

New Developments in Legislation on Outsourcing

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The effective use of outsourcing personnel is supported by the long history of its application in the world economy. In Russia, outsourcing personnel is effectively done by both Russian organizations and foreign companies, which began the widespread use of the given model in issues pertaining to the temporary employment of staff.

In world practice, there are rather well-known cases where the outsourcing of personnel helped save certain organizations from the threat of bankruptcy by allowing them to temporarily provide their employees for employment within other companies, thereby greatly reducing labor costs during the time of the company's crisis. Even without taking into account such "crises," the options for the use of outsourcing personnel should not underestimate the effectiveness of the option, its flexibility and the new opportunities it can offer to employers and employees in the economy of the 21st century.

In Russia, there is still currently no legal framework governing the use of outsourcing of personnel. The Labor Code does not contain a definition for contingent "agency" labor, nor rules for the building of the employment relationship between an employer and an employee in the given scheme of employment. Despite this, the State Duma is at the moment considering legislation that would in effect impose a total prohibition on the use of contingent labor. (Contingent labor refers to the concept of temporary employees provided to an organization by a third party on the basis of an agreement either with an employment agency or some other business entity.)

Draft legislation № 451173-5 banning the practice of outsourcing was passed in the first reading by the State Duma of the Russian Federation. It is worth noting that almost immediately after it was introduced for consideration, the draft legislation was harshly criticized by the business community and within individual circles of power. Thus, the ineffectiveness and negative aspects of the draft legislation was fairly stated by government of the Russian Federation and the Social and Economic Development Ministry.

The opponents of the proposed legislation in its current form correctly note that the prohibition on the use of contingent labor or outsourcing will deliver a blow to the country's economy as a whole. "It is necessary to regulate the practice, but not to prohibit it," representatives of the business community said, along with the government of the Russian Federation.

Considering the large number of negative reviews addressed to the draft legislation № 451173-5, the Committee on Labor, Social Policy and Veterans Affairs have prepared proposed amendments. These amendments introduce the possibility of using outsourcing and define the rules of interaction and cooperation between employers and employees.

Pursuant to the amendments, it proposes to introduce the concept of an agreement on the provision of personnel allowing for the temporary sending of employees (with their consent) to other employers. In this case, it is agreed that between the hosting party and the temporary employees provided, no permanent employment relationship may arise out of such a provision and the monitoring for compliance of the hosting party of labor laws upon the provision of temporary employees will be exercised by the providing party, i.e. the original employer, but it is very difficult to imagine how this will work in practice.

Also, an amendment to the law banning the use of contingent labor introduces the concept of a third party or private employment agencies — that is to say, organizations that will be a mandatory intermediary in the chain of outsourcing personnel.

Private employment agencies, in accordance with the changes, will be non-governmental organizations that have been accredited and are working in cooperation with government employment agencies. At the same time, the amendments specifically stipulate that in the capacity of private employment, agencies cannot be accredited to exercise the operations of small and medium-sized businesses using a preferred tax regime.

The definition of "Hosting Party" in accordance with the changes refers to the organization accepting temporary employees to fulfill employment functions on the basis of an agreement on outsourcing.

The proposed changes also specifically stipulate that in respect to the salaries of temporary employees, that salary is accrued and paid in consideration of all the required laws of insurance premiums. The size of the premium paid will be determined according to the type of economic activity of the hosting party and other factors, in particular the results of and an evaluation of workplace conditions of jobs in which the temporary employee is performing work related duties.

Thus, the hosting party within the scope of the fulfillment of obligations for the provision of the workplace, salary and other forms of compensation under labor legislation also commits to the calculation and payment of insurance premiums.

It is also proposed to further strengthen an additional guarantee from the replacement of permanent employees by the use of temporary personnel. Thus, subject to change, that in the event the number of temporary employees exceeds 10 percent of the average number of staff, the decision on the concluding of a private employment agency agreement on the temporary provision of personnel will be made taking into account the opinions and views

of professional trade unions.

The amendments also provide a rather important social guarantee in that the agreements on outsourcing will by necessity include provisions related to salary, and that they will not worsen the situation of temporary personnel in comparison to the provisions of salary of employees of the hosting party employed in a similar position.

Also to the hosting party, in accordance with the changes, there is an assumed responsibility to provide safe working conditions and occupational health and safety for temporary employees, providing them with the necessary technical documentation, tools and equipment to perform their work-related duties, all of which also has to be provided for in the terms of the outsourcing agreement.

The amendments identified the following cases in which a private agency has the right to provide temporary personnel:

- providing temporary personnel to an individual who is not a self-employed for purposes of personal care and or personal assistance;
- providing temporary personnel to serve in the temporary absence of permanent employees by which in accordance to labor legislation, collective agreements, social partnership agreements and other acts of the work place are followed;
- For the temporary expansion of production, increase in output;
- Employment of persons who are temporarily unemployed.

The provision of temporary personnel by an outsourcing agreement in accordance with the changes shall be prohibited in the following cases:

- For employees who are on strike;
- For the replacement of personnel during an anticipated period of downtime, passage of bankruptcy proceedings of the organization;
- For the replacement of personnel suspended in relation to withholding in the payment of payment of wages;
- For the replacement of personnel who are employed working in dangerous situation;
- For the fulfillment of certain types of work, if such work requires that the hosting party holds special authorization or license.

Given the aforementioned, the changes offer a sound approach to the creation of a legal mechanism for implementing out-sourcing of personnel by means of consolidating the cases in which it will be possible to use out-sourcing and when it is prohibited.

This in turn will provide both employers and employees all the benefits associated with the use of contingent labor, while at the same time restricting employers from improper actions that may be detrimental to the rights of employees.

Thus, in contrast to the draft legislation which effectively prohibits the outsourcing of personnel in any form, the presented amendments offer more realistic and deliberate steps in improving labor legislation in the Russian Federation. This is not to deny that changes may require additional refinement, for example adjusting the list of cases where the use of outsourcing of personnel is permissible and where it is prohibited and to further determine the rules regarding the interaction of the providing and hosting parties which again does not deny the significance of the proposed changes.

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