



## Changes in labor legislation

### New rules for severance pay and remote work

#### New procedure for severance pay

On 13 July 2020, parliament passed federal law № 210-FZ “On the introduction of amendments to the Labor Code of the Russian Federation with regards to the provision of guarantees for employees dismissed as the result of the liquidation of an organization” (the “**Amending Law**”), which came into force on 13 August 2020. This law amended provisions of the Labor Code of the Russian Federation (the “**RF Labor Code**”) related to payments due to employees when liquidating a company.

The basis for the adoption of the Amending Law was a decision of the Constitutional Court of the Russian Federation where article 178 of the RF Labor Code (prior to its amendment) was found to be unconstitutional<sup>[1]</sup>. In this ruling, the Court held that the right to severance payment of 2 months’ average monthly earnings after dismissal due to the employer being liquidated was not, in fact, guaranteed to all dismissed employees, since under the contested provision of the RF Labor Code, certain employees acquire this right only once the employing organization has ceased to exist as a legal entity, and are thereby deprived of payments. Consequently, this provision was found to have a discriminate effect and was deemed by the Court as unconstitutional, which therefore needed to be adjusted.

The Amending Law, as well as Federal law No. 203-FZ of 13 July 2020 “On amendments to article 21 of Federal law “On the state registration of legal entities and individual entrepreneurs”, adopted simultaneously, were aimed at addressing the unconstitutionality of the above-mentioned provision and ensuring that statutory rights apply equally for all employees.

Given their scope of application, the amendments adopted will actually have an impact not only on the rules for severance payments in case of liquidation of a company, but also in the event of redundancy plans.

Keep in touch



<sup>[1]</sup> Ruling of the Constitutional Court of the Russian Federation of 19 December 2018 № 45-P (In the case of the constitutionality review of article 178(1) of the Labor Code of the Russian Federation based on a complaint by Ms. M. V. Trofimova)



### **New rules for severance payment**

In the event of dismissal of employees due to the company's liquidation or as part of a redundancy plan, employees are still entitled to a severance payment amounting to one month's average monthly earnings. This is to be paid in full on the last day of work.

The extent to which employees are entitled to a 2nd month of severance pay will now be calculated pro-rata to the period of actual unemployment. If employees for example take up a new job in the middle of the second month after being dismissed (due to liquidation or a redundancy plan), they are only entitled to half of the second month's severance payment. In order to receive this severance, the employee must submit a written application to the former employer no later than 15 working days after the end of the 2nd month after dismissal.

Severance payment for the 3rd month after dismissal, as before, is only paid upon decision by the State Employment Service, if it was unable to find the employee a new job. However, to be eligible for a third month's severance pay, since the Amending Law entered into force, the dismissed employee must now register with the State Employment Service within the first 14 working days after the dismissal, and not within the first calendar fortnight, as was previously the case. The employee needs to apply in writing to the former employer no later than 15 working days after the end of the 3rd month after the dismissal. Severance payment for the 3rd month is calculated pro-rata to the actual period of unemployment, as is the case for the second month.

The employer must transfer the funds for the second and third months of severance payment no later than 15 calendar days after the employee submitted the corresponding application (cf. the new wording of Art. 178 of the RF Labor Code).

Also amendments are made in Article 318 the RF Labor Code that modify the procedure for payments to employees dismissed from organizations located in specific areas of Russia's Far North and areas equated thereto. Now, as before, dismissed employees are entitled to severance payments upon decision of the Employment Service in the amount of their average monthly earnings for the fourth, fifth and sixth months after dismissal if they have not found new employment, however, for this purpose they must register with the State Employment Service within fourteen working days after the dismissal (previously the deadline was a month). Also, the same calculation method as above is employed pro-rata to the actual period of unemployment if the employee had started in a new job during the relevant month.

The amendments will speed up the process for severance payments (in case of liquidation) in the above-mentioned cases by making it possible for employers to at once calculate the payment amounts for the second and third month, or 5 months for the relevant areas of the Far North and equivalent.

### **Liquidation and payments: judicial contradictions**

The intention with the amendments adopted, in our opinion, was initially to ensure equal respect for the rights of employees dismissed as a result of a liquidation. According to the initiators' original intention, it was assumed that the tax authorities would not be able to register an entry in the Unified State Register of Legal Entities that the entity has indeed been liquidated until the until the end of the period during which employees are entitled to severance pay.



In the end, the version adopted maintained only one feature of the original proposal in this regard, according to which the liquidated company, when submitting its application for registration of the liquidation to the registration authority, gives a written assurance that all payments due to former employees were indeed paid (cf. Art. 21(1)(a) of Federal Law No. 129-FZ as amended).

That is, in fact, the registration authority does not verify the veracity of the company's assurances. The RF Labor Code itself imposes an obligation on the former employer to make all due payments to employees before completing any liquidation, however it does not provide any specific enforcement mechanisms for this obligation.

In our view, the amendments in their adopted wording do not fully solve the problems identified by the Constitutional Court. There remains a possibility that employees will be entitled to other partial payments after the liquidation is effective, which they would not be able to receive.

### **Remote work**

The State Duma of the Russian Federation approved at first reading bill No. 973264-7 for a proposed Federal Law "On amendments to the Labor Code of the Russian Federation as to the regulation of remote work" (the "Bill").

The reason that this Bill was submitted was the COVID-19 pandemic, which revealed a lack of flexibility in labor legislation as to the possibility of using information technologies in employment methods, and in the regulation of remote work.

During the pandemic, businesses' management used various methods to inform employees of the transition to remote work: e-mails and oral messages, executives orders by the company, or less frequently making the employees familiar with such an executive order upon their signature. Only very rarely have employers acted in the manner required under existing labor legislation, namely by concluding an additional agreement to the employment agreement with each employee, providing for the completion of work tasks by remote work and specifying that the workplace also can be remote. But even for those employers that attempted to follow statutory requirements, it proved difficult to conclude additional agreements in electronic form, as this was not regulated in detail in legislation.

According to the Bill under consideration, employers will be able to temporarily transfer employees to remote work or combined remote work (combining office work with remote work).

It is assumed that the temporary remote work regime will be introduced and available on the basis of an appropriate clause in the employment agreement, or of an additional agreement to the employment agreement if the reason to introduce the temporary remote work have arisen after the employment agreement was concluded.

Meanwhile, in exceptional cases that endanger normal living conditions of the population (for instance, epidemics or accidents), a simplified procedure to enact temporary remote work will be allowed on the basis of an internal regulation by the Company.

These amendments bring a much higher level of detailed regulation in the relevant regulation.



### **Electronic document workflow**

Another reason why this Bill was put forward was the to consolidate the procedure for the electronic flow of documents in employment relations. The manner in which electronic documents can be exchanged and received will have to be consolidated in the company's internal regulations, as well as in employment agreements themselves.

Under the amendments put forward, it is assumed that it will be possible to conclude the additional agreement on remote electronically.

### **Dismissal of a remote employee**

In its current wording, Art. 312.5 of the RF Labor Code provides that termination of an employment agreement on remote work (dismissal) at the initiative of the employer is possible, inter alia, based on causes provided for in the employment agreement.

This, in principle, allows employers to dismiss remote employees on grounds such as, for instance, the employer regarding the employee's work as ineffective, or a change in the employer's development strategy.

This leads to a differentiated treatment against remote employees when compared to other employees, as generally termination of an employment agreement (dismissal) is possible only on the grounds exhaustively provided for in the RF Labor Code.

The Bill on remote work aims to eliminate this discriminatory effect. It intends to regulate that the employment agreement with a remote employee, in likeness with other employment agreements, may only be terminated at the employer's initiative on the grounds exhaustively provided for in the RF Labor Code.



For more information, please contact:



**Mikhail Timonov**  
Partner

T: +7 812 363 3377  
M: +7 921 415 0475  
[mikhail.timonov@eversheds-sutherland.ru](mailto:mikhail.timonov@eversheds-sutherland.ru)

---



**Olga Chirkova**  
Principal Associate

T: +7 812 363 3377  
M: +7 921 767 5251  
[olga.chirkova@eversheds-sutherland.ru](mailto:olga.chirkova@eversheds-sutherland.ru)

---



**Ekaterina Mironova**  
Principal Associate

T: +7 495 662 6434  
M: +7 903 001 1534  
[ekaterina.mironova@eversheds-sutherland.ru](mailto:ekaterina.mironova@eversheds-sutherland.ru)

---



**Ivan Kaiserov**  
Senior Associate

T: +7 812 363 3377  
M: +7 921 643 2468  
[ivan.kaiserov@eversheds-sutherland.ru](mailto:ivan.kaiserov@eversheds-sutherland.ru)

---



**Daria Atamanova**  
Junior Associate

T: +7 812 363 3377  
M: +7 921 894 9520  
[daria.atamanova@eversheds-sutherland.ru](mailto:daria.atamanova@eversheds-sutherland.ru)

---

**[eversheds-sutherland.ru](http://eversheds-sutherland.ru)**

© Eversheds Sutherland 2020. All rights reserved. Eversheds Sutherland LLC is part of a global network that functions as various legal entities under the brand Eversheds Sutherland. Eversheds Sutherland LLC's Taxpayer Identification Number (INN) is 7703618107. The information provided in this legal alert may not be considered as professional advice or legal services and is not advice related to a specific situation. This information is intended for the general review of the users in relation to issues that may be of interest to them. Eversheds Sutherland is not liable for incomplete information.