

What's Different About 'Distance-Working'?

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One of the hottest topics of 2012 will likely be the legislative changes that await us in the new year, with many hoping that such changes will bring solutions for at least some of the "sore spots" in employer-employee relations.

One such issue is how to regulate "distance workers" ("home workers" or "telecommuters") who work from home. This area, which has long been a topic of discussion, will likely soon be set on a formal legal basis. Currently, work performed by employees at home is regulated overall by the Russian Labor Code, and in particular by Article 49, which governs the specifics of telecommuters' work. Another relevant document is Regulation No. 275/17-99 "On the Employment Conditions of Home-Based Workers," approved by the Soviet State Labor Committee and the Secretariat of the All-Union Central Trade Unions Council, which dates back to Sept. 29, 1981. But modern Russian law remains largely underdeveloped in this regard and is geared more toward the now-obsolete home-working model, which involves piecework, home-based manufacturing for "cottage industries."

Meanwhile, however, technology is developing so rapidly today that employees can perform not only simple assembly jobs without leaving home, but also write and edit texts, develop computer programs and much more. Translators, editors, journalists and other such knowledge-based professionals often work from home. Moreover, many employers now allow certain categories of employees to work from home as an additional benefit in their employment packages.

All this speaks to the fact that distance-working is increasingly becoming part of our reality, and that the existing regulatory framework simply does not fit today's business environment. Nor does it cover the crucial issues that employers already using a distance-working model face, such as how to keep track of working hours, who supplies equipment (e.g. computers) — the employer or the employee, and how to ensure workplace security, to name just a few.

Russia's State Duma is soon expected to take up a bill on distance-working in Russia, which has already been approved by both trades unions and employers' associations. But while the bill was initially to be introduced in January 2012, to date no action has yet been taken.

The bill states that telecommuters can work either from their own residence or any other location they choose outside their employer's office. While their family members may help them, there would be no formal employment relationship between the employee's family members and his or her employer. Moreover, employees working remotely would be fully covered by all relevant labor laws and regulations.

One key issue that will inevitably crop up in practice is how to monitor and account for telecommuters' working hours. It would make most sense if home workers could set their own working hours and off-time themselves, except when their contracts stipulate a specific work schedule, and factoring in all applicable norms regarding the work week. It may also be wise to give such employees a flexible schedule or establish specific working patterns for them. One area that clearly will be difficult to resolve is how to monitor home workers' performance to ensure that it meets the terms of their contracts. So it's clear that in certain cases the distance-working model presupposes a certain level of trust, which employers should factor in when offering employees the option of working remotely as a benefit. And those employees for whom any option other than distance-working doesn't appear feasible should be required to develop a strict system for keeping track of reporting how they spend their working hours.

As for equipment usage, of course, these days we mostly understand this to mean laptops or personal computers. It's likely that the question of how employees get the equipment they need, particularly PCs, will be left to the parties involved to decide. In making such decisions, employers should of course consider not only equipment usage, but confidentiality concerns as well. In other words, the employer will have to ensure both the integrity and confidentiality of any company information to which an employee has access as part of his/her work.

Another key issue involving distance-working is how to ensure workplace safety for employees who work from home. The Russian Labor Code says that the employer must ensure secure working conditions that meet state occupational safety and health regulations. Currently, the rules are the same regardless of whether the workplace is at the employer's premises or at an employee's home. It also goes without saying that when employees work from home, their workplace is not under the direct or indirect control of their employer. The bill proposes making the employee responsible for meeting workplace safety requirements. But it's still unclear how employees would in reality meet such requirements, particularly those stipulating that the workplace undergo certification, if it even makes sense to apply such regulations to the distance-working model where the workplace is beyond the employer's control.

In addition, applicable law provides a very complex formal procedure for reporting workplace accidents, including the creation of a commission to investigate accidents, question witnesses and notify the authorities. The problem with distance workers is that without direct supervision of the employee, an employer could not possibly determine whether a given incident was in fact a workplace-related accident or not.

So it's clear that many issues remain for the Duma's lawmakers to decide. And it's also apparent that even if the Labor Code is amended, many issues will remain unresolved and, as experience shows, they will likely be addressed in a piecemeal fashion as the law is applied. But, of course, there is still hope that the bill's proposed labor law amendments would do much to resolving the most pressing issues while taking into account the interests not only of employees but also employers, who essentially risk losing oversight over their employees in the labor model being debated.

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