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Will Labor Hire Be Outlawed?

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In May last year the State Duma passed the first reading of a new employment relations bill focused on preventing employers from bypassing full employment contracts via short-term civil law contracts and other employment mechanisms. The bill's authors intended to limit the use of labor hire, which is currently very popular in some sectors of Russia's economy.

In particular, employment agencies will be prohibited from entering into contracts with employees that subsequently allow other entrepreneurs or organizations to use those employees' labor — also known as labor hire, staff leasing, contract labor or outstaffing — with relevant amendments to be made to the Labor Code. Under the bill, where an employee performs duties for a legal entity other than the one with whom they have signed an employment contract, the employee is considered to be an employee of the other entity under that employment contract. The only question is whether the new laws will be effective, though this is doubtful because an outright prohibition is unlikely to achieve these goals.

Is labor hire a threat to employees?

Labor hire has vocal critics, with many industry experts and trade unions seeing the practice as a means to deprive employees of entitlements to permanent employment, place pressure on wages of existing employees, de-skilling existing employees, or to position a company in such a way as to be able to deny a direct employment relationship. Labor hire also attracts suspicion for greater capacity to discriminate against temporary employees who may not always be cognizant of their rights. Russian trade unions usually treat labor hire as an evil and, in recent years, have worked to develop their own instruments and techniques to counteract it in workplaces.

Increased flexibility for business and skilled employees?

Alternatively, the practice is undoubtedly very convenient for business, allowing staff to be engaged for temporary jobs and short periods, and optimizing staff costs. Importantly, outstaffing can also be beneficial for some employees involved, facilitating opportunities for those looking for temporary employment, as well as opportunities for students and junior staff to gain required experience, with the attendant possibility that temporary employment may become permanent when they prove their worth. More extensive use of labor hire is also seen as suiting an employment environment where changing employment periodically is viewed positively, as opposed to long durations with a single employer, or in circumstances where employees have particular skills or qualifications commanding a premium that a single employer is unlikely to have a long-term demand for.

Increasing use in Russia

The practice has become increasingly popular among businesses in Russia, reflecting an increased global economic and corporate focus on workplace flexibility, and take up in service sectors of developed economies since the 1980s, coupled with an increased understanding that a mix of employment types within a company is, in many cases, more efficient. It is already a reality in the Russian employment landscape, reflecting the increasing diversity and global interaction of the Russian economy.

So how can the issue best be managed? One effective measure might be to develop an appropriate regulatory framework, which currently doesn't exist in Russia, rather than prohibit labor hire in general.

The international experience

A look at comparable international experiences in managing the issue shows that legislators

in most European countries have long ago dealt with this sphere of employment relations. Belgium, Britain, France, Germany, Spain, Italy, Luxembourg and many others permit labor hire, though it is subject to often-stringent regulation. Many governments that permit labor hire also require temporary employment (leasing) agencies to obtain state licenses. The employment laws of many jurisdictions also require that contractual relationships between employees and labor hire agencies contain specific provisions and are agreed in writing. In France, for example, the maximum labor hire contract is two years, with other nations requiring that this type of contract be subject to registration. The difference between these approaches and that proposed by Russian legislators is striking.

In many countries, labor hire agreements can only be concluded in a limited number of legislatively listed circumstances, or come with a number of regulatory requirements. These can include identification of specific tasks or circumstances where specific labor hire is used — to complete urgent or extraordinary orders, or replace temporarily absent staff, etc. — with the leasing firm needing to identify a maximum employment term for the labor hire employee. In many cases companies using labor hire need to consult with staff representative bodies about the employment of hired labor through a labor hire company, explaining why it is necessary. Similarly there are often clearly identified outcomes where the employment period extends beyond the original contract — ranging from a maximum number of possible extensions, to mandatory conversion to permanent employment with the leasing firm, or even outright prohibition. Other jurisdictions make a clear distinction between "contract of service" and "contract for service," which distinguish between permanent employees and individuals hired through labor hire practices, and which can carry implications regarding taxation, superannuation, workplace conditions and remuneration, and generally reflect legally distinct responsibility and managerial oversight regimes.

The Russian Labor Code and labor hire

The Russian Labor Code makes no mention of labor hire employment at all, and only the Tax Code has managed to legalize the relevant category of contracts — secondment agreements. The legislators thus have much to do in this area. But are they focusing on the right things?

Logically, a specific law needs to be drafted on labor hire or a relevant new chapter introduced into the Labor Code. This could ensure all labor hire employees guarantees envisaged by the Labor Code, in particular, by setting out rights, guarantees and responsibilities, for employees, employers, and lessees of labor, particularly those stipulated in Articles 21, 22, etc. of the Labor Code, possibly subject to certain exceptions.

ILO Conventions

Ratification of ILO Private Employment Agencies Convention No. 181 adopted by the General Conference of the International Labour Organization in 1997 could facilitate a solution to this problem. The convention makes governments responsible for protecting the rights of temporary employees. In line with this, national laws should stipulate their rights to set up trade unions and engage in collective bargaining. The laws should also provide for the rights of leased staff to statutory welfare payments, maternity allowances, professional training, etc.

Interestingly, the bill's authors also propose supplementing the Russian Code of Administrative Offenses with an article introducing employer liability for avoiding conclusion of an employment contract. Do we need such an article? I don't think so. The law already envisages liability for violations of employment and occupational safety legislation.

Administrative issues

Another moot point is the legislators' proposal to entitle the State Labor Inspectorate to re-classify a civil law contract as an employment contract.

Notably, the State Labor Inspectorate is not competent to re-classify a civil law contract as an employment contract or decide on the legal status of an actual employment relationship, as it is not responsible for resolving employment disputes. Such disputes should undoubtedly be settled exclusively by courts in the manner prescribed by the procedural legislation. Empowering the State Labor Inspectorate to re-classify civil law contracts as employment contracts will result in huge numbers of unjustified orders being issued to employers. Relevant disputes will, regardless, ultimately go to court, since employers will need to appeal the actions and orders of the inspectorates. It is also reasonably certain that employers will not apply to superior inspectorates but opt to go directly to court, thereby increasing the load on judges. It should not be forgotten, of course, that there is an inherent corruption risk, with a possible outcome of the new employment relations law to aggravate existing difficulties. It is not easy to distinguish between civil law and employment contracts. Many experts also acknowledge that most employees will not notice any difference in practice.

A different approach to labor hire is needed — not prohibition

Labor hire is a very efficient tool for contemporary business that can benefit employers and employees, as well as the government. Before labor hire can be simply banned, there should be an understanding as to whether the Labor Code can be modified to provide adequate alternatives for meeting daily business needs. I believe those who apply the Labor Code on a daily basis will definitely say "no." A balance needs to be struck between the law and business needs, which will ensure employee rights without drastic prohibitions. Properly regulated labor hire practices mean new jobs, additional tax revenues and other benefits. So why would the government wish to lose these?

The importance of addressing this issue appropriately cannot be overemphasized, particularly with Russia aiming to attract more and more foreign investors, with the government looking to create a more diversified Russian economy, and one in which smaller and medium-sized businesses play a significantly greater part. In Russia's changing business environment employment flexibility is likely to become a more pressing issue, and creating a legal framework for managing a key facet of this will be a more effective response than trying to ban it.

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