

Features for Hiring Foreign Staff as Heads of Representative Offices

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Some employers who invite foreign employees to work as the heads of representative offices of foreign legal entities, as well as for other positions, mistakenly believe that they are not required to obtain work permits.

Apparently, this error is based on certain provisions of Federal Law № 115-FZ from July 25, 2002 "On the Legal Status of Foreign Citizens in the Russian Federation." Thus, according to paragraph 9 of Part 4 of Article 13 of the Federal law, these foreign citizens are not required to obtain a work permit where the two following conditions are simultaneously met:

1. They are included in the number of employees agreed upon by the Russian representative office's authorized accrediting body;
2. They are citizens of states with whom Russia has signed an international treaty, and which, according to the treaty based on the principle of reciprocity, accords citizens of the Russian Federation the same right of employment in the offices of foreign companies without obtaining permits.

At the present moment, the Russian Federation has not signed any international treaties that determine the mutual number of employees of foreign representative offices.☒ With this in mind, the employer is obligated to issue a work permit in all cases for foreign employees who are invited to work at representative offices on the territory of the Russian Federation.

Employers can apply for a work visa for the head of a representative office at the same time as applying for a work permit.☒ Apparently, this possibility of receiving a work visa before the issuance of a work permit entices employers to forgo the subsequent obtaining of a work permit, a fact that goes against Russian law.

The fact that the heads of representative offices receive wages from and pay taxes to a foreign

state is an additional factor in misleading employers about the need to obtain work permits for these foreign employees.

In this circumstance, a foreign citizen receiving wages from and paying taxes to a foreign country is in no way mutually connected with obtaining a work permit in Russia as per the meaning of Article 11 of the Labor Code of the Russian Federation. Moreover, according to Russian tax legislation, foreign citizens who spend more than 183 days in the Russian Federation during the calendar year are considered to be tax residents of the Russian Federation and are subject to pay taxes on the territory of the Russian Federation.

Thus, Russian employers must complete the following migration documentation for the hiring of a foreign head of a representative office who enters the territory of the Russian Federation via a visa regime: an accreditation card of the foreign employee, a corporate work permit, a personal work permit for the foreign citizen for a period of up to 1 year, as well as an invitation for a single-entry work visa for 3 months with a further re-issuance of a multiple entry work visa valid for up to 1 year. It is also necessary to implement a number of related procedures (refer to the Employment Center with information about the requirements of foreign employees, notification to the appropriate tax authorities regarding the recruitment and employment of foreign workers, as well as notification of the foreign citizens' arrival by place of residence). When hiring a foreign head of a representative office entering the territory of the Russian Federation via a visa-free regime, employers can eliminate the need to issue visa documents; they do not need to obtain an accreditation card for this employee. But employers should also notify tax authorities, the territorial department of the Federal Migration Service and the Employment Center of the employment of foreign employees.

It should be noted that the recruitment and hiring of a foreign employee without having obtained a valid work permit may result in the imposition of an administrative fine of 250,000 to 800,000 rubles or the administrative suspension of business activity for a period up to 90 days.

Given the above stated facts, employers who recruit and hire foreign citizens as heads of representative offices must obtain a work permit for these foreigners in order to avoid administrative responsibility.

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