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Out-of-Court Settlement of Employment Disputes: Common Options

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In today's Russia, employment relations in small and medium-sized businesses largely depend on informal arrangements, the role of legislation still being inadequate. Even so,

major businesses mindful of their reputation have to take full account of the Labor Code. Labor disputes might, of course, evolve in any company, irrespective of size, triggered by demands for higher salaries, as well as other differences. Employers have a wide range of tools at their disposal for resolving and remedying such disputes. In practice, to resolve an employment dispute, employers often negotiate with or dismiss the employee, engage in mediation, raise salaries (as demanded by the employee) or even gather discrediting information about the employee concerned. If a conflict cannot be resolved through negotiations, relevant competent bodies come in, such as the council for conciliation or the Federal Labor Inspection. Below, we discuss each of the above instruments.

NEGOTIATIONS are a common way of resolving employment status, as well as any other disputes and differences. Even so, though quite effective in certain situations, this method might prove absolutely fruitless in others.

So what is specific about negotiations as an employment dispute resolution method?

Say an employer needs to dismiss an undesirable employee. Fairly often, officers just propose that he resigns voluntarily, referring to reasons such as relevant instructions from the management or poor performance. In most instances, such negotiations are doomed to failure.

The story is quite different if the employer compiles several sets of documents pertaining to the conflict situation: one containing an agreement between the parties proposing some appropriate conditions, depending on the specifics of the conflict concerned (such as cash compensation) and another containing documents with evidence of disciplinary sanctions previously imposed on the employee. Instead of cash compensation, the employer might also propose that the employee retain his voluntary medical insurance for an agreed period of time, be given a good reference or have unpaid leave while he searches for a new job.

In certain cases, **EMPLOYEE DISMISSAL** proves the only way to resolve a difficult conflict.

The most common options in relieving an employee from duty are dismissal by agreement between the two parties or on the grounds of staff reduction due to cutbacks, dismissal owing to repeated employee failures to fulfill his job duties for no apparent reason, provided a disciplinary sanction has been imposed, and dismissal in the event of a single gross violation of duty.

A pre-arranged agreement between the parties offers the employer by far the best assurance that the employee will not be subsequently reinstated by court ruling. This is also a fairly good option for the employee, compared to staff reduction, job elimination or dismissal for gross violation of or failure to fulfill job duties.

To dismiss an employee on the basis of staff reduction, for gross violation of or failure to fulfill job duties, the employer should abide strictly by all formalities of procedure prescribed by the employment legislation. For instance, in the event of a decrease in salary, the employer must notify the employee in person and have him validate the document with a signature at least two months before the intended dismissal date (Article 180 of the Labor Code). Upon termination of employment, the employee is paid severance equal to his typical monthly earnings, and also retains his monthly salary for up to two months while seeking

a new job (Article 178 of the Labor Code).

MEDIATION is a form of out-of-court dispute resolution aided by a neutral and unbiased third party and is used extensively in Europe, the United States and Australia. Historically, mediation was an instrument for resolving international and trade disputes, but the modern-day environment also sees mediation as a means for employment dispute resolution.

The mediator will often be a well-known practicing lawyer specializing in labor law. At the same time, mediation as an employment dispute-resolution tool is still infrequently used in Russia, even though Russian companies sometimes do engage lawyers focusing on labor law at their own expense, to obtain an expert opinion on a dispute.

A PAY INCREASE can hardly be recognized as an efficient means for resolving employment disputes, since it only yields temporary and deceptive results. An employee who has managed to wring a pay raise once is very likely to initiate a new conflict with the employer, believing that an employer who paid up once is likely to do so again.

Many employers also consider **COLLECTING DISCREDITING INFORMATION ABOUT THE EMPLOYEE** as an employment dispute-resolution method. Obviously, in most instances this is done to get rid of an unwanted employee. Since this method is highly personal and is far from good faith, it is difficult to discuss its efficacy in practice.

Notably, use of compromising information about an employee might, in certain circumstances, be recognized as an arm-twisting procedure by a court of law.

EMPLOYMENT DISPUTE CONSIDERATION BY A COUNCIL FOR CONCILIATION

The current labor legislation allows an employment dispute to be considered by a council for conciliation. The employee may apply to a council for conciliation within three months of the day on which he becomes or should have become aware of the infringement of his rights. In practice, this instrument of out-of-court settlement is not widespread, since individual employment disputes are more often initiated by employees who prefer to go straight to court or the Federal Labor Inspection. Instances of employees applying to a council for conciliation to resolve employment disputes are also infrequent because few entities have such councils since a certain amount of expertise is required to set up a council for conciliation and its proceedings.

Even so, these means of settling a dispute might prove handy for the employer.
The advantages of referring an employment dispute to a council for conciliation are that no government authorities are involved, the dispute stays within the company or its structural unit, which, among other things, reduces the risk of leaking confidential data and precludes an undesirable spread of information about the pending dispute. Another convenience of dispute resolution by a council for conciliation is the shorter amount of time it takes to reach a decision. A council for conciliation considers employment disputes much more speedily than a court of law (within 10 days of the application date), which also helps reduce legal costs for the employer. Establishment of a council for conciliation will itself, though, require additional expenses on the part of the employer, since the employer is charged with providing administrative and technical support for the council.

EMPLOYMENT DISPUTE CONSIDERATION BY THE FEDERAL LABOR INSPECTION

Russian labor legislation provides another means of pretrial resolution of employment disputes involving a government authority, namely the Federal Labor Inspection or its territorial offices (the labor inspection). The labor inspection has the power to visit with individuals, consider applications, letters, complaints and other submissions from employees pertaining to infringements on their rights, to carry out unscheduled inspections, take steps to eliminate violations identified and restore infringed rights.

In practice, employees quite frequently apply to the labor inspection seeking employment-dispute resolution and protection of their rights and legal interests. Labor inspection considers an employee's application within 30 days of the application registration date. Following the results of an inspection, the employer may be held liable for failure to meet the legislative requirements on work safety. In addition, if manifest departures from labor legislation are revealed, the employer will be issued binding orders to eliminate them.

This out-of-court employment settlement tool is attractive only to employees, who readily initiate proceedings with the labor inspection, and triggers inspections of the employer's operations and potential administrative liability if any departures are revealed.

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