

CORONAVIRUS OVERCOMING THE DIFFICULTIES

REDUCTION OF COSTS FOR PERSONNEL AT THE TIME OF CORONAVIRUS IN RUSSIA

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Due to the current situation with COVID-19 and related financial difficulties some employers are forced to reduce the costs for personnel. At the same time employers have to consider that Russian employment legislation is mainly focused on protection of employees' rights. Considering that employers have to use only those options that are completely lawful.

- *Downtime regime*

For those of the employers that as a result of statutory measures to prevent the spread of COVID-19 were forced to suspend its activity and are not able to provide employees with the work for reductions of costs introduction of downtime regime may be used unless redundancy of employees is planned.

Downtime as per Art. 72.2 of Russian Labour code is determined as a temporary suspension of work due to economic, technological, technic or organizational reasons.

The downtime that occurred on the grounds beyond the control of employer and employee shall be paid at a rate of 2/3 from employee's salary proportionally to the downtime period. Downtime may be worthwhile to use for the employees with bonus payments (provided that this is a major part of employee's remuneration) as this allows to save significant costs of the employer in a current difficult economic situation.

Downtime regime is introduced by the internal order of the employer. Even though it is not explicitly regulated it is recommended to include in the order provisions about the reason for downtime introduction, scope of its application (from one employee to all employees in staff), timing and order of payment as well as absence of the need for presence of employees at working places. As a general rule downtime is deemed as a working time, in this regard employees have to be present at the place of employment unless it is expressly allowed by the employer. Those employees that will be in downtime shall be acknowledged with the order of the employer against signatures.

- *Unpaid or paid leave of employees*

Even though such scheme seems to be favorable for employers according to Article 128 of Russian Labour code unpaid leave may be provided only at the initiative of employees.

So, the only legal option for the employer in this regard may be a proposal to employees to take unpaid vacation. If the employer forces the employee to file application on provision of unpaid leave and such enforcement may further be proved by the employee, the employer may be held administratively liable for violation of labour legislation with administrative fine in the amount ranging from 30,000 to 50,000 RUR for each violation (this applies to every employee being in such forced unpaid leave). In addition to the above the employer in case of respective labour dispute has to compensate the employee lost salary (that has not been received for the period of forced vacation).

The forced use of annual paid leave that is not foreseen by the vacation schedule is also deemed as unlawful practice. If the employee agrees to use the leave it is required that the employee submits application to the employer. Afterwards the respective order of the employer is to be issued and the employee shall be familiarized accordingly

If the employer is interested in performance of labour duties by employees (either fully or partially) the following solutions may be reviewed.

- *Part-time working regime*

Part-time working regime may be established by mutual agreement between the employee and the employer executed in a form of Addendum to the employment contract. Part-time work assumes that salary is paid in proportion to the actually worked hours. Part-time work may be introduced simultaneously with transfer to remote employment. With these measures the employer from the one hand saves costs and from the other hand ensures compliance with the statutory measures to prevent spread of COVID-19. With part-time working regime there are no limitation for the employees in terms of duration of annual paid leave, work record and other rights.

Part-time working regime may be established at the initiative of the employer (without consent of employees) in compliance with Art. 74 of the Russian Labour code due to changes of organizational or technological labour conditions. In such a case the employee shall be notified about the forthcoming changes not less than 2 months in advance. If the employee refuses to continue employment in such new conditions the Employer have to offer in a written form any other available vacant position (either in line with the qualification of the employee or the position with lower qualification or payment). If there are no available positions or the employee does not accept the offer of the employer the employment contract may be terminated on the basis of par. 7 part 1 Art. 77 of Russian Labour code. In such case the employee is provided with a severance benefit in the amount of 2 weeks' average salary.

Article 74 of Russian Labour code also allows to establish part-time working regime when there is a risk of mass redundancy due to changes of organizational or technological labour conditions. This is possible as an exceptional measure for the period of up to 6 months. The opinion of trade union (if exists) is to be considered. Another formality is the notification of the employment service within 3 working days from the date of taking the respective decision on establishment of part-time working regime. If the employees do not agree with such part-time working regime employment contracts may be terminated with payment of compensation and provision of all the applicable guarantees as determined by the labour legislation for staff redundancy.

- *Reduction of salary for non-fulfillment of labour duties*

Provisions of Article 155 of Russian Labour code foresees that in case of non-fulfillment of labour duties on the grounds beyond the control of employer and employee salary is to be paid at a rate of 2/3 from employee's salary in proportion to the actually worked time.

These rules similar to payment within a downtime regime may be applied for the purposes of costs reduction to those employees that currently may not be provided with full-time employment and continue to perform labour duties to a certain extent.

It is recommended to consider termination of employees only as a measure of last resort.

Russian Labor Code provides the possibility to terminate employment contract due to circumstances beyond the control of the will of the parties, for example, due to extraordinary circumstances (including epidemics). Based on subpar. 7 par. 1 Art. 83 of the Labor Code termination is only possible when such circumstances impede the continuation of work and are recognized as an extraordinary by the decision of the Government of Russia or by the decision of a state authority of the corresponding Russian region. Currently there are no such decisions, therefore the established high alert regime does not allow the employer at least now to terminate or suspend employment contracts.

Considering the current conditions termination due to staff redundancy and reaching a mutual agreement on termination may be the most favorable options.

It is also recommended to take into account the clarification of Rostrud (Federal Service for Labor and Employment) about termination of the employment contract with employees. It is relevant to those employees that do not work within the so called established "non-working period" (is valid until April 30th with presumable prolongation until mid-May). Such termination is possible in accordance with the initiative of the employee (provided that HR department working remotely is ready to accept such application), under mutual agreement and due to expiry of a fixed-term employment contract within the non-working period.

April 22nd, 2020

Il presente articolo ha esclusivamente finalità informative e non costituisce parere legale.

This article is exclusively for information purposes, and should not be considered as legal advice.



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