

SINO-RUSSIAN BUSINESS: FIVE TIPS ON RUSSIAN EMPLOYMENT AND IMMIGRATION LAW

Establishing a business in Russia is invariably connected with human resources regulation. The subject is heavily legislated and employers have a number of duties, obligations, and liabilities. Russian employment law is generally regarded as over-protective of employees.

Immigration law has undergone recent developments, and is rather complex. Individuals who enter Russian territory are distinguished by the purpose of their visit and their status; immigration law also prescribes certain pre-conditions and formalities that must be fulfilled.

Below is some general guidance related to the most crucial points of Russian employment and immigration law.

Tip 1: The Employment Contract

An employment contract must be in writing and provide for the rights and duties of both employer and employee. Its provisions may also refer to internal regulations adopted by the employer unilaterally, although if there are any inconsistencies, employment contract provisions will prevail.

Contracts can be concluded for an indefinite or definite term; the former being the general rule and the latter the exception. A contract for a definite term of up to 5 years can only be concluded where the relevant grounds are provided by law, and in certain cases only with the employee's consent.

A probation period of up to 3 months for ordinary employees and 6 months for sole executive bodies, chief accountants, and a few other managing positions must be an express term of the contract, or it will not be considered valid. Dismissal during the probation period is only possible if justifications based on the employee's professional abilities are given; unjustified dismissal is not allowed.

In order to guarantee the employer an enhanced level of protection of its rights, the employment contract should be made as detailed as possible, as making amendments without the employee's consent after the contract is signed will be rather difficult to do.

Termination of employment in Russia is one of the most rigid and strictly regulated areas of Russian employment law. Termination of an employee at the initiative of the employer may only be carried out in accordance with the provisions of the Russian Labour Code. Generally, an employer cannot terminate an employee's contract 'at will', i.e. through a unilateral decision without cause or legal justification. Russian employment law requires compliance with a

number of formalities when terminating an employee, and these depend on the grounds for termination. Details of the specific procedure to be followed should therefore be ascertained in each case, prior to the termination of an employment relationship.

Tip 2: Confidentiality and Other Restrictions

An employer who wishes to protect confidential and/or sensitive data will need to adopt a number of detailed rules and procedures. Courts are usually inclined to decide in favour of the employees when formal drawbacks are revealed. In substance, guaranteed protection is only possible if extremely detailed procedures which describe who, how, and under what conditions the sensitive data may be accessed are followed. It is the duty of the employer to take all the necessary precautions to prevent non-authorized users from accessing this protected information.

Restrictive covenants such as non-competition or non-solicitation clauses are generally unenforceable in Russia, although some confidentiality obligations may be enforceable to a limited extent. Such restrictions are considered to be in violation of the employee's right to work and the employee's right to free disposal of working abilities, both rights granted by the Constitution and the Russian Labour Code.

Tip 3: Sick Leave, Maternity Leave, and Child Care Leave

The right to sick leave is granted from the employee's start of employment and requires no minimum length of service. However, length of service can be crucial in determining the amount of sick leave pay, which can vary from 60% to 100% of the employee's average salary, but never more than the established limit.

The allowance is calculated on the basis of the employee's average monthly salary over a period of two years, and is capped at a specific amount. The employer is required to pay this allowance and then set it off against social contributions. The first three days of absence, however, are paid from the employer's funds.

An employee who requires maternity leave is entitled to 70 days' paid leave prior to the child's birth, and 70 days' paid leave after the child's birth. This allowance is increased to 84 days prior to the birth when more than one child is expected, 86 days after the birth for a difficult birth, and 110 days after the birth for a birth of triplets or more.

Child care leave may last up to three years and can be used by the mother or the child's relatives at any time during this period. The employer is responsible for paying the various maternity-related allowances provided for by law and then setting off the relevant amount against social contributions.

In general, pregnant women and women with children who are under three years old are entitled to an extensive number of benefits and privileges in relation to work conditions and contract termination.

Tip 4: Working and Business Visas

Business and working visas are very important to the business activities of companies.

Business visas are designed for foreign nationals who wish to conduct short-term and temporary business activities in Russia. Examples of these activities include business trips, negotiations, market studies and preparations to establish a company in Russia. Foreign nationals with multi-entry business visas are permitted to stay in Russia for up to 90 days within a period of 180 days.

Foreign nationals who obtain Russian business visas are not allowed to undertake any type of work activities in Russia, as this would require a work visa. Work visas are designed for foreign nationals who intend to conduct professional activities in Russia.

The family members of the holder of a work visa may also obtain 'work visas'; these will be marked as "accompanying person" and will entitle the family members to stay in Russia, although without the right to work.

Work visas are only issued after the employer has received general authorisation to recruit foreign nationals and has been provided with a quota of foreign persons they may recruit. Each foreign employee will also have to obtain a work permit.

Tip 5: Highly Qualified Foreign Specialists

Legal entities and branch offices of foreign companies may enjoy a simplified procedure for obtaining work permits for foreign employees that are considered to be "highly qualified foreign specialists". As of January 1, 2015 this procedure will be available for accredited representative offices of foreign companies as well.

Annual remuneration paid to a highly qualified foreign specialist must be at least RUB 2 million gross (approx. USD 55,555) unless a lower amount is specified in international agreements for

certain nationals. At the moment there is no relevant agreement with the People's Republic of China, so the general rule will apply.

The work permit for a highly qualified foreign specialist can be obtained within 14 working days, and the employer is exempt from a significant number of formalities (e.g. obtaining a quota and the general authorisation to recruit foreign employees).

Opting for a highly qualified foreign specialist regime will also afford employers increased flexibility, such as extended work permit validity, the possibility of obtaining a work permit for multiple Russian regions instead of just the region where the employer is based, and the imposition of fewer restrictions on business trips.

For further information, please contact:

Valeriy Fedoreev

Partner

CMS, Russia

Gogolevsky Boulevard, 11

119019 Moscow, Russia

T: +7 495 786 40 00

D: +7 495 786 40 60

E: Valeriy.Fedoreev@cmslegal.ru