

Breaking New Ground in Russia

Labor Law Aspects

2006

Breaking New Ground in Russia

Work Visa and Labour Law Aspects

Baker & McKenzie

Baker & McKenzie - CIS, Limited
Sadovaya Plaza, 11th Fl.
7 Dolgorukovskaya Street
Moscow, Russia 127006
Tel: +7 495 787 27 00
Fax: +7 495 787 27 01

Baker & McKenzie - CIS, Limited
57, B. Morskaya Street
St. Petersburg, Russia 190000
Tel: +7 812 303 90 00
Fax: +7 812 325 60 13

©Baker & McKenzie 2006. All rights reserved.

This publication is copyrighted. Apart from any fair dealing for the purposes of private study or research permitted under applicable copyright legislation, no part may be reproduced or transmitted by any process or means without prior written permission of the editors.

Unless otherwise indicated, the law is as stated on _____.

IMPORTANT DISCLAIMER. The material in this volume is of the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The Firm, the editor and the contributing authors disclaim all liability to any person in respect of anything and the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No client or other reader should act or refrain from acting on the basis of any matter contained in this volume without taking specific professional advice on the particular facts and circumstances in issue.

For further information, please contact _____

Contents

1.	Introduction	.1
2.	Employment-related Orders	.1
3.	Labor Books	.2
4.	Probationary Period	.2
5.	Minimum Wage	.2
6.	Work Time	.2
7.	Holidays and Days Off	.3
8.	Vacations	.3
9.	Sick Leave	.3
10.	Maternity Leave	.4
11.	Dismissal	.4
12.	Compensation	.5
13.	Foreigners Working in Russia	.5

1. Introduction

Foreign investors should be aware of the broad set of laws regulating labor relationships between employers and employees that currently exist in Russia. The principal piece of legislation governing labor relationships in Russia is the Russian Federation Labor Code (the “Labor Code”), effective February 1, 2002. In addition to this core legislation, labor relationships are regulated by the 1992 Russian Federation Law on Collective Agreements and Accords, as amended (currently through 2004), the 1995 Russian Federation Law on the Procedure for Resolving Collective Labor Disputes, as amended (currently through 2001), and the 1996 Russian Federation Law on Professional Unions, Their Rights and Guarantees of Activities, as amended (currently through 2004), as well as Russian legislation on minimum wages and labor safety and other related laws and numerous regulations.

A written employment contract in Russian, setting out the basic terms of the employment relationship, must be entered into by each employee working in Russia. The Labor Code provides all employees with minimum guarantees that cannot be superseded by any other agreements between the employer and the employee. Accordingly, any provision in an employment contract that diminishes an employee’s position from that set forth in such guarantees will be invalid.

As a general rule, employment contracts are to be entered into for an indefinite period of time. A definite term employment contract may also be entered into, but such a contract cannot be enforced for a term longer than five years in duration, and it may only be executed in the circumstances specifically provided for by Article 59 of the Labor Code. Such situations usually occur when the nature or conditions of work make it impossible for the parties to enter into an indefinite term contract. Further, an employee cannot be prohibited from holding a second job in addition to his/her full-time employment with certain limited exceptions provided by Federal law.

Under Russian labor legislation, relevant employment duties and obligations should be defined in the employment contract. It is important that these duties and obligations are broadly defined because an employee cannot be required to perform tasks outside of the scope of duties described in his/her employment contract. Similarly, an employer cannot make unilateral changes to an employee’s obligations. Moreover, the employer must notify an employee 2 months in advance of any changes that would be made in the fundamental employment terms and conditions.

2. Employment-related Orders

Employers in Russia are required to issue an internal order (decree) each time an employee is hired, transferred to a new job, granted a vacation, disciplined, or terminated, and also in several other cases. For example, Article 68 of the Labor Code expressly requires that the order on hiring must be issued and given to the employee for countersignature not later than 3 days after the employment contract has been executed. When an employee is terminated for any reason, the order on termination must be issued and given to the employee for countersignature on the last day of employment.

3. Labor Books

A labor book is a document that contains information about a person's employment history, as well as certain other information. An employee must make sure that a note of employment is made in his/her labor book by an employer when the employment lasts for over 5 days. The labor book is vital because it confirms an employee's right to a state-provided pension and other benefits. Employers are responsible for keeping their employees' labor books and making all recordings in it in a timely manner. The employer must return the duly completed and stamped labor book to the employee on the last day of employment. If this is not done, the employer may be penalized.

4. Probationary Period

An employer has the right to establish a three-month probationary period for a newly hired employee. As an exception to the above rule, an employer may establish a six-month probationary period for employees hired for certain top executive positions (e.g., head of an enterprise, chief accountant and his/her deputies, head of a sole division of an enterprise). The imposition of a probationary period must be specifically stated in the employment contract, as well as in the order on hiring. If during the probationary period an employer determines that an employee does not meet the criteria established for the job position for which he/she was hired, the employee can be dismissed by the employer without payment of severance and with only three days' written notice. The above-mentioned notice to the employee must provide reasons for the employee's failure to pass the probationary period. However, an employee is entitled to resign during the probationary period without stating any reason with three days' written notice to the employer.

5. Minimum Wage

Wages may not be lower than the minimum monthly wage established by the applicable Russian legislation. The amount of the minimum monthly wage is subject to frequent indexation. Currently, the amount of the statutory minimum monthly wage is 720 rubles per month (approximately USD 26). As of September 1, 2005 it will be 800 rubles per month (approximately USD 29), and as of May 1, 2006, the amount of the statutory minimum monthly wage will be 1100 rubles (approximately USD 40).

6. Work Time

Employers are required to keep a record of all time worked by each employee, including any overtime. The regular workweek is 40 hours. Any time worked over 40 hours is classified as overtime and may only be demanded by employers in extraordinary circumstances, as specified in Article 99 of the Labor Code, and upon an employee's prior written consent. The Labor Code limits the total amount of overtime for each employee to 120 hours a year, and an employee may not be required to work more than 4 hours of overtime in two consecutive days. Overtime must be paid at the rate of 150 percent of the regular hourly rate for the first 2 hours of overtime worked during one day and at the rate of 200 percent of the regular hourly rate thereafter. Upon an employee's written request for such, an employer must compensate overtime work by granting the employee additional time off instead of payment of overtime compensation. Such time off shall be not less than the time worked as overtime.

Note that certain limitations regarding overtime work apply to protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of 3, disabled employees, and certain other categories as defined by Federal laws.

7. Holidays and Days Off

In Russia, there are 12 public holidays. The official public holidays are as follows:

January 1, 2, 3, 4, and 5	New Year's Holiday
January 7	Christmas
February 23	Fatherland Defender's Day
March 8	International Women's Day
May 1	Spring and Labor Holidays
May 9	Victory Day
June 12	Russia Day
November 4	National Unity Day

The length of weekend time off shall be not less than 42 hours. As a rule, employees may be required to work on a day off or on a public holiday only in extraordinary circumstances, as specified in the Labor Code, and only upon the employees' prior written consent. As a general rule, employees shall receive payment of not less than twice the regular rate for any work performed on a day off or on a public holiday or receive another day off instead.

Certain limitations connected with working on days off and on public holidays apply to the protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of three, disabled employees, and other categories as defined by Federal laws.

8. Vacations

Employees in Russia are entitled to an annual paid vacation of at least 28 calendar days per one year of work. An employee is entitled to use his/her vacation time (in full) once he/she has worked for an employer for at least six months. The Labor Code requires that the dates of annual vacation of each employee should be indicated in the schedule of vacations for the calendar year. The employer must approve this schedule by mid-December of the preceding year. The Labor Code further requires that employers notify their employees in writing at least 2 weeks before the vacation is to start. An employee's vacation allowance should be paid out to the employee at least 3 days before the vacation is supposed to start.

9. Sick Leave

In Russia, the system of sick leave requires an employee to submit a medical certificate (so-called "sick leave list") only after his/her recovery. Generally, employees cannot be terminated by their employer during a sick leave period and are entitled to receive sick leave compensation. Sick leave compensation is covered by the Russian State Social Insurance Fund, which is funded by the employer's contributions that are retained as a percentage of its employees' salaries in the form of the Unified Social Tax.

Under current rules, sick leave compensation must be paid to an employee in the event of his/her illness, injury (labor-related or other), and in cases when an employee is looking after a sick family member, as well as in some other instances. Currently, the amount of compensation paid to the employee during such sick leave is set at between 60 and 100 percent of the employee's earnings, depending on the employee's uninterrupted work history and other circumstances. In cases of a labor-related injury or occupational disease, the amount of sick leave compensation is 100 percent of the employee's earnings. On December 29, 2004, the Russian Federation Law on the Budget of the RF Social Insurance Fund for the Year 2005 No. 202-FZ was enacted, which, in effect, put a ceiling on sick leave compensation for employees in Russia. Pursuant to the Law, the amount of sick leave compensation for the period of a full calendar month cannot exceed 12,480 rubles (approximately USD 450).

The above limitation does not apply to certain defined categories of employees for whom sick leave compensation cannot be limited according to Federal law.

10. Maternity Leave

Paid maternity leave starts to accrue a minimum of 70 calendar days prior to the birth and continues to accrue for additional 70 calendar days after the birth. Paid maternity leave is provided for a longer period in the event of complications while giving birth or in cases of multiple births. Maternity leave compensation is covered by the Russian State Social Insurance Fund, which is funded by the employer's contributions that are retained as a percentage of its employees' salaries in the form of the Unified Social Tax. A child's caregiver (the employee who has given birth, the father, grandmother, grandfather, or another relative who is actually taking care of the child) may request partially paid childcare leave until the child is 3 years of age. During the entire period of paid/unpaid leave, the employee retains the right to return to his/her job, and the full leave period is included when calculating the employee's length of service.

11. Dismissal

An employment relationship may be terminated by an employer only on the specific grounds provided in the Labor Code, including reduction in force, the employee's repeated failure to fulfill his/her employment duties without justifiable reasons (if the employee was disciplined within the preceding 12 months), and the employee's unjustified absence from the workplace for more than 4 consecutive hours during 1 working day. An at-will termination of an employment relationship by an employer is not allowed. Employers when terminating employment for any reason must strictly comply with specific procedures and documentary requirements provided by the Labor Code. The Labor Code gives additional protection to a number of specific categories of employees, including minors, female employees, employees with children, trade union members, and various other categories. However, employees are entitled to terminate their employment at any time, without stating any reason, and, as a general rule, with only two weeks' written notice to the employer.

12. Compensation

Salaries must be paid to employees at least once every half a month. Employers are obligated to pay salary and other employment-related payments on a date set by the internal labor regulations or by the individual employment contract. An employer will be obligated to pay compensation (i.e., interest) for delaying the payment of salary and other employment-related payments in accordance with the rules established by Article 236 of the Labor Code. In addition, employees have the right to stop working, with prior written notice to their employer, if their employer has delayed payment of their salary for more than 15 days. Employees in Russia must be compensated in the currency of the Russian Federation (Russian rubles). As a general rule, employment-related payments in a foreign currency, both in cash and by bank transfer, are prohibited.

13. Foreigners Working in Russia

The prior permission of the appropriate migration authority is required for entities employing foreign nationals for work in Russia. In addition, a valid Russian work visa and a work permit are required for foreign nationals before they may commence working in Russia. The same rule applies to foreign nationals working in Russia under civil-law contracts for performance of works or provision of services (e.g., sales representatives). The permission to hire foreign nationals and individual work permits are issued to the employing entity for a period of up to one year. Currently in Moscow, the procedure for obtaining a permission to hire foreign nationals and individual work permits may take from 3 to 5 months to complete. In other constituents of the Russian Federation, this procedure may take significantly less time.

In addition, foreign nationals working in accredited representative offices of foreign firms should obtain a personal accreditation card from the representative office's accrediting body.

