



NEWS FOR EMPLOYERS: CHANGES IN THE PROCEDURE FOR ENGAGING FOREIGN NATIONAL EMPLOYEES AND DETERMINING THE QUOTAS

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

Pepeliaev Group advises that, in Moscow, 7 April 2014 was set the starting date for applications to be filed to determine the level of demand for foreign national employees to be engaged to work during 2014 and 2015 ("Applications").

The general rules for determining employers' need for foreign national employees have also been changed.

According to the Moscow City Department of Labour and Employment, the following deadlines have been set for employers to file Applications:

- before 1 July 2014, Applications are to be filed for the next year;
- before 1 September 2014, Applications are to be filed for the current year.

The key feature of the Application filing procedure is that the authorized body needs to be provided with the originals of the certificates confirming that the employer is registered or accredited as a legal entity or a branch / representative office in accordance with Russian legislation.

We also draw readers' attention to the fact that on 22 March 2014, new rules came into effect for determining the level of demand for hiring foreign national employees' (the "Rules").

These Rules set up a new procedure for determining the employers' need in engaging foreign national employees in labour activities in a constituent entity of the Russian Federation and suggesting the ways of increasing (reducing) the demand rate in foreign national employees, that was established earlier.

In connection with the Rules being introduced, companies may have difficulties with engaging foreign nationals in labour activities in Russia if those foreign nationals do not qualify as highly skilled or skilled foreign specialists.

A review of the main changes is provided below:

1. Now the constituent entities of the Russian Federation independently decide on demand rate for hiring foreign national employees.

Based on applications filed by employer an authorized officer of the relevant constituent entity of the Russian Federation, determines the demand rate for foreign national employees, including any cases when the demand rate increases or reduces.

2. The procedure and timeframes for considering employers' applications has been reduced.

Employers file the Applications with the authorized body of the constituent entity, which refers them to be examined by the inter-agency commission (the "IAC") of the constituent entity, which deals with the hiring and use of foreign national employees.

Now it takes only around 1.5 months in total period for an Application to be considered, starting from the date on which it is submitted to the authorized body until the employer gets the IAC's decision. However, the IAC's decision may be amended at a later stage.

3. The list of criteria which employers must comply with to engage foreign national employees has been amended significantly.

The rules set an open list of "quality-based" criteria based on which the IAC assesses employers' applications and decides whether to accept or reject them. Such criteria include, for instance, the following:

¹ Order No. 27n of the Russian Ministry of Labour and Social Protection (Moscow) "On adopting the Rules for the state authorities of a constituent entity of the Russian Federation to determine whether there is a need for foreign national employees to be engaged" dated 23 January 2014.

- whether it is possible for the employer's need in foreign national employees to be met using local staff within the same RF constituent entity, among other things, by providing professional education, reallocating staff inside the constituent entity or engaging staff from other constituent entities, by engaging recent graduates, etc.);
- whether the employer has any outstanding breaches of labour, migration, tax law as well as relevant rules in the areas of social and medical insurance, social protection of disabled persons, and employment legislation;
- whether the employer provides to foreign national employees with medical insurance and housing facilities in cases provided for by Russian legislation, etc.

4. In comparison with the previous rules, the following are preserved:

- the preliminary application system (through the Automated System accessible at www.migrakvota.gov.ru);
- the need for foreign national employees is approved for the subsequent year;
- the system for determining the need for foreign national employees to be hired, including in relation to priority professional specialization groups as well as the countries of origin (the states to which the nationals belong) of the foreign national employees;
- the option for adjusting (increasing or decreasing) the need for foreign national employees.

What do the new developments mean for employers?

The introduction of the new extended criteria for assessing employers' applications, in our view, may significantly affect the hiring of foreign national employees if they are not highly skilled or skilled foreign specialists.

In addition, since the Rules do not set out any definition or explanation of what should be considered as an outstanding breach of law (employment, migration, tax law, etc.), this may result in the IAC applying its discretion widely when it assesses employers' applications.

However, it is worth noting that the Rules significantly reduce the period for the employers' applications to be considered, which is undoubtedly a change for the better.

Help from your adviser

Pepeliaev Group's lawyers are ready to provide the necessary legal support in relation to any issues connected with enforcing legal requirements with regard to drafting, analyzing the legal aspects of, and filing employers' applications to engage foreign national employees. Our experts are also ready to perform a legal analysis of whether employers are complying with employment, migration and tax law, legislation in the areas of social and medical insurance, social protection of disabled persons, and employment legislation.

Our experts possess in-depth experience of advising and drafting the necessary documents in the above areas of the law.

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