

Prohibition of Personnel Leasing in 2016

Newsletter

August 10, 2015

A little more than a year has passed since the adoption of Federal law No. 116-FZ of May 5, 2015 that substantially limited the use by employers of labor of non-employees (“out-staffing”). Now, three months before the law enters into force (**January 1, 2016**), we believe it necessary to remind what exactly the employers will face in view of the upcoming changes.

1. WHAT WILL BE PROHIBITED

Personnel leasing will be prohibited as a rule (where *personnel leasing* means the work of an employee at the instruction of his/her employer for the benefit of another person (an individual or a legal entity) under the management and control of the latter).

In other words, the most significant segment of “out-staffing” / “staff leasing” falls under the prohibition. The use of agency work is prohibited for individuals and legal entities, except as described below. The law also provides for a list of cases where provision of staff is not allowed in principle.

2. EXCEPTIONS

Provided that there are the consent of the worker and the work is of a temporary nature, certain categories of persons are allowed to carry out the provision of staff for performing job functions of another person on his behalf and under his direction and control.

Exceptions apply in the following cases:

A) **private employment agencies** (accredited by the state) will be entitled to provide their staff, if:

staff is directed to temporarily fulfill the duties of absent employees, who retain their positions, or

staff is directed to carry out work related to the knowingly temporary (up to 9 months) expansion of production or volume of services, or

staff is sent to individuals for the purposes of personal care, assistance in housekeeping.

B) **legal entities** (including foreign ones) will be entitled to provide their staff to other legal entities, if:

they are affiliated, or

they are parties to a shareholders' agreement, or

one of them is a party to a shareholders' agreement (the sending party), while the other is a joint-stock company, whose shares make the subject matter of such a shareholders' agreement (the receiving party).

3. LEGAL EFFECT

The receiving party shall be subject to subsidiary liability under the obligations of the sending party owed to the staff being provided (regarding salaries, other compensation).

The sending party shall ensure that the conditions of remuneration of the staff being provided are not worse than the conditions of remuneration of the employees of the receiving party who perform the same functions and possess the same qualifications.

4. LIABILITY

We believe that violations of the prohibition of agency work and the restrictions on staff leasing may entail the following adverse consequences for receiving party:

1) potential legal qualification of the aforementioned relations as employment (the receiving party will be retrospectively deemed to be the employer of the employees provided to it with the ensuing consequences: execution of an employment contract for an indefinite term, payment of salaries, compensation, vacation, etc.). In addition, such party may incur liability for failure to make contributions to the budget and non-budget funds with respect to such employees;

2) administrative fines for violations of labor legislation (up to RUB 100,000 for legal entities and up to RUB 20,000 for officials; in case of repeated violations - up to RUB 200,000 for legal entities, while an official may be disqualified for the period from 1 to 3 years).

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