




FEW MONTHS REMAIN UNTIL STAFF LEASING IS BANNED IN RUSSIA

For the attention of company CEOs, in-house lawyers and HR specialists


Pepeliaev Group reminds you that, as early as on 1 January 2016, the ban on using 'staff leasing' (in Russian 'zayomny trud') is to take effect¹.

Owing to the new legal regulation being introduced², companies should pay attention to the following.


1. Starting from 1 January 2016, almost all forms of staff leasing used in Russia will be *de facto* prohibited by law, except for a very limited number of cases (please refer to Item 2 below).

 Companies violating this ban may face a fine (up to RUB 100,000 for a legal entity and up to RUB 20,000 for an executive). If a company engages a foreign national to work in violation of the law, tougher actions may be taken (for a legal entity: a RUB 1,000,000 fine, suspension of operations for 90 days, and a ban on hiring highly-skilled specialists; for the foreign national: a RUB 7,000 fine, administrative deportation from Russia, and a ban on entering Russia of up to 5 years, etc.).

2. Providing employees (staff) labour to third parties will be possible only as prescribed by the law, i.e. only **private staff agencies ("PSAs") and certain other legal entities, for example, affiliated ones³**.
3. Companies may enter into contracts for providing employees (staff) labour with PSAs only: (i) if such agencies are accredited; and (ii) in special cases envisaged by law (for example, to replace an employee who is temporarily unavailable).

 Please note that, for the moment, the basic rules for accrediting PSAs have not been approved, but have been prepared, and are already at the expert review stage⁴.

4. It will become possible for companies to enter into contracts for seconding staff (personnel) with other legal entities (that are not PSAs) only after the relevant federal law has been passed⁵.

 At present, the draft law has been prepared and is at the development and expert review stage. However, the prospects of this law being adopted by 2016 remain vague, and its final version may considerably differ from the current one.

¹ Federal Law No. 116-FZ dated 5 May 2014 'On amending specific items of the legislation of the Russian Federation' // Rossiyskaya Gazeta, Issue 101, 7 May 2014

² Please see Chapter 53.1 of the Russian Federation Labour Code, which enters into force as of 2016.

³ The kinds of entities are provided by the Law No 1032-1 dated 19 April 1991 'On the employment of the population in the Russian Federation' and will be also specified by a special federal law on seconding staff (personnel) with another entities that are not PSAs.

⁴ URL: <http://regulation.gov.ru/projects#npa=26227>.

⁵ URL: <http://regulation.gov.ru/projects#npa=9931>.

5. In addition, currently, **the risk of recognition of *de facto* employment relationships with leased staff is becoming higher** and will increase even more as the new regulation comes into force. Already now a number of sanctions may be imposed on employers for avoiding the direct conclusion or improper conclusion of the employment contract with the employee, or for the use of a civil law contract instead of an employment contract (penalties up to RUB 100,000 per each employee, etc.). In the case of foreign national employees, the consequences for the employers may be much more serious.

What to think about and what to do

To avoid punishment from the supervisory authorities, we recommend that the companies should prepare in advance for the new statutory requirements and should probably re-examine their existing models of staff leasing.

If, by 1 January 2016, the additional legal provisions referred to above have not been approved and given that the risk of recognition of the direct employment relationships has been increased, we advise companies to analyse the models they use and choose the best strategy for the 'transitional period' until the legal regulation of providing employees (staff) labour has been introduced in full and the court and inspections practice has been developed.

Help from your adviser

Pepeliaev Group's lawyers have an extensive track record of advising on how to build non-standard employment relationships and providing legal support when new statutory requirements are implemented (among other things, developing step-by-step guidelines and action plans, analysing and assessing existing and potential risks, drafting amendments to local regulations, employment contracts, etc.). They also have directly participated in preparing amendments to the draft laws mentioned above.

Pepeliaev Group's lawyers will readily provide customised advice to companies on how to prepare for a "transitional" period and recommendations on companies' activities after the new legal requirements come into effect.

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