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Top 7 HR Trends: Lawyers' Perspective

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In this article we would like to draw attention to the main HR trends from the standpoint of labor lawyers. This includes changes or proposed changes to labor and employment laws, as well as HR practices that are raising important legal questions.

"New Labor Code." We often hear that the existing Labor Code is in need of modernization. Business people, academics and many government officials share this opinion. However, as things stand, little has been done to redraft the Labor Code. The only thing in place is the concept published by the Russian Chamber of Commerce and Industry. Taking into account the importance of the issue and the strong opposition of trade unions, we do not expect changes to come quickly — redrafting the Labor Code will take at least 1-2 years.

Temporary agency work. What's already being considered by the legislature is a ban on temporary agency work. The draft law, which runs counter to globally accepted HR practice, was passed in its first reading in May 2011. Thanks to concerted objections from the business community, it has not been further adopted. The next hearing is to take place this autumn. The outcome is hard to predict, but we hope that a more balanced approach will come over, and that temporary agency work will be legalized.



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Draft law on remote work (telework). The demand for flexible arrangements has made the government introduce the bill on telework. The draft law is supported by all parties involved, including trade unions, and it has every chance of being on the statute book by the end of 2012. The legal status of teleworker will be similar to that of homeworker. The only

difference is that with teleworkers you'll be able to sign most documents electronically by certified digital signature. Although any reduction of formalities merits approval, the measures proposed by draft law are incomplete. With teleworkers, companies need more freedom to derogate from legislative provisions by agreement.

Flexible working. More and more companies allow employees to work remotely part of their time — one day a week or even more. This helps to motivate people, but requires clear obligations of employees to be set to avoid abuse. Otherwise, the company may face difficulties, e.g. in imposing disciplinary sanctions on those not fulfilling their duties while claiming to be working remotely. Drawing up a separate policy is an effective measure.

Personal data protection. Now companies widely use practices advanced by new technologies: HR shared services, online recruitment, cloud computing, etc. This requires special attention to personal data (PD) protection issues.

The law on PD, as revised in 2011, left many uncertainties. Key subordinate legislative acts have not yet been adopted. This makes it impossible for a company to fully comply with PD protection law, although companies can significantly reduce legal risks by fulfilling the main organizational and formal requirements: adopting a PD policy, appointing the official responsible for PD protection, etc.

Importantly, the Federal Service for Information Technologies and Communications (Roskomnadzor) is making ongoing efforts to raise fines for PD law non-compliance. The last initiative, evidently unreasonable, is to make fines proportionate to company revenue.

References to violations of PD laws are becoming more popular among employees. But our experience shows that courts still have little understanding of PD protection laws. This is a double-edged sword. In one case it will help the employer, with a court finding no violation when actually there is one. In another case the company will be obliged to do something despite the PD law providing otherwise (as was the case with the recent Supreme Court ruling on provision of information to trade unions).

Guarantees and compensation payments for employees working in hazardous conditions. This is another hot topic after the Supreme Court in April 2012 ruling invalidated the old Soviet acts and stated that the Government Regulation No. 870 of 20 November 2008 is applicable. This means that if the assessment of workplaces in terms of working conditions revealed hazardous conditions, the respective employees must be provided with a short working week of no more than 36 hours, additional paid leave of at least 7 days and a salary increase of 4 percent. Although the Supreme Court decision is not legally binding on lower courts, our analysis shows that they generally follow the above position.

New rules for labor inspections. As of August 2011, Law No. 294-FZ dated 26 December 2008 (setting rules for checks by state and municipal authorities) covers labor inspections. As our experience shows, labor inspectors still do not fulfill many requirements of this law. This gives employers additional grounds to invalidate fines and orders based on an audit that has been conducted with violations of requirements.

As seen from the above, many trends are dictated by enforcement practice rather than new laws. That's why it is so important to take into account such practice when making HR

decisions. And you should pay special attention to court decisions. Our day-to-day practice of handling court disputes shows that courts tend to rely more and more on previous decisions.

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