



NEWS FOR EMPLOYERS: THE LAW BANNING SO-CALLED 'ZAYOMNY TRUD' HAS BEEN ADOPTED

For the attention of heads of companies, in-house lawyers and human resources specialists.

Pepeliaev Group advises that, on 5 May 2014, Russian President Vladimir Putin signed the law banning 'zayomny trud' (the "Law")¹.

The Law was developed for the purposes of amending items of Russian legislation to prevent employers from avoiding entering into employment agreements. Using the mechanisms of 'zayomny trud' (as defined below) and 'secondment' is recognised as being one of the avoidance methods used. The amendments that have been passed will come into force on 1 January 2016.

The most substantial changes that the Law makes are:

1. It amends the Russian Law 'On the Employment of the Population in the Russian Federation (the "Law on Employment")².

The Law on Employment will be amended to add a definition of "carrying out activities regarding agency labour (secondment)" and of a list of persons having the right to carry out such activity.

2. Amending the Russian Labour Code (the "Code")

The Code will be supplemented by:

- a direct prohibition on 'zayomny trud', which will be defined as labour carried out by an employee who is at the disposal of an employer on behalf of, and under the management and control of, a third party;
- particular aspects being specified of how the labour is regulated of employees sent on a temporary basis to third parties under an agreement to supply employees (staff) on an agency basis;
- an obligation of the employer and host party to bear joint liability against the employees sent to work for that host party.

Particular attention should be paid to the following:

1. The Code contains rules only in relation to private employment agencies (PEAs). Relationships between other legal entities in relation to temporary agency employees (what in Russian is called 'secondment', using the English word) should be regulated by a separate federal law, which is still at the stage of being developed.
2. The Law on Employment does not cover all existing forms of activity that relate to one legal entity supplying staff to another. Secondment is permitted only in a context where a shareholder agreement has been entered into or where the party supplying staff and the host company are affiliates. Such an approach from legislators creates additional unjustified restrictions on the ability to use the mechanism of secondment. In view of the lack of clear conditions for an internal corporate secondment, there must be doubt as to whether the very possibility of secondment will continue to exist.

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

² Law No. 1032 I dated 19 April 1991 'On the Employment of Population in the Russian Federation' // 'Collected Russian Legislation', No. 17, 22 April 1996, article 1915.

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3. The activity of PEAs is also substantially restricted.
 - a) A PEA has the right to enter into employment agreements with employees only in cases where such employees are sent to work for a host company on a temporary basis (up to 9 months) under a secondment agreement. This may be done only for activity to be performed in the context of an approved job function.
 - b) A company may enter into a secondment agreement with a PEA to engage more than 10% of such company's average staff headcount only with due regard for the opinion of the elected body of the company's primary trade union organisation.
 - c) PEAs must undergo an accreditation procedure and must comply with the following specified requirements:
 - i. they must have issued capital of RUB 1 million or more;
 - ii. no outstanding liabilities of tax, levies and other mandatory payments to the Russian Federation's state budgetary system are allowed;
 - iii. a degree and two years of professional experience in the job recruitment sector are required for the position of head of the PEA;
 - iv. no criminal convictions for offences against individuals or for offences of an economic nature are allowed for the position of head of the PEA.
 - d) Various other restrictions have also been enacted. These relate to the nature and conditions of the host company's activity.
4. The Law does not expressly mention that it is possible to enter into secondment agreements under which employees (staff) are sent to a host (an individual or legal entity) abroad. The fact that this situation is not directly regulated causes uncertainty as to whether it may lawfully be applied in practice.

What do the new developments mean for employers?

It seems to us that the passing of the law brings with it substantial risks for employers, such as: there is greater legal uncertainty, new corruption schemes will spring up, business processes will become more complex, and so on. Nevertheless, the partial enactment of the conditions for PEAs to operate may be regarded as a step towards the advent of transparency in the sector and as one positive outcome of the Law being passed.

At the same time, it must be said that companies will be obliged to significantly reduce the number of external specialists they hire, especially using a secondment model. This may cause serious losses for business.

Help from your adviser

Pepeliaev Group's lawyers have experience of advising across the board on how to construct non-traditional labour relationships. They are well versed in providing legal support when clients implement new legislative requirements (including, among other things, devising step-by-step guidance and plans of action, analysing and assessing the existing and potential risks, and drafting amendments to the client's internal regulatory documents and to employment contracts).

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