

## *2019: key developments in Russian labour and migration legislation*

### **Pension reform**

#### **1. New retirement age in Russia**

Starting from January 1, 2019, the retirement age will increase by one year during each year of the transition period, until the retirement age reaches 65 for men and 60 for women.

The Law stipulates that men who reached 60 years old and have had 42 years of work experience, and women aged 55 years old and have had 37 years of work experience are entitled to retire earlier — 24 months prior to reaching standard retirement age.

The Law lists some categories of employees who are entitled to early retirements, such as:

- Women aged 56, having at least 15 years of working experience, if women gave birth to 4 children and raised them until they reached 8 years old;
- Women aged 57, having at least 15 years of working experience, if women gave birth to 3 children and raised them until they reached 8 years old.

#### **2. New criminal liability for employers**

Starting from October 14, 2018, there is a criminal liability for unjustified denial in hiring a person due to his/her pre-retirement age and unlawful dismissal of a person who has reached pre-retirement age.

Starting from January 1, 2019, pre-retirement age means 5 years prior to reaching the retirement age.

The penalties could be a fine up to 200 000 RUB (approx. 2 597 EUR); or fine in the amount of up to 18 months' salaries of the convicted person, or in a form of obligatory works for up to 360 hours. Criminal liability can be imposed on authorized officers of the legal entity (e.g., General Manager, HR Manager, etc.).

### **Labour law**

#### **3. Scheduled audits of companies for labour law compliance**

The Federal Labour & Employment Service published the list of companies which are subject to scheduled audits by the State Labour Inspectorate in 2019. The audit comprises a labour documentation audit of companies in relation to their compliance with the Russian labour legislation.

#### **4. Deadline for conducting special evaluation of working conditions**

By December 31, 2018, all companies had to complete a special evaluation of working conditions, which finally replaced the procedure for certification of workplaces.

As of January 1, 2019, lack of the documents confirming completion of the special evaluation of working conditions, at the workplace, may incur administrative liability.

Each company shall publish a summary of the results of the special evaluation on the company's website.

Starting from 2020, based on the data from the information system that records results of a special evaluation of working conditions, the Federal Labour & Employment Service will be able to automatically hold the companies, which failed to conduct a special evaluation of working conditions at the workplace, administratively liable.

## 5. Introduction of a tax for self-employed persons

Starting from January 1, 2019, an experiment on the taxation of “self-employed” individuals (individuals who are self-employed, who do not have an employer and do not attract employees under labor contracts) commenced in Moscow, Moscow Region, Kaluga Region, and Tatarstan.

The Federal Tax Service has already warned employers against re-hiring individuals as self-employed, in order to optimize taxes and social contributions. In case the Federal Tax Service reveals the fact of unlawful re-hiring of individuals as self-employed persons, the company may face additional taxes/fees and may be held administratively liable.

## 6. Extra days off for employees undergoing standard medical examination

From January 1, 2019, employees undergoing medical examination have the right to be released from work for one working day (once every three years), while preserving their place of work (position) and average earnings.

According to the changes, certain categories of employees are entitled to be released from work for two working days (once a year) while preserving their place of work (position) and average earnings. These categories of employees include persons of pre-retirement age, as well as working pensioners.

In order to be eligible to additional days off in order to undergo a medical examination, the employee must file a written application to the employer.

## Migration law

### 7. New criminal liability for sham migration registration

Starting from November 23, 2018, the law introducing amendments to criminal liability for sham migration registration of foreign nationals and stateless persons, came into force.

In accordance with the law, the following cases are considered as sham migration registration of foreign nationals, such as:

- migration registration at a place of residing, without intention of a foreign national/stateless person to live there, as well as without host party's intention to provide such place of residing for a foreign national/stateless person;
- migration registration at the company's address, where a foreign national/stateless person does not perform labour activities in fact.

Sham migration registration may entail the criminal liability in accordance with the Russian Criminal Code. The penalties could be a fine up to 500 000 RUB (approx. 6 490 EUR); or fine in the amount up to 3-years' salary of the convicted person; or in a form of obligatory works for up to 3 years, with suspension of the right to hold certain positions, or perform certain activities for up to 3 years; or imprisonment for up to 3 years with suspension of the right to hold certain positions or perform certain activities for up to 3 years.

### 8. New obligations of parties inviting foreign nationals in Russia

Effective as of January 16, 2019, amendments to the migration legislation impose new obligations for the companies inviting foreign nationals in Russia.

The changes concern both the invited foreign employees and business partners. Namely, the companies which obtain/issue the invitation letters for work, or business, visas shall now track the compliance of the purposes of arrival/period of stay in Russia of these foreign nationals, as well as ensure their timely departure from Russia. The list of specific measures, that companies must take, will be approved by the Russian Government Decree, which has not yet been adopted. However, the liability of non-compliance is already in force.

The law establishes a new administrative liability for inviting parties who do not comply with the above obligations. The following fines apply:

- for individuals — from RUB 2000 (approx. EUR 26) to RUB 4000 (approximately EUR 52);
- for officials of legal entities (e.g. company directors) — from RUB 45000 (approximately EUR 584) to RUB 50 000 RUB (approximately EUR 649);
- for legal entities — from RUB 400000 (approximately EUR 5 195) to RUB 500000 (approx. EUR 6 490).

## Civil procedure

### 9. Amendments to procedural legislation

In 2019, amendments to procedural legislation will come into effect, which will directly affect the procedure for handling labour disputes.

In accordance with the new rules, only lawyers and other persons with higher legal education, or a degree in law, can be representatives in court. At the same time, new requirements will not apply to legal representatives (for example, to the general director of the company).

The changes establish a new cassation appeal rules. The cassation appeal will need to be submitted to the cassation court of general jurisdiction, through the court of the first instance (previously, the complaint could be submitted directly to the cassation court). In addition, the complaint will need to be filed within three months from the date of the entry into force of the contested judicial act (a six-month period was previously set).

The law provides that if a claim is filed with an arbitration court, instead of a court of general jurisdiction (provided that the court of general jurisdiction must consider such a case), the case will be referred to a court of general jurisdiction on jurisdiction.

The law also provides additional requirements for the content of the claim.

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