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Ban Hangs Over Temporary Staffing Agencies

By Mark H. Gay

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Staff can work in, or on, the same building yet a third party can take care of hiring, payroll and benefits. **Michal Zacharzewski**

Restrictions on the use of temporary staff threaten to close a growing source of business for recruitment companies.

They may also undermine the flexibility of companies and shut off a route to economic recovery, according to opponents of the measure. As the recruiting market weakens, some agencies like Ventra seek to offset the business by offering out-staffing services.

Personnel leasing and out-staffing employs about 100,000 people legally and more in the gray market. But a bill introduced to the Duma in 2010 would ban the use of agencies to employ staff on a temporary basis. The legal status is currently gray: the law neither prohibits nor explicitly allows temporary agency labor. A ban is not inevitable, and the draft law could yet clarify and protect employee rights.

Foreign firms continue to use unlawful employment contractors, while unions and politicians press for outright ban on agencies.

The legislation poses a threat to out-staffing, in which entire corporate functions, such as payroll or human resources administration, may be turned over to staff working for a third party. Unlike outsourcing, in which companies pay service providers to run facilities like call centers, or move activities to cheaper locations abroad, the out-staff look like part of the core workforce: they may even sit onsite at desks next to the permanent staff.

Industries that use out-staffing range from basic manufacturing to oil and gas extraction. Fixed term contracts are limited to five years and can only be concluded in cases specified by law, like covering for absence, for seasonal work or for occasional work of no more than two months' duration.

Avoiding taxes

Employee leasing, whereby companies outsource entire departments, usually covers periods of three months or more, in industries like automotive, energy, banking and pharmaceuticals. The roles typically include receptionists, personal assistants, translators, sales staff and finance and IT personnel.

Under an employee leasing contract, employment responsibilities are shared by both the provider and the client company. While employee leasing is a three-party relationship, in practice it is regulated by two types of contract: a civil contract between the provider and client, and a labor contract between the provider and the employee

In the gray market, small operators pay temporary workers in cash to avoid tax and social payments. Many well-known companies, both US and European, use these illegal staffing providers, according to Marina Simonova, General Director of Ventra.

The issue of pay and conditions led trade unions to initiate the bill, aiming to prohibit the temporary employment market. Surveys (by the Agro-Industrial Union of Russia (AIWU) and the Union of Food, Tobacco, Services and Allied Workers 'Solidarnost') of the food processing, beverage and agriculture industries suggest that many temporary staff do work that was once the role of full time workers.

Cost savings are indeed the main reason for outsourcing, said Simonova, but some companies also shift non-core functions to third parties. "IT personnel are not your core staff in a bank, so you can outsource them to a company that hires, pays them, withholds taxes, does all the HR and bookkeeping functions for you — yet the staff work in hour office beside your own

staff. Perhaps an industry is seasonal, so companies need a provider that can put people on its own books for the hot period."

About 100,000 to 130,000 people work as out-staffed employees in Russia in the open or "white" market, according to estimates from Ventra and Coleman Services.

Labor shortage

If, rather than banning temporary employment agencies, the Duma clarifies the law and removes legal obstacles, the sector will see dramatic growth said Simonova. In Belgium it accounts for seven percent of the labor market, so it would be a substantial amount in Russia. Recruiters say this would offset the trend towards further shortages on Russia's labor market. Unemployment is already low, yet demographics suggest there will be even fewer nationals of working age.

Olga Bantsekina of Cornerstone said the situation regarding a bill to ban agency labor remained unchanged and she had no further comment.

Old and Modern

Russian legislation was more advanced in the nineteenth century than most of Europe: It had employment agencies and legislated for them, unlike most of Europe at the time.

The Labor Code of the Russian Federation, adopted in 2001 was supposed to adapt work regulations to the free market. According to research by International School of Higher Education in Labor and Industrial Relations, however, it retained restrictions from the planned economy. For example, it does not recognize temporary agency work or telework, although both civil and tax law include some provisions.

In May 2011, the bill prohibiting temporary agency work (Bill No. 451173-5) was passed unanimously at its first reading. Later amendments have recognized the fact that many companies already use flexible employment arrangements and have addressed the need for licensing, health and safety in dangerous occupations, and the definition of temporary employment, from hiring during a strike to replacing core activities which can be more efficiently supplied by third parties.

The legislation has also taken on political overtones with the proposal in December 2012 by the Duma's labor law committee chairman Andre Isayev of an amendment would direct any ban on temporary staff at foreign providers in retaliation for the US Magnitsky Act that imposes travel restrictions on certain Russian government officials. Many recruitment agencies operating in Russia are part of multinational companies, however, not all of them offer out-staffing services.

Another law recognizing teleworking as distinct from other forms of home work was passed in the lower chamber in October 2012 (Bill No. 88331-6).

Russian employment law is state of the art in one respect: the draft law allows digital contracts between teleworkers and employers, using the digital signature of both parties. However the employer would still need to send a certified, paper copy of the document within

three days, by snail mail.

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