

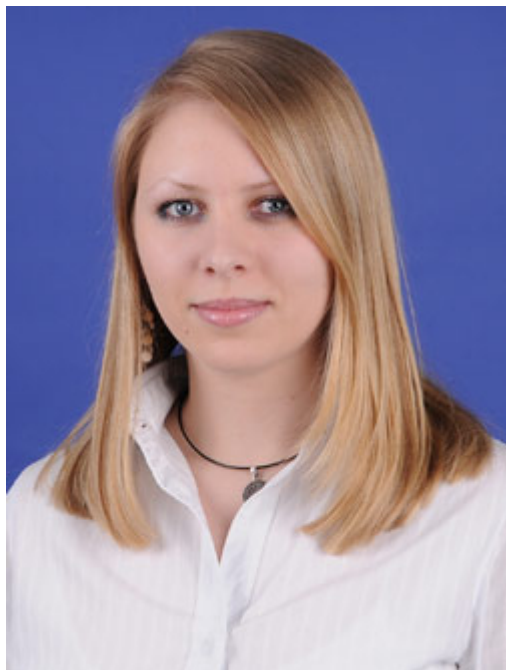
Employment: Labor Law: Old Risks, New Penalties

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Labor legislation has seen significant changes in the past few years. This reflects the need for state regulation in certain areas of changing employment relationships. Some of these changes, for example, include new chapters in the Labor Code for regulating the employment of remote employees and foreign employees. Also, the process of evaluating an employee's work place for labor safety purposes was replaced by a special assessment of working conditions at the work place, as well as other changes.

The year 2015 started with changing definitions for labor law violations and a toughening of the penalty regime. In particular, a new version of Article 5.27 of the Administrative Offenses Code introduced separate penalties for failure to conclude an employment contract or for the substitution of a civil law contract for an employment contract. The penalty is up to RUB 100,000 for employers penalized the first time and up to RUB 200,000 for employers penalized a second time for the same violation. The new Article 5.27.1 of the Administrative Offenses Code provides penalties for different violations of labor safety requirements up to RUB 200,000. Article 19.5 of the Administrative Offenses Code added a new Paragraph 23, which introduces penalties of up to RUB 200,000 for not complying with the written directions of a labor inspector.

From past experience, when a regulator toughens the penalties for any kind of violation, it is a warning for every business to check its level of compliance, to assess all risks and to take any necessary preventative measures. Employers should look carefully at the new penalties and ask: Are there any non-compliant labor practices that potentially could lead to penalties for my company? Do I have civil law contracts with individuals who should be treated as employees under employment contracts? Have I performed the required special assessment of working conditions at the workplace? Was my assessment timely?

Simultaneously with the new monetary penalties for labor violations, a new type of penalty —

a warning — has been introduced to the Administrative Offences Code. This is a new tool for the authorities to prevent violations and to give employers an opportunity to make corrections without facing a monetary penalty (a fine).

The government recently approved a plan dedicated to increasing the efficient monitoring of labor law compliance for 2015–2020 (hereafter the Plan). The Plan describes the existing factors that negatively impact labor law compliance and the monitoring of labor law compliance. It cites the lack of balance between incentives for labor law compliance and penalties for labor law violations, as well as the lack of preventive measures. The goal of the Plan is to change the existing "penalty model" into a "compliance model." Thus, the introduction of a new penalty — a "warning" — is in line with the Plan's goal over the next few years, because a warning encourages employers to stay compliant to avoid "real" penalties. Tougher "real" penalties may also stimulate employers to cease non-compliant practices if the risks become higher. Or at least this is the theory.

In practice, however, the differentiation of labor law violations may simply result in additional disputes with the labor authorities. For instance, during the course of a field audit, an inspector uncovered several violations relating to different articles of the Labor Code and imposed multiple fines for what should have been one overall violation. The employer proved in court that the violation of several articles of the Labor Code creates only one overall violation according to Part 1 of Article 5.27 of the Administrative Offences Code. Therefore, there should have been only one penalty.

In another case, an inspector tried to impose sanctions based on different articles of the Administrative Offences Code for the same violation. The inspector found a "general" violation for the absence of a special assessment of working conditions at the work place (Labor Law Part 1 of Article 5.27), two "specific" violations for breaches of labor safety requirements (Labor Law Part 1 of Article 5.27.1) and a failure to perform a special assessment (Labor Law Part 2 of Article 5.27.1). Again, the employer had to defend its position in court. The court held that in this case, Article 4.4 of the Administrative Offences Code should be applied. According to that article, if an action (or inaction) constitutes an offence under several articles of the Labor Code, only one penalty applies based on the article with the most severe penalty.

The above cases are another reason for employers to pay special attention to the recent changes to the penalty provisions and to re-assess "old" risks of labor law violations, including the cost of litigation.

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