

TERMINATION OF PREGNANT EMPLOYEES: WHAT TO CONSIDER

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During the course of a persistent Covid-19 pandemic issues with personnel may become more complicated. Sometimes employers are faced with the problems of terminating employment relationships with their employees. It may well be the case that such problems concern pregnant employees. The labour law and the court practice protect the interests of pregnant employees especially in case of termination. In this article we will focus our attention on those aspects to be considered by employers to avoid any violation of rights of pregnant employees in case of termination of employment contracts.

Termination at the initiative of employer

In general, pregnant employees may not be terminated at the initiative of the employer. The only exception is provided in case of liquidation of the employer company. As confirmed by the court practice, awareness by the employer of the pregnancy of its employee is not strictly necessary. This means that, even if the employee did not inform the employer about her pregnancy during the termination procedure, the court decision will be in favor of employee (in other words, in this case termination will be held illegal).

Termination upon expiry of a fixed-term employment contract

Fixed-term employment contract with a secondary employee can be entered into for the period when the primary employee is temporarily absent (for childcare leave or other reasons) and is terminated when primary employee returns at work. Employment relationship with a pregnant secondary employee may be terminated, provided that there are no vacant positions for transfer or in case of refusal of such transfer.

Upon expiry of a fixed-term employment contract with a pregnant employee, it shall be extended until pregnancy or maternity leave is terminated (in the latter case, provided that the employee used such vacation). Generally, the employee shall submit to the employer written application and medical certificate confirming her state of pregnancy. However, sometimes such documents are not presented. The court practice in this respect is rather controversial. On one hand, there are court decisions (such as, among others, the *Appeal decision of the Higher court of the Komi*

Republic dated 28.05.2018 in the case No. 33-3098/2018) stating that termination of an employment relationship with a pregnant employee is lawful, if the employee did not provide the employer with the relevant medical certificate or written application. On the other hand, in other court decisions (such as, among others, the *Appeal decision of the judicial collegium for civil cases of the Sverdlovsk region dated 01.08.2018 in the case No. 33-13576/2018*) it was held that the right of a pregnant employee to extend a fixed-term employment contract does not depend on the application of the employee. Therefore, the employer must clarify beforehand with the pregnant employee whether or not she plans to extend the contract. Among other, in this case the court paid special attention to the fact that the employee refused to get acquainted with the termination order and to receive her labour book. In the reasoning of the court, these actions were to be interpreted as a presumption that the employee was willing to extend her employment relationship.

Given that court practice is quite controversial, it is advisable that at the time of expiry of the contract employers ask the employee whether she is pregnant and (if confirmed) whether she intends to extend her employment contract. It is worthwhile mentioning this issue in the notification concerning the forthcoming termination.

Termination pursuant to mutual agreement

The Russian Labour code does not prohibit entering into a mutual termination agreement with pregnant employees. At the same time, the court practice confirms that such termination is risky.

The Russian Supreme court in its *decision dated 20.06.2016 No. 18-KГ16-45* reinstated an employee that discovered to be pregnant after having signed the mutual termination agreement and then reconsidered the termination. In such situation, the refusal of the termination by the employee is somehow a presumption that termination actually occurred at the initiative of employer.

The Moscow city court in its *appeal decision dated 26.02.2019 in the case No. 33-3938/2019* has even moved further in this direction. Termination of pregnant employee pursuant to mutual agreement was deemed illegal, even though the employee was aware of being pregnant prior to signing the mutual termination agreement. The arguments put forward by the court were the same. An agreement may not be valid in case there is no willingness on the side of the employee.

Termination at the initiative of employee

In general, an employee is entitled to terminate his/her employment agreement on a voluntary basis. However, certain issues arise with regard to pregnant employees.

The court may establish that the pregnant employee, in fact, had no intention to terminate her employment agreement and, as a result, reinstate the employee. Such situations occurred in practice in the following cases:

- the employee argued that the application for termination was signed under pressure because of internal investigation on the employee and possible imposition of disciplinary sanctions (*decision of the Moscow city court dated 10.07.2019 No. 4з-8509/2019*);
- the employee actually discovered to be pregnant after termination of the employment relationship and asked the employer to be reinstated, but the employer refused to reinstate her (*Appeal decision of the Moscow city court dated 30.11.2018 in the case No. 33-50325/2018*);
- the employee was unable to revoke the application for termination because she was in hospital undergoing medical treatment (*Appeal decision of the Moscow city court dated 14.11.2018 on case No. 33-49516/2018*);

- the employee had no real intention to terminate the agreement and incur salary loss, since she had two dependent children and no other source of income or job offers at that time (*Appeal decision of the Moscow city court dated 30.08.2018 on case No. 33-33963/2018*).

In order to avoid disputes with pregnant employees, it is thus advisable to cancel termination if a pregnant employee explicitly asks so and there may be a risk that the court considers this behaviour as a sort of forced termination.

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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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