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Job Offer Letters: How to Exclude Employers' Risks

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Job offer letters are a relatively new development in Russian practice, and there is no mention of the concept in Russian labor law. This useful instrument is one of those things that has been commonplace internationally for decades, without impinging on the consciousness of Russian companies or employees. Until recently, they were only used by representative offices of foreign companies and companies with foreign investment, or when foreign nationals were hired. Nonetheless, over the past decade, they have become a standard tool in Russia, and are especially popular when employers are competing to hire top and mid-level managers or rare specialists.

Employers in Russia are free to offer job offer letters to candidates. The fact that there are no explicit legal rules or regulations that set out the criteria to be followed is of minor significance and even allows companies to have absolute discretion in terms of how they want to use them.

A job offer letter has proven to be an effective, useful instrument for negotiating the terms of future employment, and they present no risk for employees. For employers, on the other hand, there are risks unless particular care is taken. Discretion is definitely the better part of valor for the employers.

Employers are advised to pay heed to the recent court practice trend that more and more employees are relying on the terms set out in their job offer letters to support employment-related claims. In the majority of these cases, employees are challenging their dismissals, or arguing over the amount of remuneration or bonuses actually paid to them. In some cases, employees seek an award of benefits that were included in the job offer letter but were never provided to them. Quite often, employees resort to the terms of the job offer letter as proof of the duration of their employment contract, probation period, or scope of their duties.

Basically, any provision of the job offer letter that deviates from the employment contract concluded afterwards creates potential for a dispute. Needless to say, in cases where the employment contract was never concluded, the employee has a very good chance of persuading the court that the terms of the job offer letter should apply.

Given that the unwary employer could easily find himself up a creek without a paddle, the lesson that should be learned by wise employers is to keep in mind several issues when sending a job offer letter to a candidate. These tips would help to avoid disputes.

First, a written employment contract in Russian is a must and needs to be signed as early as the start of the employment relationship. This equally applies to foreign national employees.

Second, no risk arises at all if all terms of the job offer letter are incorporated unchanged into the employment contract.

Third, it is prudent for the job offer letter to contain the absolute minimum amount of detail, or to use flexible wording so that the terms of employment can be amended in further negotiations with the employee, with the employment agreement featuring the agreed upon terms.

Finally, there would be no risk of a job offer letter being treated as a binding employment contract if it states expressly that it is not an employment contract. Moreover, the terms of the job offer letter would be disregarded by courts if the employment contract stated that it cancels and supersedes all earlier agreements and offers, including the job offer letter. These two very simple, short provisions cut out the risks altogether.

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