
Employers now face greater liability for violations of legislation on employee compensation

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Summary

On 3 July 2016, Russian President Vladimir Putin signed into Federal Law No. 272-FZ “On amending specific Russian Federation legislative acts on increasing employers’ liability for violations of legislation on employee compensation” (the “Law”), which imposes greater liability on employers if they violate laws governing payroll issues.

The Law amends:

- the Russian Federation Employment Code (by setting tighter deadlines for making payroll payments, as well as higher interest rates on outstanding employee compensation due, and by introducing amendments concerning unscheduled inspections of employers for violations of payroll regulations and establishing a separate statute of limitations on labour disputes concerning non-payment or incomplete payment of employee compensation);
- the Russian Federation Code of Administrative Offences (CoAO) (by categorising violations of payroll payment regulations as a separate type of administrative offence);
- the Russian Federation Code of Civil Procedure (CCP) (by amending the venue rules for lawsuits concerning the restoration of employee rights).

The Law was enacted to compel employers to make payroll payments on time and in full, in a volume no less than that stipulated by Russian employment legislation.

Please note that the Law will take effect **90 days from the date of its official publication**, which occurred on 4 July 2016.

In details

- *Changes concerning administrative liability for violations of salary payment regulations*

As noted above, the Law now classifies violations of payroll regulations, namely non-payment, delayed payment or incomplete payment of salaries and other payroll amounts, as a separate type of administrative offence unless such actions involved a criminal offence or salary amounts were set below the legally established limits (Part 6, Article 5.27 of the CoAO). Before the enactment of this piece of legislation, such violations were governed by general provisions (Part 1, Article 5.27 of the CoAO), whereas from now on they will be treated as a separate type of offence. However, it should be noted that, compared to the general regulation, the only change is the increased administrative penalty imposed on corporate officers (RUB 1,000-5,000 under the “old” rules versus RUB 10,000-20,000

under the “new” rules), whereas the amounts of penalties imposed on other entities remain unchanged (RUB 1,000-5,000 for unincorporated businesses and RUB 30,000-50,000 for legal entities).

Furthermore, the Law raises penalties for violations of payroll payment rules to be imposed on entities that were previously charged with administrative offences for similar violations: (1) RUB 20,000-30,000 or disqualification from one to three years for corporate officers (instead of RUB 10,000-20,000 roubles or disqualification from one to three years), and (2) RUB 10,000-30,000 for unincorporated businesses (instead of RUB 10,000-20,000), and RUB 50,000-100,000 for legal entities (instead of RUB 50,000-70,000).

Given the more stringent sanctions imposed for violations of payroll rules, employers should place greater emphasis on ensuring employment law compliance in this regard.

- *Changes concerning deadlines for payroll payments*

The Law also amends Part 6, Article 136 of the Employment Code, stipulating in particular that payroll payments (which, together with base salaries, may include other incentive payments and benefits) be made within 15 calendar days from the end of the period for which they were accrued.

In view of this, we urge employers to pay particular attention to this amendment and, if necessary, make appropriate changes in their corporate documents.

- *Changes concerning employers' material liability for delays in salary and other payments due to employees*

The Law revises Article 236 of the Employment Code concerning employers' liability for delays in payroll payments. In particular, if an employer fails to make payroll payments by a set deadline, it would be obligated to pay such amounts with interest (cash compensation) at a rate of at least **1/150 of the key rate of the Central Bank of Russia (CBR)** then in effect (the previous version called for interest of **1/300 of the CBR refinancing rate**) charged on the relevant salary or payroll arrears for each day of delay, starting from the first day after the payment due date and continuing through the actual payment date, inclusive. The new wording also specifies that if salary or other payments due to an employee were not paid in full and on time, such interest (cash compensation) must be accrued on the actually outstanding amounts.

In enacting such changes that raise penalty amounts, in particular, the lawmakers are seeking to compel employers to refrain from delaying salary and other payroll payments.

- *Changes concerning unscheduled inspections of employers for violations of payroll regulations*

The Law amends Article 360 of the Employment Code. From now on, unscheduled state labour inspections may be conducted on the basis of information received by the federal labour inspectorate, including information on circumstances that lead to non-payment or incomplete payment of salary or other amounts due to employees on time, or setting salary amounts below the minimum level stipulated by labour law.

So, to avoid potential unscheduled labour inspections, it behoves employers to pay greater

attention to compliance with employment law provisions regarding payroll payments.

- *Changes concerning the statute of limitations for labour disputes concerning non-payment or incomplete payment of salary or other payroll payments*

The Law changes the period within which an employee can file a lawsuit in court for settlement of an individual labour dispute. In particular, a separate statute of limitations has now been set for disputes concerning non-payment or incomplete payment of payroll payments. Specifically, an employee can now file suit in court within one year from the original payment due date of the relevant outstanding amount, including cases of non-payment or incomplete payment of salary or other payroll amounts due to an employee upon his or her termination.

Please be reminded that the previous statute of limitations for such disputes was only three months. So, from now on, employers will have to factor in this extension of the statute of limitations when dealing with a potential dispute with an employee.

- *Changes in the venue rules for lawsuits concerning the restoration of employee rights*

Together with the relevant changes in the CoAO and Employment Code, the Law also introduces changes concerning the rules on venue for lawsuits concerning the restoration of an employee's rights. From now on, employees can file such claims at their place of residence. As stated in the explanatory note to the Law, "the ability to file claims at their place of residence will ensure a more effective protection of employees' rights when an employer's address changes, or when the employer registers in a different constituent region of the Russian Federation; reduce financial losses of citizens who are not earning salaries, including those working on a rotational basis and remotely, taking into account their socially relevant specifics (for example, being a mother and raising children, or caring for family members)".

Employers should therefore pay greater attention to assessing the risks of potential disputes, since an employee may now file suit in a region other than where the employer is located, which could create difficulties in obtaining and reviewing case materials and lead to additional litigation-related expenses.

- *Our recommendations*

Given the more stringent sanctions to be imposed for violations of employment law, we recommend that employers pay greater attention to ensuring compliance with employment law, particularly as regards payroll payments, and verify that their corporate documents comply with the Law, and

make any necessary changes (particularly as regards the timeframe of payroll payments).

In our view, the changes concerning the statute of limitations for employment disputes concerning non-payment or incomplete payment of salary or

other payroll payments, and changes in venue rules for filing lawsuits for restoration of employee rights may entail the most significant adverse consequences for employers.

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