing a disciplinary sanction.

c It is not possible to recover court fees from an employee, even if the court did not satisfy the employee's claim.

d The size of a 'golden parachute' may not be either arbitrarily large or violate the legal interests of the company.

e An employer cannot dismiss for absenteeism an employee who, with the informal consent of an employer, actually and permanently works remotely, even in the absence of an additional agreement on the transition to remote working.

f Companies must adhere to the selected salary indexation mechanism.

IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

A written employment contract setting forth the basic terms of the employment relationship and employment duties must be concluded with every employee working in Russia. The conclusion of the employment contract is the employer's obligation. If the employee starts working before the conclusion of a written contract, the employment contract with that employee is deemed concluded and the employee cannot be deprived of the rights provided for by law.

Employment contracts may be executed either for an indefinite period or for a fixed period, but not for more than five years (fixed-term employment contract).

A fixed-term employment contract can be concluded only on the grounds provided by law, and as such will apply only when a fixed term (1) is required or (2) can be decided between the parties. In all other cases, the contract should be for an indefinite period.

A fixed-term employment contract is required when an employee is hired, in particular, under the following circumstances:

a to perform the duties of an employee who is on a leave of absence but who retains his or her job;

b to perform temporary work or seasonal work (up to two months);

c to be sent to work abroad;

d to perform work that goes beyond the framework of an employer's ordinary activity;

e to work for organisations that are intentionally formed for a fixed period of time or for the purpose of completing a certain task;

f to carry out a defined task, the term of completion for which cannot be determined by a specific date; and
g in some other cases as provided by law.

Upon agreement by the parties, a fixed-term employment contract may be executed under, *inter alia*, the following circumstances:
a with persons hired by small businesses (including individual entrepreneurs) that have up to 35 employees, or 20 employees in the case of businesses (individual entrepreneurs) operating in retail or consumer service sectors;
b with pensioners (who obtain this status because of their retirement age);
c with persons who are only allowed to perform temporary work, pursuant to a properly issued medical certificate;
d for the purpose of carrying out emergency work aimed at preventing catastrophes, disasters, accidents, epidemics, epizootics and for the elimination of the aftermath of these and other emergencies;
e with creative employees of the mass media, cinematographic organisations, theatres, theatrical and concert organisations and circuses, etc.;
f with the heads, deputy heads and chief accountants of organisations; and
g in some other cases as provided by law.

In all other cases, an employment contract should be for an indefinite period. An employment contract concluded for a fixed term in the absence of sufficient reasons, as established by the court, is deemed to be concluded for an indefinite period. Moreover, in cases where several fixed-term employment contracts have been executed to perform the same type of work, the court may decide, taking into account the details of the case, that the employment contracts last for an indefinite period.

The employment contract should contain information about the parties to the contract, place and date of conclusion. It must specify the place of work, the commencement date, the position of the employee according to the staff schedule of the company, the rights and duties of the parties, remuneration, conditions of the working place (these are mandatory provisions of the contract) and other provisions. It is forbidden to stipulate directly or indirectly any limitations or privileges depending on the age, nationality, religion, gender or political views of an employee.

It is the employer's obligation to conclude the employment contract with the employee in writing no later than within three working days of the day the employee was admitted to work.

Substantial provisions of an employment contract can only be modified with the mutual consent of the parties thereto, for instance, by addenda or attachments to the contract. In the event of changes to the organisational or technological conditions of the company, the employment contract can be amended without the consent of the employee provided that his or her function will not be changed. These types of changes are subject to two months' prior notice.

ii Probationary periods

An employer has the right to establish a three-month probation period for a newly hired employee. As an exception to this rule, an employer may establish a six-month probation period for employees hired for certain top-level executive positions (e.g., head of a company, chief accountant, their deputies, or the head of a branch or representative office of an enterprise).

There are some categories of employees for whom the probation period should not be stated at all, such as pregnant women or women with children under one-and-a-half years old, or employees who are starting a job within one year of graduating from an educational institution.

The probation period should be specifically provided for by the employment contract. In the absence of this provision in the contract, no probation period is considered to be established for the employee. During the probation period, if the employer determines that the employee does not meet the criteria established for the job position for which he or she was hired, an employee can be dismissed by the employer without a severance payment by giving three days' written notice specifying the reasons for dismissal. An employee is entitled to resign during the probation period without any reason, giving three days' written notice to the employer.

iii Establishing a presence

Generally, a foreign company can hire employees without being officially registered to carry on business in Russia; however, if it employs (or intends to employ) an individual to work in Russia for more than 30 calendar days (continuously or cumulatively) in a year, it is obliged to obtain Russian tax registration.

A foreign company is not prohibited from hiring employees through a specialised agency or another third party, for example under an outsourcing agreement. As these employees conclude employment contracts with the specialised agency or another third party, a foreign company has no obligation to pay remuneration to them, or withhold or pay the corresponding taxes.

Under certain conditions, tax registration issues and permanent establishment (PE) risks may arise for a foreign company.

A foreign company may engage an independent contractor under a service agreement (i.e., a civil law contract) without tax registration in Russia. In this situation, under certain conditions, these relationships can lead to the creation of a PE of a foreign company in Russia. Pursuant to the Tax Code, a PE is a branch, representation, department, bureau, agency, or any other separate subdivision or other place of activity of the company or a 'dependent agent' through which this foreign company regularly conducts commercial activities in Russia.

A dependent agent of the foreign company for tax purposes is a Russian company (or individual or individual entrepreneur) who acts based on an intercompany agreement, exclusively represents this foreign company in Russia and conducts regular business activities (i.e., negotiates and concludes agreements) on behalf of this foreign company.

Therefore, if the activity of a foreign company through an independent contractor creates a PE in Russia, the foreign company may be subject to full taxation in Russia.

Among the statutory payments that are required to be paid to employees are salary, sick leave allowance, annual holiday pay and other additional payments stipulated for certain categories of employees. Foreign employees are entitled to some of these local benefits (e.g., payment for annual holiday).

Some statutory benefits are not subject to personal income tax. Income that is not taxable includes:

a state allowances, including maternity leave and unemployment benefits; and

b all types of compensation payable in accordance with effective laws within established limits (e.g., reimbursement of harm caused by injury or other damage to health, dismissal of employees, compensation for unused holiday and the expenses involved in the improvement of employees' professional skills).

The employer paying statutory benefits in favour of employees is obliged to declare them and withhold personal income tax at source.

V RESTRICTIVE COVENANTS

Pursuant to Russian law, non-compete clauses in employment contracts are not enforceable, as one of the main labour principles protected by law is that each employee has freedom of labour, including the right to work, and any person is free to choose his or her profession or type of activity.

Following these principles, the law does not allow a company to restrict an employee from working for another employer (a competitor). If a non-compete clause is included in an employment contract, it cannot be applied legally and will not be enforceable in Russian courts. The only statutory possibility allowing companies to restrict or control work for third parties relates to heads of companies: pursuant to the Labour Code, a general director (chief executive officer) can work for another employer only with the consent of the authorised body of his or her employer.

In addition, an employee of a state company or corporation should inform his or her employer of any potential conflicts of interest. Failure to report a conflict of interest could form grounds for dismissal of an employee.

VI WAGES

i Working time

Employers are required to keep a record of the working hours of every employee, including any overtime. The regular working week is 40 hours, or less for certain categories of employees and under certain working conditions.

An employee may be expressly engaged for night work according to the working conditions or production necessity with the obligatory consent of the employee. In these circumstances, the statutory requirements for payment shall be that each hour of work during the night shall be compensated at a higher amount than work during the normal working day. The rate of pay must be at least 20 per cent greater than the normal hourly payment for a day's work.

ii Overtime

Any time worked in excess of 40 hours per week is classified as overtime (unless an employee has an open-ended working day regime pursuant to his or her employment contract) and may only be required by employers with the employee's prior written consent. Without the employee's consent, overtime work may be required only in emergency situations (such as fire, accident or disaster).

Pursuant to the labour laws, overtime should be compensated as follows:

a for the first two hours of overtime, no less than one-and-a-half times the usual hourly rate; and

b for subsequent hours of overtime, no less than twice the usual hourly rate; or

c in accordance with an employee's wishes, overtime work may alternatively be compensated by the provision of additional rest periods or time off work. However, this period may not be for less time than the overtime actually worked.

An employee's overtime work cannot exceed four hours within two consecutive days or 120 hours per year.

Overtime work performed at the weekends or on public holidays and compensated as work performed on weekends or public holidays by increased payment or by provision of another day of rest shall not be compensated as overtime work.

VII FOREIGN WORKERS

Chapter 50.1 of the Labour Code specifies the general conditions and requirements of the employment of foreign nationals. The basic requirements are that:

a the employment contract must be concluded for an indefinite term (except on special grounds);

b the employment contract must contain details of the work permit (as well as work patent, residence permit or temporary residence permit) and a voluntary medical insurance policy;

c a foreign national must have a voluntary medical insurance policy that covers the whole period of employment in Russia;

d a foreign national must confirm his or her knowledge of the Russian language, history of Russia and basics of Russian legislation; and

e in the event of expiry of a work permit (or work patent, residence permit, temporary residence permit or voluntary medical insurance policy), the employer is obliged to suspend the foreign national from work until he or she obtains new documents.

The law does not stipulate a requirement for employers to keep a register of foreign employees. Generally, there is no limit on the number of foreign employees that may be engaged by Russian-registered corporations, with the exception of some economical areas that are specified by the government every year. Representative offices of foreign commercial organisations that are incorporated in one of the World Trade Organization Member States may initially hire up to five foreign employees. Despite the general rule, a company is not allowed to hire as many foreign employees as it wishes – in the year preceding the prospective employment of foreign workers, it must apply for a quota. The company must submit a special form, indicating how many employees it expects to employ in the following year, their professions, job titles and countries of origin. Filling in and submitting the form does not guarantee that the company will be allowed to hire foreign employees or employees from certain professions or with certain qualifications. The decision is made by state bodies based on the current economic situation and the company's legal record (i.e., any prior violation of the law by the company may negatively affect the decision). The quota requirement only applies to the less highly qualified foreign nationals coming into Russia with a visa.

The Ministry of Labour and Social Protection of Russia is entitled to adopt a list of those professions, positions and qualifications that are given a quota exemption in a given year. However, these professions, positions and qualifications may vary from year to year, or may not be adopted at all.

A simplified procedure for obtaining a work permit has been adopted for employees from France, South Korea and Mongolia. Currently, employers do not have to obtain a decision from the State Employment Centre regarding permission to employ foreign workers from these countries.

Companies, and representative offices of foreign companies, may also engage foreign nationals as highly qualified specialists. The main condition for engaging a foreign worker as a highly qualified specialist is that he or she has experience, skills and achievements in the sphere in which he or she is to be employed and that the company will pay him or her more than 167,000 roubles per month. Salary requirements differ depending on the type of highly qualified specialist, for example teachers and scientists invited by state-accredited institutions, and foreign nationals engaged in Project Skolkovo (Russia's technical innovation project). For these specialists, quotas for obtaining work permits are not applicable. Employers do not have to obtain a decision from the State Employment Centre in order to legally hire a foreign worker as a highly qualified specialist.

The period of employment of a foreign national in Russia is limited by the duration of his or her work permit. Generally, a work permit is issued for up to one year; a work permit for highly qualified specialists can be issued for up to three years. If an employee continues working when his or her work permit expires, both the company and the foreign employee will be subject to administrative fines (which are quite considerable for the company).

Foreign nationals who will be working in Russia, rather than travelling to Russia on business, need to have work permits and should be staying under a work visa (except in the case of visa-free entry).

Remuneration received by a foreign employee from a source in Russia is generally subject to Russian personal income tax. It may also be subject to social insurance contributions. An employer should also provide any highly qualified specialist and his or her accompanying family members with medical insurance.

A company paying remuneration to a foreign employee is deemed a tax agent and, therefore, must withhold personal income tax from the remuneration payable to employees and remit it to the tax authorities. If the personal income tax was not withheld by a tax agent, the employee should file a tax return and pay the tax independently.

The personal income tax rate is 13 per cent for Russian tax residents (individuals staying in Russia for more than 183 days during a period of 12 consecutive months and more than 183 days during a calendar year) and 30 per cent for non-Russian tax residents (individuals staying in Russia for fewer than 183 days during a period of 12 consecutive months).

For those foreign employees who have the status of highly qualified specialist (see above), the personal income tax rate is 13 per cent, irrespective of their tax residency status.

Employers (both Russian companies and Russian subdivisions of foreign companies) shall pay social insurance contributions with respect to those foreign employees who have a long-term or temporary residence permit in Russia. Employers are obliged to remit contributions to the Federal Tax Service of Russia from compensation paid to foreign citizens who are temporarily resident in Russia.

There is also obligatory accident insurance in Russia. All individuals (including foreign nationals) working under employment agreements are subject to this insurance irrespective

of their immigration status. The insurance covers incidents of temporary or permanent injury to the health of employees (including death) that occur while performing employment duties (as a result of a professional illness or a work-related accident).

The applicable rate of obligatory accident insurance depends on the degree of professional risk that an employer's activity entails and may vary from 0.2 per cent to 8.5 per cent. The base for calculating obligatory accident contributions is generally the same as the base for calculating social insurance contributions.

Foreign employees have the same rights and obligations as Russian employees and are granted the same level of protection under Russian law.

VIII GLOBAL POLICIES

The main disciplinary principles are contained in the Labour Code. Internal disciplinary rules can be adopted by the employer in the form of by-laws and regulations on discipline. As a general rule, however, these are incorporated into the rules of the internal labour regulations of the company.

Internal labour regulations are a local standard governing the hiring and dismissal of employees; the basic rights, obligations and accountability of the parties to an employment contract; the work regime; rest periods; incentives and punitive measures applicable to employees; and other regulations concerning labour relations, including disciplinary rules.

Internal labour regulations do not need to be filed with or approved by any government authorities.

The Labour Code establishes some mandatory rules prohibiting discrimination on various grounds. Everyone shall have equal opportunities to implement their labour rights under the labour laws.

Nobody may be subject to restrictions in labour rights and liberties or gain any advantages based on gender, race, skin colour, nationality, language, ethnic origin, property, family, social status, occupational position, age, place of residence, attitude to religion, political views, affiliation or failure to affiliate with public associations, or any other circumstances not pertaining to the employee's ability to perform his or her work.

Sanctions for sexual harassment are regulated by the Criminal Code.

A company's internal labour regulations have to be executed in Russian, as Russian is the official language and must be used by all companies regardless of their ownership structure for their employment contracts, by-laws and record management.

When an employee is hired (before a labour contract is signed), he or she should be provided with the internal labour regulations and other internal regulations relating to his or her work as a hard copy that he or she must sign. If the internal labour regulations are altered subsequently, the employee shall be provided with a revised copy.

The rules of the internal labour regulations shall be approved by an employer, taking into account the opinion of the representative body of the organisation's employees, if there is one within the company.

Generally, if there is a collective contract in the company, the rules of the internal labour regulations shall be supplementary to it.

The internal labour regulations shall be freely accessible. They should be available on the company's intranet, but in any case a hard copy should be held by the company.

The disciplinary rules can be incorporated into the employment contract by reference to them.

IX PARENTAL LEAVE

Pregnant employees are entitled to maternity leave of 70 calendar days before the expected date of birth and 70 calendar days after the birth. The pregnancy must be medically certified. In the event of a multiple birth, the prenatal part of the leave is increased to 84 calendar days and the postnatal part of the leave is increased to 110 calendar days. In the event of a complication relating to the birth of a child, the postnatal leave is increased to 86 calendar days.

During maternity leave, employees are not entitled to receive pay from their employer, but receive a state benefit from the Social Insurance Fund. The benefit is set at 100 per cent of the employee's previous average pay, up to a statutory ceiling. In 2020, the maximum total benefit for the full 140 days is 301,095.20 roubles.

The employer pays the benefit to the employee and reclaims the sums paid out from the Social Insurance Fund.

Female employees are entitled to take their annual leave entitlement immediately before or after maternity leave (even if they have less than six months' service with their employer).

If a pregnant employee's work is medically certified as representing a hazard to her health, and the employee so requests, her workload must be reduced or she must be transferred to another job (whichever is necessary to prevent the hazard) while retaining her former average pay. If the employee must be transferred to another job, and that type of post is not available, she must be given time off until such a job is available, and receive her former average pay from the employer.

Pregnant employees must not:

a be sent on business trips;

b work overtime; or

c work at night, at weekends or on public holidays.

If, on returning to work, an employee is unable to perform her previous job on health grounds, women who have recently given birth are entitled, at their request, to be transferred to another job until their child is 18 months old. They must be paid either the wage for the job being performed, or their former average pay, whichever is higher.

An employer must not dismiss an employee who is pregnant or on maternity leave, except when the employer's business is liquidated or wound up, or an individual entrepreneur's activities are terminated. Further, an employer must not discriminate in recruitment against women on any grounds relating to pregnancy or having children.

If an employee has a fixed-term employment contract, and the contract is due to expire during the term of her pregnancy or maternity leave, the employer must, at the employee's written request, extend the term of the contract until the end of her pregnancy or maternity leave.

Except when an employer's business is liquidated or wound up, or it is an individual entrepreneur whose activities are terminated, or on specified grounds of serious misconduct, the employer must not dismiss certain categories of employee, namely:

a female employees with children under the age of three;

b lone parents (of either gender) with children under the age of 14, or 18 in the case of a child with disabilities; and

c parents (or legal guardians) who are the only wage earner (that is, any other parent or guardian is unemployed) in a family where there is a child with disabilities under the age of 18 years, or in a family where there are at least three children under the age of 14 and one child under the age of three.

An employee who adopts a child is entitled to take leave from the date of the adoption for 70 calendar days (110 days if adopting two or more children). The leave may be taken by only one adoptive parent. During adoption leave, employees are not entitled to receive pay from their employer, but receive a state benefit, as for maternity leave.

Employees are also entitled to take parental (or childcare) leave to care for a child aged under three. The entitlement is granted per child and may be taken by the mother, the father, a grandparent, a guardian or any other relative who cares for the child. One of these people may take all the leave, or two or more of them may each take parts of the leave.

An employee taking parental leave is entitled to receive a state benefit from the Social Insurance Fund until the child is 18 months old, but not to be paid by the employer. The benefit is set at 40 per cent of average pay, calculated on the basis of pay for the previous two years, subject to a monthly maximum (set at 27,984.66 roubles in 2020).

An employee who adopts a child is entitled to take parental leave to care for the child until it reaches the age of three years, under the same conditions as natural parents. The leave may be taken by only one adoptive parent.

Employees who are entitled to take parental leave may, at their request, do so on a part-time basis, while working part-time, and retain their entitlement to state benefits.

Employees have a right to return to their former job after taking parental leave. The period spent on leave is counted as continuous service with their employer. An employer must not dismiss an employee who is on parental leave, except when the employe's business is liquidated or /wound up, or the employer is an individual entrepreneur whose activities are terminated.

Male employees are entitled to up to five calendar days of unpaid leave in the event of the birth of their child.

X TRANSLATION

Russian is the official language of Russia and must be used by all companies – regardless of their ownership structure – for all human resources documentation (including employment contracts) and record management. There are no formalities such as notarial certification of translation or use of certified translators.

In the republics and other constituent territories of Russia, employment contracts can be executed in two languages: Russian and the language of the republic, or any other language used by the population of the subject. The exact rules and obligations on the use of languages are established by the relevant Russian legislation.

As for foreign employees who know neither Russian nor the language of the constituent territory of Russia, Russian legislation contains no general requirement that the employment contract be presented in a language familiar to the individual. However, in practice, an employment contract with a foreign employee is usually signed both in Russian and in the language in which the foreign employee is fluent, to guarantee that he or she has a clear understanding of his or her rights and responsibilities under the agreement.

If the employment documents are not translated into a language that is familiar to the employee, he or she could challenge the implication of any disciplinary sanctions upon him or her for breach of the obligations stipulated in the document on the grounds that he or she did not understand the contents of the document.

XI EMPLOYEE REPRESENTATION

Employees are permitted to form representative bodies to protect their rights. As such, there are no works councils as a form of representation in Russia. Under the Labour Code, the representatives of employees shall be trade unions and other representatives. Russian law, however, does not define the 'other representatives' and the rules governing their activity. Therefore, all information regarding employee representation in this section concerns trade unions.

Once created at the company level, a trade union represents all workers engaged by the specific employer who have become members of the trade union, or who have authorised the trade union to represent their interests.

Trade unions shall have the right to exert control over the employers and the official persons observing the legislation on labour, including on the issues of the labour agreement (contract), working hours and rest periods, remuneration for labour, guarantees and compensations, privileges and advantages, and other social and labour issues in the organisations in which the members of the given trade union work. They shall also have the right to demand that the disclosed violations are eliminated. Employers and official persons shall be obliged, within a week of receiving a request to eliminate the exposed violations, and to inform the trade union about the results of its consideration and the measures effected.

For the trade unions to exert their control over the observation of the legislation on labour, they shall have the right to set up their own labour inspection service, which shall be vested with the powers stipulated by the legislative provisions and approved by the trade unions.

If the employees of a given employer are not united in any primary trade union organisation, or if fewer than half of the employees of the given employer are members of the existing primary trade union organisation, or if no existing trade union has the power to represent the interests of all the employees in a social partnership at the local level, another representative (or representative body) may be elected by secret ballot from the ranks of the employees at a general meeting (conference) of the employees for the purpose of exercising these powers.

The existence of this other representative shall not be deemed an obstacle to a primary trade union organisation exercising its powers.

Trade union organisations shall represent the interests of employees in collective negotiations, the conclusion or alteration of a collective contract, control over execution thereof, and in the implementation of the right to participate in the management of an organisation, and in considering labour disputes between employees and employers.

The trade unions shall independently formulate and approve their rules, which should define the length of a representative's term, how frequently representatives must meet, terms and procedures for setting up the trade union, the rules for becoming a member of the trade union and leaving it, the rights and the duties of the trade union members, the authority of the trade union bodies and the term of their powers. Trade unions also determine provisions relating to the structure of the union and shall hold meetings, conferences, congresses and other events.

The employer shall give the trade unions functioning in its organisation the equipment, premises, and means of transport and communications necessary for their activity in conformity with the collective agreement or other type of valid agreement.

XII DATA PROTECTION

i Requirements for registration

As a general rule, before processing personal data, an operator is obliged to notify the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications of its intention to process personal data. The notification should contain information required by the respective laws in Russia.

The operator is defined as a legal entity, individual, state authority or municipal authority that individually or collectively organises or carries out the processing of personal data, and determines the purpose and content of processing that personal data or the operations to be performed with that data.

Employers have the right to process the personal data of their employees without notifying the above-mentioned authorised state body. However, if the purposes of processing personal data fall beyond the scope of labour law and employment relations, the employer is obliged to notify authorised state authorities of its intention to carry out the processing of employees' personal data.

According to the general rule, it is required to obtain the consent of an employee prior to the processing of their personal data. If personal data may only be obtained from a third party, the employer is obliged to notify the employee in advance and obtain his or her written consent. The employer shall inform the employee of the purposes, probable sources and methods of obtaining the personal data, the nature of the personal data to be obtained and the consequences of an employee's refusal to provide written consent for the use of the data.

The general rule is that a subject of personal data shall make a decision to supply his or her personal data and give his or her consent, of his or her own free will, to the data being processed in his or her own interest. As mentioned above, the employer is entitled to request personal data that is necessary for the performance of the labour agreement with the employee. The consent of the employee will be required if the employer intends to transfer the personal data of its employee to third parties. However, consent may be withdrawn by the personal data subject at any time.

To ensure the rights and liberties of the employee, the employer and its representatives must permit only specially authorised persons to access employees' personal data. Moreover, these persons shall be permitted to obtain only the data that is necessary to fulfil particular functions. Employers shall adopt an internal policy covering the procedure of processing employees' personal data. This policy shall be adopted in Russian (or in a bilingual form) by order of the general director of the legal entity (or other authorised person) and all employees shall acknowledge familiarisation with their signatures.

The company is obliged to take the required organisational and technical measures in processing the personal data, including using ciphering facilities (where applicable), to protect personal data against any illegal or accidental access, destruction, alteration, blocking, copying and dissemination, and other illegal actions.

The Federal Law of 21 July 2014 introducing amendments to the Federal Law on Personal Data sets out the obligation on operators of personal data to ensure that certain types of processing of personal data belonging to Russian nationals is carried out by the use of databases located in the territory of Russia at the moment of collection of the personal data of Russian nationals, including collection via the internet. This localisation requirement entered into force on 1 September 2015.

The localisation requirement does not apply to all possible types of processing in Russia. Only the following types of processing must be performed by the use of databases located in Russia: collection, recording, systematisation, accumulation, storage, adaptation or alteration, retrieval and extraction (the 'target types of processing').

The localisation requirement does not prevent companies from transferring data abroad. However, in the context of localisation requirements, some peculiarities shall be taken into account; that is to say, personal data shall be placed initially in a 'primary database', which shall be located and maintained (to the extent that maintenance involves the target types of processing) in Russia. Personal data contained in a primary database may be transferred abroad and be placed in other databases (secondary databases) if the rules on cross-border data transfer are complied with.

Further, on 1 September 2015 a new enforcement mechanism in the sphere of personal data came into effect. It implies inclusion of information resources (domain names, references to pages on the internet, website addresses), where the data is processed in violation of the rights of personal data subjects, in a special registry of violators of data subject rights (the Registry). Under this mechanism, the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications is granted the power to restrict access to these types of information resources by users from Russia. The Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications can apply these restrictions on the grounds of a court's decision.

ii Cross-border data transfers

Russian law does not require registration for the purposes of the cross-border transfer of personal data.

The general rule is that the employer should ensure that the receiving states are parties to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data or are deemed by the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications as states providing adequate protection of the rights of the subjects of the personal data despite their non-membership of the aforementioned Convention (the Member States are listed in the respective order issued by the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications). If the employer transfers personal data to states that do not ensure adequate protection of the rights of the subject of the personal data, the Russian company must obtain written consent from the subject of the personal data (i.e., the employee).

Taking into account that employers are obliged to gain the consent of their employees when intending to transfer their personal data to third parties (regardless of the location of the receiving third party) and to avoid any possible claims from the employees regarding the processing of personal data by the company without consent, it is recommended in all cases of cross-border transfers that the employer obtains the written consent of the subject of the personal data, stating the scope of the personal data to be transferred, the purpose of the processing and the recipients of the data. The employers should require the recipients of personal data to treat the data as confidential information. If the transfer is made on the ground of an agreement, the agreement should provide for an obligation of the recipient to treat the personal data as confidential information.

Additional transfers of personal data are allowed if the employee's consent covers any such transfers.

iii Sensitive data

Information relating to an employee concerning race or ethnic origin, political views, religious or philosophical convictions, state of health or private life is considered as sensitive data.

As a general rule, an employer may not request or process sensitive data. In cases directly associated with the issues of labour relations, an employer may obtain and process information relating to the private life of an employee only with his or her personal consent.

For a cross-border transfer of sensitive data, a Russian company must obtain the written consent of the employee.

iv Background checks

Russian law limits the amount and type of data that can be obtained about a candidate or an employee. The main principle is that the volume and character of personal data to be obtained about a candidate should be justified by a lawful reason. According to the Labour Code, these reasons are:

a to observe laws and regulations, for example if a certain check is prescribed by law, an employer can demand this information, or if a certain job is prohibited to a specific group of people (e.g., those under 18), an employer can also request the relevant personal data;

b to assist in employment, training and promotion (this may imply any information that is reasonably and lawfully required to hire, train and promote efficiently);

c to ensure the personal safety of employees (this may appear to allow a rather broad interpretation, but the general principle of non-excessiveness is to be observed);

d to control performance (the quality and volume of work carried out); and

e to ensure the safety of assets (again, the general principle of non-excessiveness is to be observed).

Russian law provides a full list of documents a job candidate must present to an employer, and prohibits the employer from requiring extra certifications. Thus, bank statements, credit repayment records, and the like cannot be demanded from the candidate. Moreover, even if the candidate voluntarily agrees to provide them, such requests can be interpreted as an invasion of privacy and discrimination on grounds of property. Additional documents can be required only when explicitly provided for in the legislation (e.g., public servants should present information about their income, property and material liabilities).

Criminal record checks may be required for certain jobs. For example, applicants for teaching positions may be subject to these checks as people with a criminal record are prohibited from working in educational roles. In other instances, enquiring about an applicant's criminal background can be considered excessive. However, there is no relevant court practice so far.

There is a statutory minimum amount of information an employer is entitled to know about a potential employee. Demanding further information or documents is illegal, and requesting them might be risky, as it may imply that the candidate was not hired for a protected reason or that there has been an invasion of privacy.

An employer should also avoid receiving any information about, for instance, the political, religious or other views of an applicant or an employee, or his or her membership of social organisations.

Obtaining information about an applicant's or an employee's private life is permitted only to the extent that is relevant to the job. For example, information about dependants is relevant to determining whether an applicant or employee is entitled to certain guarantees.

XIII DISCONTINUING EMPLOYMENT

i Dismissal

Pursuant to the law, employment may be terminated only on the grounds provided for by the law. The Labour Code sets out a list of the principal grounds for termination of employment, but it is not exhaustive; it can be extended by grounds stipulated in other federal laws.

As a general rule, the company does not have to notify the state bodies of a dismissal. Among the exceptions are dismissals resulting from a company being wound up, and redundancies (see below). If a company is dismissing a foreign employee, it must notify the General Directorate for Migration of the Ministry of Internal Affairs within three days of termination of the employment agreement.

Notification of the elected body of the trade union is to take place if an employer initiates dismissal of a trade union member on the grounds of staff reduction, insufficient qualification of the employee or numerous failures by the employee to fulfil his or her labour duties, provided that he or she has had a disciplinary punishment. The opinion of the trade union is not binding for the employer. The employer could dismiss an employee who is a member of the trade union-elected body for reasons of staff reduction or if he or she has insufficient qualifications, provided the elected body of the higher-level trade union gives its consent.

The dismissal can take place within one month of the trade union providing its reasoned opinion.

If an employer decides to reduce its staff numbers, it should submit a written notification to the elected body of the trade union organisation no later than two months before the planned action, and three months in advance if the staff reduction may lead to collective dismissal.

It is not common practice for employers to provide a social plan containing measures that are additional to those required by law or contained in industry or territorial agreements. However, measures aimed at reducing the number of employees subject to collective redundancy or providing re-employment may be contained in the company's collective bargaining agreement and may be implemented by the employer.

Offers of suitable alternative employment have to be made in the event of redundancy.

There are different notice periods depending on the type of dismissal. A notice of dismissal must be made in writing. Furthermore, it should be signed by the employee, proving that he or she received that notice. A notice period does not depend on the length of employment.

An employee who is not performing as expected during a probation period can be dismissed by giving three days' notice.

A fixed-term contract is terminated when it expires. An employer must notify an employee of the contract's termination three days beforehand.

In the case of redundancy or reduction of personnel, an employer has to notify employees two months before dismissal. Seasonal workers are to be given seven days' notice in such circumstances and three days' notice applies for temporary employees (working under an employment contract with a term of up to two months).

In all other cases of dismissal, the notification period is not defined in the law.

If a company is being wound up or there is a reduction of staff, an employer can, with the written consent of the employee, terminate the employment contract before expiry of the two months' notice period provided it pays additional compensation to the employee in the amount of the employee's average earnings calculated pro rata to the time remaining until the expiry of the notice period.

The general principle is that protection is granted to all employees. Special protection against dismissal at the initiative of the employer applies, inter alia, to the following groups:

a pregnant employees (can be dismissed at the employer's initiative only if a company is being wound up; a fixed-term labour contract should be extended until the end of the pregnancy);

b employees under 18 years old (can be dismissed at the employer's initiative only upon consent of the appropriate state labour inspectorate and commission for juvenile affairs and protection of their rights (unless the company is wound up)); or

c employees with two or more dependants.

A severance payment shall be paid to employees in the event of termination of employment as a result of the company being wound up, or in the case of redundancy (as described below). Severance pay equal to two weeks' average wages is paid to an employee in the following cases of dismissal:

a the employee's refusal to be transferred to another job as might be required according to a medical certificate[2] prohibiting the employee from remaining in his or her current job, or if the employer does not have an appropriate job to offer;

b the employee being called to military service (or alternative civil service);

c the reinstatement of an employee who previously occupied that position;

d the employee's refusal to be transferred to a job in another location;

e the employee is recognised as being fully incapable of working in accordance with a properly issued medical certificate; or

f the employee refuses to continue working following a change in the terms of the employment contract.

An employment contract or a collective contract may stipulate other cases of severance pay, as well as the amount of severance pay that is due.

If the employment is terminated at the mutual agreement of the parties, then a respective agreement specifying the terms of the termination shall be concluded.

ii Redundancies

If a company decides to make certain posts redundant, it should first select the employees that can be subject to redundancy, considering the protected categories.

Each employee must be individually notified in writing at least two months before the proposed dismissal, and each employee should confirm receipt of the notification in writing. Seasonal workers will be given seven days' notice in such circumstances and temporary employees (i.e., those with an employment contract of up to two months) are entitled to three days' notice.

2 A medical certificate must be issued according to the procedure established by federal laws and other normative legal acts of Russia.

The company further offers the employees all suitable vacancies within the company (including those requiring fewer qualifications or with a lower salary). Each offer should be made in writing and the employee's refusal or consent should also be in writing. If there are no vacancies within the company, the employee should be served the appropriate notices and confirm the receipt thereof.

Under Russian legislation, there is no difference between collective dismissal and reduction in the workforce. Mass lay-offs are not directly regulated. However, provisions in the Russian labour legislation relating to 'downtime' indirectly regulate lay-offs. Under these provisions, in the event of a temporary suspension of work owing to economic, technological, technical or organisational causes, an employee may be transferred without his or her consent for up to one month to a job with the same employer that is not stipulated by the employment contract. In this case, a transfer to a job that requires fewer qualifications is permitted only with the employee's written consent. If transferred, the employee is paid for the work he or she performs and at a rate not below the average earnings in his or her previous job.

A period of downtime attributed to fault by an employer shall be remunerated in the amount of not less than two-thirds of the employee's average salary. A period of downtime occasioned by reasons dependent neither on the employer nor on the employee shall be remunerated by no less than two-thirds of the tariff scale and salary, which are calculated pro rata for the duration of the downtime.

In a case of collective dismissal,[3] an employer must provide notifications to the State Employment Agency of certain information in two stages. At the first stage (three months before the dismissals) the following information is required:

a details of the employer and employees;
b a list of all employees of the organisation as at the date of the notice;
c the reasons for the collective redundancy;
d the number of employees to be made redundant;
e the commencement date of the collective redundancy;
f the final date of the collective redundancy; and
g information about the employees to be made redundant (professions, number of persons, date of dismissal).

At the second stage (two months before the dismissals), the employer must again provide details about itself and each employee to be made redundant (full name, education, profession, qualifications and average salary).

The following categories of employees cannot be made redundant:

a pregnant women;
b women with children under three years old;
c single mothers with children under 14 years old (or disabled children under 18 years old);
d individuals bringing up a child under 14 years old (or a disabled child under 18 years old) without a mother; and
e a parent who is a sole breadwinner for a child under three years old in a large family bringing up minors in which another parent is not employed and takes care of their children.

3 Dismissal may be considered to be collective depending on the number of employees the company plans to dismiss. The exact thresholds for collective dismissal are provided in agreements relevant to a specific industry sector or territory.

Among other employees, protection should first be given to employees with higher qualifications and labour productivity. To evaluate labour productivity, a performance review can be used; however, there is no statutory procedure on how performances are evaluated.

Among employees with equal qualifications and productivity, the following categories should be given preference:

a employees with dependent family members;
b employees who have suffered from workplace injury or work-related disease while working for the company;
c employees doing professional training at the employer's instruction; and
d disabled veterans.

Protection may be given to additional categories by regional or industrial agreements, collective bargaining agreements, company policies, employment contracts, and the like.

Actual termination of the employment contract cannot take place while an employee is on holiday or on sick leave (unless in cases of termination of employment owing to the company winding up).

If the employment is terminated because a company is being wound up, or in the case of redundancy, a dismissed employee is to be paid severance pay equal to his or her average monthly wage. Further, an employee is entitled to payment of average monthly wages while searching for a new job. These payments are limited to a two-month period upon termination of employment (including the severance pay). If the employee obtains the agreement of the State Employment Service, he or she may be entitled to severance for the third month as well, provided he or she registered with an employment service within two weeks of the date of dismissal.

If the employment is terminated on the ground of mutual agreement of the parties, an agreement specifying the terms of the termination shall be concluded.

XIV TRANSFER OF BUSINESS

In the case of a sale of shares of an employer to another company, the employment contracts are not subject to termination as the employing company remains the same. Thus, any changes in the terms and conditions of employment can be made only in accordance with the general procedures prescribed by the Labour Code, which provides that the employer should notify the employee of any change to material terms and conditions of employment at least two months before it occurs. A change to material terms and conditions can take place only in the case of a change in organisational or technological conditions of employment and only with prior written notice to the employee.

According to the law, a change in the owner of the property (assets) of an organisation is not a ground for termination of employment contracts with employees except for its general director, deputies of the general director and chief accountant. The Supreme Court has clarified that this applies to cases of sales of all property (assets) of an organisation. It also commented that this rule applies, for example, to the privatisation of state-owned companies, enterprises or assets of state-owned companies or enterprises. This rule may also apply to the sale of an enterprise as a property complex (which is considered and registered as a real estate object). The new owner has the right to dismiss the general director, deputies of the general

director and chief accountant within three months of obtaining the ownership title to the property (assets). In this situation, these employees, if dismissed, are entitled to compensation in the amount of no less than three months' salary.

Reorganisation (whether a merger, accession, division, split-off or transformation) of a company is also not a ground to terminate employment and thus the transfer of employment agreements will be required. An employee may refuse to continue to work in connection with the change of the owner of the assets of an organisation or in connection with the reorganisation of the company. If that is the case, the employment will be terminated.

XV OUTLOOK

There are no particular trends or significant developments in employment law expected in 2020. However, employers need to remain aware of the following recent changes during the coming year.

i Introduction of tax for self-employed persons

A trial period of taxation of self-employed individuals (including people who are self-employed, who do not have an employer and do not attract employees under labour contracts) began on 1 January 2019; from 1 January 2020, this involves the following constituent entities of Russia: Moscow, St Petersburg, Moscow Kaluga, Volgograd, Voronezh, Leningrad, Nizhny Novgorod, Novosibirsk, Omsk, Rostov, Samara, Sakhalin, Sverdlovsk, Tyumen, Chelyabinsk regions, Krasnoyarsk and Perm territories, the Nenets autonomous area, the Khanty-Mansi autonomous area – Ugra, the Yamalo-Nenets autonomous area, the Republic of Bashkortostan and the Republic of Tatarstan.

The Federal Tax Service has already warned employers against rehiring former employees as self-employed individuals for the purpose of optimising taxes and social contributions. If the Federal Tax Service becomes aware of unlawful rehiring of individuals as self-employed persons, the company may face additional taxes or fees and may be held administratively liable.

ii Electronic work-record books

With effect from 1 January 2020, employers must record all information about labour activity in electronic form (i.e., an electronic work-record book). Nevertheless, a hardcopy work-record book will be maintained after 31 December 2020 for any employee who requests it. Employees shall be notified about amendments and the application requirement by 30 June 2020. However, even in the absence of the respective requests, employers shall continue to keep hardcopy work-record books for their employees. Employers are obliged to record all information about labour activity only in electronic form for those employees who refuse to keep a hardcopy book or who are being employed for the first time.

If there are any changes in labour activities, an employer must prepare a monthly report of the labour activity of all employees for submission to the Pension Fund of Russia no later than the 15th day of the month. However, this rule is applicable only until 1 January 2021. After that date, the employer will be obliged to report to the Pension Fund no later than on the next day after the change.

On termination of an employment relationship, for those employees about whom there are only electronic records, employers will be obliged to provide a certificate of work experience as at the termination date.

Appendix 1

ABOUT THE AUTHORS

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Irina Anyukhina is a partner at ALRUD Law Firm, and heads the labour and employment practice. Irina is a recommended expert on labour law, advising international and Russian companies on international and cross-border workplace issues, reductions and restructurings, senior executives and expatriate issues. Irina operates at the interface of employment and corporate law in cases involving mergers and acquisitions, implementation of incentive programmes, executive compensation and benefits, global and local employment policies, outsourcing, and employee privacy issues. She is often involved in cross-border and internal investigations into employees' misconduct.

Irina joined ALRUD in 2002 and became a partner in 2007. Clients praise her business-oriented approach, outstanding communication skills, thoughtfulness and ability to clearly enunciate the core of the matter.

Irina graduated from the Moscow State University of International Relations with the Ministry of International Affairs of Russia, in the public international law division of the international law department. She is fluent in English.

Irina coordinates cooperation with Ius Laboris, the largest international alliance of labour law professionals. She regularly speaks at international conferences, and is a member of the International Bar Association and American Bar Association.

Irina has been highly recommended for her labour and employment practice by *Chambers Europe* 2017 and *The Legal 500. Best Lawyers* 2017 recommended Irina for labour and employment law, and informational technology law.

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