



GRATA
INTERNATIONAL

Local Knowledge
for Global Business

www.gratanet.com

Remote work in Russia (including remote work of foreign workers)

At the end of 2020, the labour legislation of the Russian Federation was supplemented with a new version of Chapter 49.1 of the Labour Code of the Russian Federation, which regulates the work of telecommuters.

With the onset of a pandemic of a new coronavirus infection around the world, the approach to labour relations and the human resource management system has been revised and rethought, the shortcomings of the regular work of employees working directly in offices, gaps in the regulation of teleworkers, and the pros and cons of telecommuting have been revealed.

The demand for teleworking has opened up new business opportunities and expanded the labour market boundaries for employers, which were previously limited by the employer's territory and a radius of 100 km.

Companies now have the opportunity to attract highly qualified specialists not only from other regions of the country, but also from other countries, without additional costs for moving and living a much needed employee and specialist.

However, in practice, the question arose of the applicability of Russian labour law to relations with foreign employees operating remotely, but outside of the Russian Federation.

In the opinion of the majority, based on the provisions of Article 11 of the Labour Code of the Russian Federation, according to which, on the territory of the Russian Federation, the rules established by labour legislation and other acts containing labour law norms apply to labour relations with the participation of foreign citizens, stateless persons, organizations created or established by foreign citizens, stateless persons or with their participation, international organizations and foreign legal entities, unless otherwise provided by this Code, other federal laws or an international treaty of the Russian Federation, concluding an employment contract with an employee located abroad and intending to perform its function outside the Russian Federation is impossible.

Such relations can be formalized only by a civil law contract.

A similar position was expressed by the Ministry of Labour of Russia in its letter No. 14-2 / OOG-10811 dated December 7, 2016, according to which the Labour Code of the Russian Federation (hereinafter referred to as the Code) does not provide for the possibility of concluding an employment contract on remote work with a citizen of the Russian Federation, with a foreign citizen or stateless person working outside the territory of the Russian Federation, since, taking into account the provisions of Article 312.3 of the Code on the employer's obligation to provide safe conditions and labour protection for teleworkers, as well as the provisions of Article 13 of the Code that federal laws and other regulatory legal acts of the Russian Federation containing labour law are valid only on the territory of the Russian Federation; it is not possible for the employer to provide safe working conditions for remote workers working outside the Russian Federation. Thus, according to the department, cooperation with such citizens should be carried out within the framework of civil law relations.

However, let us turn to the content of Chapter 49.1 of the Labour Code of the Russian Federation as amended, effective from January 01, 2021.

The first paragraph of Article 312.1 of the Labour Code of the Russian Federation stipulates that remote (remote) work (hereinafter referred to as remote work, performance of the labour function remotely) is the performance of the labour function specified by the employment contract outside the location of the employer, its branch, representative office, other separate structural unit (including located in another area), outside a stationary workplace, territory or facility, directly or indirectly under

the control of the employer, provided that information and telecommunications are used to perform this job function and to interact between the employer and the employee on issues related to its performance. networks, including the Internet, and public communication networks.

At the same time, taking into account the provisions of Article 312.2 of the Labour Code of the Russian Federation, which determine that an employment contract with a remote worker can be concluded by exchanging electronic documents between an employee (a person applying for a job) and an employer in the manner prescribed by part one of Article 312.3 of this Code, i.e. ... by exchanging electronic documents using enhanced qualified electronic signatures, we can say that the current labour legislation of the Russian Federation does not contain a prohibition on attracting foreign employees to perform a certain labour function for a Russian company, without taking into account the provisions of Article 11 of the Labour Code of the Russian Federation and the established this regulation of restrictions.

Thus, a certain conflict of law arises in this issue, due to which, on the one hand, there is a restriction on the territory of the Russian Federation, and on the other, taking into account the specifics of remote work, such a restriction does not apply in this case.

For the sake of fairness, it should be noted that the employment contracts for such employees, nevertheless, are subject to certain rules established by the national legislation of the Russian Federation:

- ▶ A foreign employee who is not a resident in the understanding of taxation must have an account with a Russian bank to which wages will be transferred;
- ▶ The employment contract itself must be subject to Russian labour law;
- ▶ The amount of wages, in any case, must be established and paid in ruble equivalent, even if the parties agreed upon wages in foreign currency at its conclusion;

Subject to these rules, such an agreement will be considered lawful and reasonable.

As for the issue of compliance with labour protection requirements, with the emergence of the requirements of Article 312.7 of the Labour Code of the Russian Federation, the employer's obligation in this matter was reduced to familiarizing employees with the current provisions in this area, the employee's social insurance obligations, the obligation to investigate industrial accidents and fulfill regulations of the authorities.

Other legal requirements currently do not apply to remote employees.

Of course, with the issue of investigating accidents and compulsory insurance of such workers, there will be a lot of questions about the procedure for their implementation, especially if the employee is on the territory of another state, however, in our opinion, in this case there is a possibility of applying the relevant provisions regulating the work of journalists and diplomatic employees in aggregate with the principle of analogy (law).

It is the regulations governing the work of these employees that provide for the procedure for investigating accidents that occurred on the territory of foreign states.

Of course, in this case, the employer will require the formation of a local act defining the relevant features for employees working on a remote basis outside the Russian Federation.

Regarding the issue of whether the employer has a duty to notify the migration service about the admission and / or dismissal of foreign employees, if such an employee is recruited on a remote basis, such an obligation disappears, since the employee and the employer are located in different regions, while the obligation on notification of employment, by virtue of the current

legislation, arises only if the employee is hired in the region where the employer is present.

Thus, we believe that the amendments to the current labour legislation of the Russian Federation that have entered into force, in this case, expand the opportunities for Russian employers to attract highly qualified personnel from other countries, subject to certain conditions.

Author: Michael German, Partner, GRATA International

Practice areas

[EMPLOYMENT](#)

Locations

[RUSSIA](#)

