

The Specifics of Concluding Labor Agreements With Foreign Employees

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Labor migration in Russia has been developing particularly actively recently. According to data by the Federal Migration Service, 7 million foreign citizens entered Russia in the first half of 2011, which is a 10 percent increase year on year. The majority of those entering the country are migrant workers. At the same time, not all issues related to the legal hiring of foreign citizens are legislated today, thereby giving rise to complications when concluding labor agreements with foreign citizens.

Specifically, one of these issues is whether to conclude a fixed-term or a non-fixed-term employment agreement with a foreign citizen. Federal Law No. 115-FZ "On the Legal Position of Foreign Citizens in the Russian Federation," dated July 25, 2002, also does not stipulate for which term labor agreements must be concluded with foreign citizens because the period that foreign citizens are permitted to stay in Russia is limited to a specific term as indicated in their visas.

An analysis of the legislation allows us to conclude that it is not possible to conclude non-fixed-term labor agreements with foreign citizens temporarily residing in the Russian Federation because both their periods of stay in Russia and their work permits are limited. Consequently, a labor agreement with a foreign citizen should indicate that the labor agreement is concluded for the validity of the work permit. If its validity expires or the work permit is annulled, then the labor agreement ceases to be valid because its period has expired. The conditions on the period should indicate the term of temporary staying/living or the validity of the residency permit as the basis for concluding a fixed-term labor agreement with a foreign citizen. If an agreement has been concluded with a foreign citizen for a non-fixed-term, then dismissing a foreign employee once his/her permission to reside in the country has expired becomes complicated because the labor code does not stipulate special grounds for ending employer-employee relationships with foreign employees if the period

of validity of a work permit/work visa expires.

Another special feature to concluding labor agreements with foreign employees is that the amount of payment or other remuneration is not subject to being taxed for the pension fund, the social insurance fund or the fund of obligatory medical insurance. At the same time, it is important to note that foreign employees are subject to obligatory social insurance against job-related accidents and professional illnesses, as they are individuals completing work on the basis of a labor agreement signed with an insured party.

Additionally, when signing labor agreements, it is also important to take into consideration the particular regimes that could be established by international agreements between countries. For example, according to the agreement between Russia and Uzbekistan on labor activity and the protection of the rights of each country's respective migrant workers who are working in the other country, as of July 4, 2007, when an employer annuls a labor agreement with a migrant worker ahead of time, as based on the grounds stipulated by the legislation of the host country, then the employer is required to offer the migrant worker compensation provided by the labor agreement and the legislation of the host country for releasing migrant workers on the indicated grounds.

Under these circumstances, a migrant worker has the right to conclude a new labor agreement with another employer of the host country for the period remaining until the indicated work permit expires, provided that there are at least three months remaining until expiration. Currently, there are various international agreements concluded with the governments of France, China, Lithuania, South Korea, Ukraine, Belarus, etc. that govern the labor relationships between the employees of the countries and establish special regimes for employment.

In summary to the above-stated, the following is important: At present, there are legal gaps that should be taken into consideration when signing labor agreements with foreign employees. Additionally, when concluding labor agreements with foreign citizens, it is necessary to take into consideration the existence of international agreements concluded between countries that may establish special requirements and conditions when signing labor agreements.

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