

Transferring employees on an outsourcing in the Russian Federation: overview

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TRANSFER BY OPERATION OF LAW

1. In what circumstances (if any) are employees transferred by operation of law?

Initial outsourcing

Directive 2001/23/EC on safeguarding employees' rights on transfers of undertakings, businesses or parts of businesses (Transfer of Undertakings Directive) does not apply in Russia, neither are there similar national legal rules. The transfer of employees, if any, by an outsourcing is regulated under general employment rules.

Since 2014, the Labour Code of the Russian Federation (Labour Code) has provided the possibility for employees to be transferred in order to temporarily perform duties in the interest of, on the territory of and under the control of, other individuals and legal entities under a contract on the hiring of staff.

However, parties to an outsourcing contract should be cautious, as borrowed labour is generally prohibited. To avoid breaching the Labour Code, the parties must differentiate between "allowed" and "restricted" transfers. The main difference between them is the strict framework of circumstances and parties in which the hiring of staff is allowed (which includes the provision of staff by private recruiting agencies that have the relevant accreditation).

Under Russian law, workers are not transferred directly using outsourcing contracts structured as services contracts. Instead, workers are temporarily hired to the customer to perform duties under an outsourcing contract. The subject matter of an outsourcing contract is the "rendering of services" by the supplier. The supplier's personnel perform the obligations assigned to them not directly in the interests of the customer, but as part of performance of their duties under their employment contract or sub-supplier contract with the supplier. If employees of the supplier are transferred to the customer on a permanent basis, the employment contracts between the employer and with the supplier must be terminated and the employees will be required to enter into a relationship with the customer. Therefore, after termination of the outsourcing contract employees do not return to the supplier.

The transfer of customers' employees is not regulated by Russian law, and generally employees are not transferred to the supplier. If the customer's employees are permanently transferred while services are being rendered by the supplier on the basis of the outsourcing contract, the employment contracts with the customers' employees are terminated.

Termination of employment contracts is subject to the common rules on the termination of employment contracts, including terms and guarantees such as compensation for unused vacation, retirement payments and benefits provided for in the employment contract. Services by the customer's employees may be granted to

a supplier under a services contract. The provision of services by customers' employees can be set out in the outsourcing contract and/or be contained in a separate services contract. After the outsourcing contract ends, the employees are returned to the customer unless they are transferred according to a separate services contract and its term does not depend on the term of the outsourcing contract. It should be noted that while employees are performing their duties, their employment contracts with the customer remain in force. See also below, *Termination*.

Change of supplier

The following consequences may arise in the event of a change of supplier:

- **Transfer of the supplier's employees.** If the employees of a supplier are transferred to the customer, the consequences for the employees are as follows:
 - under a contract for the provision of staff, and if allowed by the legal provisions: the employees are returned to the supplier when the relationship between the former supplier and the customer ends;
 - under an outsourcing contract: the employees are returned to the supplier when the customer changes supplier.
 - where the supplier's employees are transferred to the customer which involves the termination of employment contracts between the supplier and the employee and the signing of new contracts between the employee and customer: the change of supplier does not influence relationships with the employees.
- **Transfer of the customer's employees.** If the employees of the customer are provided to a supplier as an actual transfer involving the termination of employment contracts with the customer and signing of new contracts with the supplier, a change in supplier generally does not influence the employment relationship between the former supplier and the transferred employees.

Termination

The mechanism for termination is similar to the procedure for changing suppliers and strongly depends on the legal form of the relationships between the customer, supplier and employees.

In cases where employees are temporarily transferred to the other party to the contract, they return to their employer if the basis for their transfer becomes invalid. If the transfer is based on a new employment contract or separate services contract, the termination of the outsourcing contract does not directly influence the relationships based on the above contracts.



2. If employees transfer by operation of law, what are the terms on which they do so?

General terms

Not applicable.

Pensions

Not applicable.

Employee benefits

Not applicable.

Other matters

Not applicable.

REDUNDANCY PAY

3. How is redundancy pay calculated?

The statutory redundancy rules apply, including the pay calculation.

HARMONISATION

4. To what extent can a transferee harmonise terms and conditions of transferring employees with those of its existing workforce?

Not applicable.

DISMISSALS

5. To what extent can dismissals be implemented before or after the outsourcing?

The statutory dismissal rules will apply irrespective of outsourcing.

NATIONAL RESTRICTIONS

6. To what extent can particular services only be performed by a local national trained in your jurisdiction?

Generally, all foreign employees need a work permit for any local employment in Russia.

SECONDMENT

7. In what circumstances (if any) can the parties structure the employee arrangements of an outsourcing as a secondment?

Secondment is allowed in very limited cases for:

- Licensed HR agencies.
- Within a group of companies (although inter-company secondment is still pending subject to a new specific law).

INFORMATION, NOTICE AND CONSULTATION OBLIGATIONS

8. What information must the transferor or the transferee provide to the other party in relation to any employees?

Not applicable.

9. What are the notice, information and consultation obligations that arise for the transferor and the transferee in relation to employees or employees' representatives?

Not applicable.

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Recent transactions

- Advising a major US pharmaceutical company on personal data protection in Russia within the international human resources project.
- Advising Apple, Oracle, Teradata and Lamborghini on the data protection issues.
- Advising Turner Broadcasting System Europe, Red Bull Media and Mondadori on media law issues (including advice on entering the Russian market).
- Advising MSC Software, Trend Micro and Urban Science on software licensing in Russia.