

client alert

EMPLOYMENT LAW | RUSSIA |

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REMINDER | RESTRICTIONS IN RELATION TO THE SECONDMENT OF STAFF IN RUSSIA

Please be reminded that Federal Law No. 116-FZ, dated 5 May 2014, which sets out the legal framework for the secondment of staff in Russia, will come into effect on 1 January 2016 (the "**Law on Secondment**").

The Law on Secondment introduces amendments notably to the Labour Code of the Russian Federation (the "**Labour Code**") and the Law of the Russian Federation No1032-I dated 19 April 1991 "*on employment of population in the Russian Federation*" (the "**Law on Employment**").

The main novelties resulting from the Law on Secondment are summarised below, though it should be noted that, until the adoption of this law, activities related to staff secondment were not regulated by Russian legislation.

1. DEFINITION OF THE CONCEPT OF OUTSOURCED EMPLOYMENT

The Law on Secondment introduces to Russian legislation the legal concept of outsourced employment ("*zayemnyi trud*"), which is defined as "*employment performed by an employee upon his/her employer's request in the interests and under the supervision and control of an individual or legal entity not being his/her employer.*"

2. GENERAL PROHIBITION ON OUTSOURCED EMPLOYMENT

The Law on Secondment sets out a general prohibition on outsourced employment in Russia. This prohibition will be reflected in a new Article 56.1 of the Labour Code.

3. EXCEPTION REGARDING CERTAIN TEMPORARY SECONDMENTS

Exceptions to the general prohibition on outsourced employment are established by the Law on Secondment in relation to employees who are seconded on a temporary basis under certain conditions. These exceptions will be regulated by a new Chapter 53.1 of the Labour Code and a new Article 18.1 of the Law on Employment.

3.1. General Conditions

Pursuant to the Law on Secondment, the main general conditions for the temporary secondment of employees include the following:

- a) Activities related to the temporary secondment of employees may only be carried out by:
 - private employment agencies that are Russian legal entities specifically accredited in accordance with applicable legislation and regulations;¹ or
 - other legal entities (including foreign companies) complying with applicable legal requirements, namely: (i) legal entities affiliated with the employer of the seconded employee, (ii) joint-stock companies, if the employer of the seconded employee is a party to a shareholders' agreement in relation to the joint-stock companies where the employee is seconded, and (iii) legal entities that are a party to a shareholders' agreement with the employer of the seconded employee.
- b) Secondment is subject to the consent of the seconded employees.
- c) The employer of the seconded employees and the host (receiving) party must enter into a staff secondment agreement. Pursuant to this agreement, the host (receiving) party must pay a fee for the staff secondment services provided by the employer. The host (receiving) party must also comply with employment legislation and regulations, including the employer's obligations related to labour safety.
- d) In the course of their secondment, the seconded employees must perform professional functions defined in the employment agreements entered into with their employer in the interests and under the supervision and control of the host (receiving) party.
- e) The remuneration of a seconded employee, which is fixed in the employment agreement concluded with his/her employer, must be no less than the remuneration paid by the host (receiving) party to its employees performing similar professional functions and holding similar qualifications. If the employee is seconded to work in dangerous or hazardous conditions, the employer must pay him/her the respective compensation on the basis of information on the characteristics of the workplace provided by the host (receiving) party.
- f) The host (receiving) party is jointly and subsidiary liable toward the seconded employee for obligations arising from employment relations with his/her employer, notably salary payment, payment of other compensation, etc.

¹ Pursuant to the new Article 18.1 of the Law on Employment, legal requirements in relation to private employment agencies entitled to carry out temporary secondment activities are in particular the following:

- Their charter capital must be at least equal to RUB1,000,000 (approx. EUR13,000);
- They must not have any tax debts or other indebtedness related to payments to the budget of the Russian Federation;
- They must be managed by a person (i) holding a higher education degree, (ii) having, within the last three years, at least two years of professional experience in the field of job placement or assistance in the employment of population in the Russian Federation and (iii) not having been convicted for any criminal offence committed against individuals or any economic crime;
- They cannot be subject to specific tax regimes.

3.2. Limitations

As a general rule, the Law on Secondment prohibits seconding employees for the purpose of:

- a) the host (receiving) party replacing employees who are on strike;
- b) performing work in the event of the host (receiving) party: temporarily suspending its activities; implementing the bankruptcy procedure; or establishing a part-time working regime in order to preserve working places and avoid mass layoffs;
- c) replacing employees of the host (receiving) party who are refusing to perform their professional duties in cases determined by applicable employment legislation, including in the event of the employees temporarily interrupting their work due to a delay in the payment of their salary exceeding 15 days.

In addition to these prohibitions, private employment agencies must not second employees in the following specific cases:

- a) performing certain professional duties at hazardous production facilities classified in I and II categories;
- b) performing professional duties at workplaces with dangerous or harmful working conditions classified in 3rd or 4th category;
- c) replacing specific functions in accordance with the staff list ("*shtatnoyie raspisanyie*") of the host (receiving) party, if the presence of employees replacing these functions is required to obtain a licence or another authorisation/certificate authorising the host (receiving) party to carry out certain activities or be a member of a self-regulatory organisation;
- d) performing professional duties as a maritime or boat (both maritime and inland) crew member.

3.3. Regime for Secondment by Private Employment Agencies

In accordance with the Law on Secondment, a private employment agency is entitled to temporary second employees to a third party only if this third party is:

- a) an individual not acting as an individual entrepreneur, who needs private support and housekeeping services;
- b) an individual entrepreneur or legal entity that needs to replace an employee who is temporarily absent and maintained in his/her job;
- c) an individual entrepreneur or legal entity who plans a temporary extension (up to none months) of his/its production activities or volume of services.

Private employment agencies may also second certain categories of protected employees in a limited number of cases when any employer may, under applicable legislation, conclude a fixed-term employment contract. Categories of protected employees to whom this rule applies are, in particular, students attending full-time programmes, single parents and large family parents (if their children are minors) and former detainees.

The Law on Secondment specifies that employment relations between seconded employees and private employment agencies are not suspended during the secondment, and no employment relations should arise between the seconded employees and the host (receiving) party.

Moreover, the Law on Secondment imposes on private employment agencies an obligation to ensure that the host (receiving) party actually uses the services of the seconded employees in accordance with the professional functions defined in their employment agreements, and that it complies with applicable employment legislation.

Every secondment must be documented by the conclusion of an amendment to the employment agreement between the seconded employee and the private employment agency. This should include information on the host (receiving) party, references to the staff secondment agreement entered into with the host (receiving) party (date and place of conclusion, number, duration) and, as the case may be, certain specific conditions regarding the rights and obligations of the host (receiving) party set out in the staff secondment agreement. A new amendment to the employment agreement must be concluded if the employee is further seconded to another host (receiving) party.

In addition, private employment agencies must complete the work books ("*trudovye knizhki*") of the seconded employees.

4. MISCELLANEOUS

It should be noted that the Law on Secondment does not regulate all the legal aspects related to the secondment of staff in Russia.

Additional legislative acts and regulations will be further adopted in application of the Law on Secondment, notably in order to define the regime for secondment to affiliated or related companies (cf. Section 3.1a) above), immigration aspects related to the secondment of foreign employees in Russia, the procedure of accrediting private employment agencies, etc.

In the absence of these additional acts and regulations, it is at this stage unclear how a foreign company will be entitled to second foreign employees to an affiliated company in Russia for a limited period.

CONTACTS

DAVID LASFARGUE

lasfargue@gide.com

BORIS ARKHIPOV

arkhipov@gide.com

TIM THEROUX

tim.theroux@gide.com

EKATERINA VILENSKAYA

vilenskaya@gide.com

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