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Employees and Employment Contracts in Russia

By Nadezhda Ilyushina

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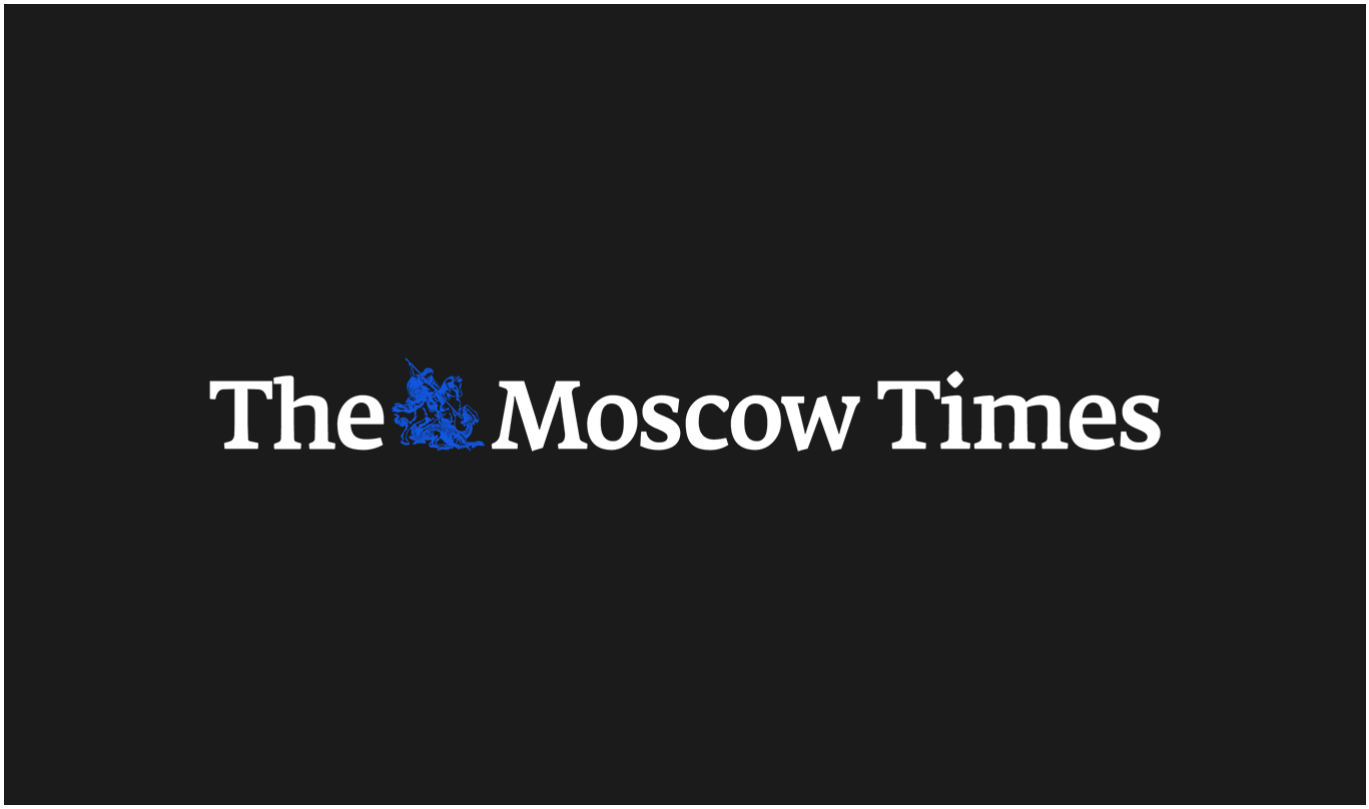

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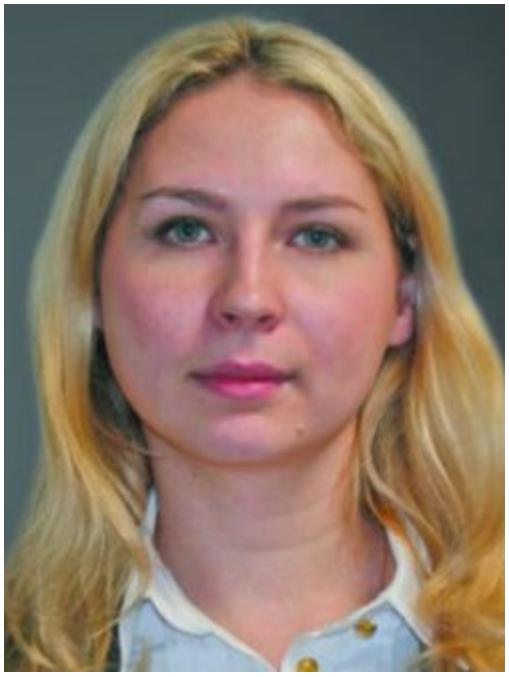
Employment in Russia, the Russian Labor Code, and the links between employment and visas for international employees, can be subject to a lot of confusion. But the following FAQ directed to Goltsblat BLP makes an ideal starting point when considering employment issues.

What types of workers are protected by employment law?

The Russian Labor Code protects all kinds of employees equally, and it does not distinguish between different types of employees, i.e. blue-collar and white-collar workers, office staff and management. Part-time, fixed-term, and seasonal employees also have protection under the Labor Code. Additionally, Russian labor laws protect foreign nationals working in Russia and Russian nationals working in Russian Diplomatic bodies in other jurisdictions, as well as those employees instructed by employers to leave Russia for a business trip abroad.

Only individuals who are considered "employees" (individuals who have undertaken to personally perform a function established in their employment agreement, and who work for remuneration under the instruction and supervision of an employer) are protected by Russian employment laws. Self-employed workers (independent contractors who do not have an employment relationship) have no employment law protection.

Do employment contracts have to be in writing?



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Yes, under the Russian Labor Code an employment contract must always be in writing. Verbal agreements are not allowed. The employment contract should be prepared in two original copies, with both originals signed by both parties, and with an original copy retained by both the employer and employee.

In circumstances where an employment contract is not drawn up in writing, it is still considered to be in effect if an employee is actually admitted to work by an employer. In this case, an employer should arrange for a written employment contract within three days of the employee's admission to work. It should also be noted that an employer's failure to enter into a written contract is punishable by a fine.

The Russian Labor Code has a minimum content requirement for any employment contract, including names and details of the employee and the employer, the employee's job function and start date, the terms of remuneration, working hours and holidays, mandatory social insurance (medical, pension, social, work-related injury), and protection against occupational hazards, etc. Not including the required provisions in the employment contract does not mean it is invalid, or that the provisions do not apply: It means that the employment contract should be supplemented with the missing provisions when it is legally considered.

Labor laws establish specific minimum employment terms, which should be observed while drawing up an employment contract. These include minimum salaries set by the government (including local government), limits on working hours and minimum weekly rest breaks, annual leave (in addition to 10 days of public holidays), and mandatory guarantees established for individuals working in Northern and equivalent regions.

In addition to the mandatory provisions, it is also allowed to include other provisions

provided that they don't worsen the employee's conditions of service in comparison with the minimum guarantees established by the Labor Code, other applicable laws and regulations.

Can an employer include non-competition and non-solicitation provisions into an employment contract?

Yes, a company can include such provisions into the employment contract. However, such provisions will have only a declarative function. Russian laws do not establish any limitations for employees on performing activities that compete with an employer's activities. Non-compete provisions (as well as non-solicitation provisions) are not enforceable under Russian laws as the Constitution of the Russian Federation establishes the right of free disposal for one's capacity to work, and the Civil Code also establishes freedom of contract (e.g. for the companies offering employment).

Nevertheless, including non-compete provisions into employment contracts has become a normal market practice in Russia, often included into employment contracts for key employees (general managers, chief accountants, etc.). Sometimes the observance of non-competition provisions is ensured through additional employee compensation paid after the contract's termination at the expiry of a non-competition period. Payment of compensation may, to some extent, guarantee observance of non-competition provisions. However, the legislation does not establish any other incentives enforcing these obligations or establishing disciplinary or material sanctions for their breach. Where sanctions for any breach of non-competition provisions are included in an individual employment contract, the court, in the event of a dispute, would most likely recognize them as invalid and inapplicable.

Therefore, the existence of non-competition and non-solicitation provisions in employment contracts, in principle, can serve as a "threat" to an employee and they impose a kind of "moral obligation" on the employee and the employer. But they will not be able to hold the employee liable for competing actions or enable an employer to claim damages if any occur as a result of the employee's competing actions.

Can the employer unilaterally change the agreed terms and conditions of employment?

The employer can unilaterally change the agreed terms and conditions of employment (excluding the employee's job function) in a very limited number of cases, provided that the reasons for the change are connected with the organizational or technological conditions of labor. The employer should notify an employee two months in advance of any changes and follow the legal formalities established by the Labor Code.

What are the protected categories of employees?

The Russian Labor Code establishes certain categories of employees who enjoy increased protection, such as pregnant women, women with children under 3 years old, single mothers who have children under 14 years (or disabled children under 18), and single fathers.

Pregnant women cannot be dismissed at the initiative of the employer except in cases of the employer's liquidation (including cases of pregnant female misbehavior, and non-

performance or improper performance of employment duties). Additionally, pregnant women cannot be sent by an employer on business trips, or instructed to work overtime, during nights, weekends and public holidays.

Women with children under 3 years old, single mothers who have children under 14 years (or disabled children under 18 years old) and single fathers cannot be dismissed at the initiative of the employer, except in cases of the employer's liquidation, repeated non-fulfillment or improper fulfillment by the employee of his/her employment duties, a single gross violation of the employees job functions (absence at the work place for more than 4 hours in a row, remaining at the work place under the influence of alcohol, etc.), or disclosure of protected (confidential) information, and the like.

These employees may be sent on business trips, instructed to work overtime, during nights, weekends and public holidays. However, the employer must obtain their relevant prior written consent in such cases.

Are foreign citizens subject to any approvals prior to employment in Russia?

In order to work in Russia a foreign citizen needs a work permit.

A legal entity intending to employ a foreigner should obtain permission allowing the company to do so (where applicable). Foreign employees can be symbolically divided into the following three groups:

- highly-qualified specialists (HQS);
- foreign employees ("ordinary") that arrive on the basis of a visa;
- foreign employees ("ordinary") that arrive in Russia without a visa.

Russian laws establish different procedures and timeframes for obtaining work authorization documents for these different groups of foreign employees.

It should be noted that there are certain restrictions on foreign nationals in relation to specific occupations, e.g. civil servants, judges, public prosecutors, notaries publics, patent attorneys, etc.

Highly qualified employees

The migration laws allow employers to evaluate a foreign employee's qualifications at their own discretion. The only formal qualifying criteria for being a HQS is the amount of prospective income — over 2 million rubles per year (approx. $ 61,000).

The hiring procedure for highly qualified specialists is relatively simple in comparison with employment of non-HQS employees. Namely, these specialists are not subject to prior quota placement, the company is not required to obtain permission to employ an HQS, an invitation for a work visa can be obtained simultaneously with the work permit. Work permits and associated work visas for the HQS may be issued for a period of up to three years (in comparison to a one year visa and permit for "ordinary" foreign employees). It takes 14 business days to obtain the HQS work permit.

Once the work permit for the HQS is obtained and the foreign employee enters Russia on the

basis of a work visa, he/she should be registered with the local tax authority within 30 days.

It should be noted that employers of HQS have certain requirements that should be reported to the Federal Migration Service (e.g. confirmation of provision of additional health insurance, payment of minimum salary established to the HQS, etc.)

Foreign ("ordinary") employees that enter Russia on a visa

In order for a company to employ this category of employees, it should obtain the following authorization documents and observe the following procedure: (i) to accord with the prior quota placement (the relevant application should be submitted by May 1 of the year preceding the year during which the company is going to engage foreigners, except for non-quota positions that are established annually by the government); (ii) to obtain permission allowing the company to employ such types of employees; (iii) to arrange individual work permits for the employees; (iv) to obtain invitations for the employees' work visas on behalf of the company, enabling such foreign employees to obtain relevant work visas.

Along with the quite significant number of documents that an employer should submit in order to obtain a permit to engage foreign manpower, and then a personal work permit, it is also necessary to prove the educational credentials of the employee under the engagement, meaning that copies of diplomas have to be applied for or notarized in their country of issue, and so on. Also, the foreigner must pass the medical screening.

A work permit and work visa for "ordinary" foreign employees can be issued for a period of up to one (1) year. It can take up to 4 months to have all work authorization documents for foreigners arriving to Russia on the basis of a visa in place.

It should be noted that both HQS and "ordinary" foreign employees arriving on a visa basis should have a work visa, with business visas or any other type of visa not allowed to be the basis of employment activities in Russia, since, according to the law, the purpose of entry (actually performing activities) should correspond to the type of visa.

Foreign employees that do not need a visa

Foreign citizens arriving in Russia without a visa (nationals from Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Moldova, Uzbekistan, Armenia and Azerbaijan) only need a work permit (except for Belarus citizens), which is issued to them for work at a specific facility. The employer needs only to notify the Federal Immigration Service that an employment contract has been concluded with such an employee, along with the Tax Authority and Federal Labor and Employment Service. The employer company does not need permission to employ this category of employee, but it should also observe the quota requirement (where applicable).

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