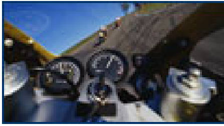

PRICEWATERHOUSECOOPERS

Legal Flash Report

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On 30 June 2006, the Federal Law was passed "On Amendments to the Russian Employment Code, Recognition of Some Regulatory Legal Acts of the USSR as Ineffective on Russian Federation Territory, and Invalidation of Certain Legal Acts (Provisions of Legal Acts) of the Russian Federation" (hereinafter, the Law). As provided for in Article 3 of the Law, it enters into force 90 days from the date of its official publication. According to clarification issued by the Russian Ministry of Health Care and Social Development in its Letter of 25 July 2006 No.1556-12, this date is 6 October 2006.

In total, over 300 amendments and over 10 new articles were added to the Employment Code. Most of the amendments are of a technical nature and seek to eliminate wording ambiguities and allow more straightforward interpretation of Employment Code provisions.

Another positive effect of the newly adopted Law is that it specifies a list of regulations to lose effect as a result of its amendments. These regulations were mostly inherited from the Soviet period, and had not been formally invalidated until now.

In view of the large number of amendments made to the Employment Code, we have decided to focus this review on the amendments which concern employment contracts, the most important elements of employment relations.

Contents of employment contracts

As a result of the amendments, the practice of dividing employment contract provisions into the categories "material" and "other" was abandoned. Provisions of employment contracts are now treated as either "information" or "terms"; the latter are further subdivided into the categories "mandatory for inclusion in an employment contract" and "supplementary". The amendments further state that the omission of any information or terms required for inclusion in an employment contract does not constitute grounds for termination of an employment contract or declaring it unconcluded. The employment contract, in this case, should be expanded to include the missing information and/or terms. An obvious deficiency, however, is that the Employment Code does not establish a procedure or timeframe for including the missing information in the contract.

The new Law requires the employer to confirm that an employee has received a copy of the employment contract. This is to be done by obtaining the employee's signature on the employer's copy of the contract. The Law also makes it mandatory for an employee to be informed of internal labour rules and the employer's local regulations before signing an employment contract. Additionally, an employee must be informed of all newly adopted and/or amended local regulations.

Also amended was the list of grounds for drawing up a fixed-term employment contract. The Law identified a number of situations in which only fixed-term employment contracts are allowed, irrespective of the wishes of the parties.

The procedures annulling an employment contract were amended. If an employee fails to start on the previously agreed first day of work, the employer shall be able to annul the employment contract, which in this regard would be recognized as unconcluded. Previously, the employer had the right to do so only if the employee failed to start within one week of the first day of work.

New Article 84.1 "General Procedures for Termination of an Employment Contract" details the procedures terminating a contract. This new addition to the Employment Code will make it possible to avoid disputes between employees and employers with respect to these procedures. One drawback of the Law is that it has not set a general procedure for amending employment contracts, which would make relations between employees and employers even more orderly.

The Law amended the procedures for setting an employee's probation period. In particular, no probation period shall be established for graduates of primary, secondary and higher professional education institutions having state accreditation, if they have taken a job consistent with their professional training within one year after graduation from the educational institution. It also prohibits setting a probation period for pregnant women, women with children under one and a half years of age, and persons less than 18 years of age.

Amendment of employment contracts

As provided for in the Employment Code, an employment contract can be amended under mutual agreement of the parties, except in cases specifically referred to in the Code. The recent amendment eliminated the contradiction that existed between general provisions of the Employment Code, under which amendments to an employment contract could only be made under mutual agreement of the parties, and separate provisions of the Employment Code, under which an employer could amend an employment contract unilaterally.

The advantage of the amended Law is that it sets out a detailed procedure for amending an employment contract on the employer's initiative. In particular, under the Employment Code, an employee (under mutual agreement of the parties to the employment contract) can be transferred to another position for a period up to one year or during the absence of another employee. Under the Employment Code, an employee (except for managers and some other categories) can be transferred to another position for a period of up to four months on the basis of a medical report. The duration of the period for which an employee can be transferred to another position without his/her consent was also amended.

New grounds for suspending an employee have been added to the Code. For instance, under certain circumstances an employee can be suspended in connection with temporary revocation for a period of up to two months of his/her special permit (license), permit for driving a transport vehicle, etc.

Termination of employment contracts

For the most part, provisions on the termination of employment contracts were revised to comply with amendments made to other provisions of the Employment Code.

Amendments were made to Article 80 of the Employment Code, which regulates termination of an employment contract on the employee's initiative. As specified by the Law, the two-week notification period necessary for an employee to terminate an employment contract on his/her own initiative starts the day after the respective notice is received by the employer.

The Law amended the definition of absence from work; it is now defined as an employee's absence from the place of work without a reasonable excuse for more than four continuous hours during a workday (shift), and also as an employee's absence from the place of work without a reasonable excuse during the whole workday (shift), irrespective of its duration. Under this provision, absence from work may be grounds for dismissal of those employees that have a workday (shift) of less than four hours—part-timers, for example.

Article 81, which lists grounds for an employer's termination of an employment contract, was expanded to include a new set of provisions. Thus, for example, divulging personal information about another employee constitutes grounds for dismissal.

The Employment Code specifies which grounds for employment contract termination are to be considered disciplinary sanctions and therefore require that the employer both comply with procedures established in the Employment Code for imposing disciplinary sanctions and issue the necessary documents.

The amendments introduced new grounds for terminating an employment contract irrespective of the wishes of the parties. For instance, expiry of the contract, suspension for a period exceeding two months or revocation of an employee's special permits in accordance with federal laws and other legal acts of the Russian Federation constitute grounds for dissolving an employment contract if, as a result, the employee becomes unable to perform his/her duties under the employment contract.

In conclusion, despite the technical nature of these amendments, they should facilitate the elimination of existing contradictions and inaccuracies in the practical application of the Employment Code, which in turn should help to mitigate related risks to employers.

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For more detailed comments on the above, please contact the lawyers of PricewaterhouseCoopers CIS Law Offices B.V. in the Moscow office of PricewaterhouseCoopers Russia at (495) 232-5757.

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