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EUROPEAN SOCIAL CHARTER

3rd National Report on the implementation of the

European Social Charter

submitted by

THE GOVERNMENT OF RUSSIAN FEDERATION

(Articles 2, 4, 5, 6, 21, 22, 28 and 29

for the period 01/01/2009 – 31/12/2012)

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CYCLE 2014

NATIONAL REPORT
ON THE ISSUES OF COMPLIANCE WITH LABOUR RIGHTS

on the application of legal norms and relevant statistics with regard to the subject group of rights No. 3 (art. 2, part 1, 3-7, art. 4 part 2-5, art. 5, 6, 21, 22, 28, 29) of the European Social Charter (revised) dated May 3, 1996 since 2009, which Russia must submit a report to the Council of Europe prior to October 31, 2013 according to the established accountability system of the Charter.[1]

The report covers the following Charter articles and article paragraphs:

1. *Article 2: "Right to fair working conditions".* Item 1 (reasonable daily and weekly working time with consistent reduction of weekly working hours);
2. Item 3 (minimum of a four-week-long paid vacation on a yearly basis);
3. Item 4 (elimination of the inherent risk of hazardous and harmful work);
4. Item 5 (weekly leave period);
5. Item 6 (informing employees about the essential aspects of the employment contract or labour relations);
6. Item 7 (employee benefits, which take the special nature of night shifts into account).
7. *Article 4. "Right to a fair remuneration".* Item 2 (workers' entitlement to increased remuneration for overtime, excluding certain cases);
8. Item 3 (right of employees — male and female — to equal pay for work of equal value);
9. Item 4 (right of all workers to a reasonable beforehand notice of dismissal from work);
10. Item 5 (limits of salary deductions);
11. *Article 5. "The right to Organize"*, on eliminating restrictions on the establishment of local, national and international employers' and workers' organizations intended to protect their respective economic and social interests, as well as the right to join those organisations.
12. *Article 6. "The right to collective negotiations".* Item 1 (promotion of consultation of workers and entrepreneurs);
13. Item 2 (promoting the establishment of a mechanism of collective negotiations between employers or their organisations and workers'

[1] The Council of Europe. Calendar of Reporting System. Table showing the presentation of reports on the application of the European Social Charter: *< http://www.coe.int/t/dghl/monitoring/socialcharter/ReportCalendar/CalendarNRS_en.asp >.*

organizations with a view to settle down the labour conditions by means of collective agreements);

14. Item 3 (promotion of establishment and use of conciliation mechanism and voluntary arbitration for the settlement of labour disputes about interests);

15. Item 4 (workers' right to labor disputes about interests, including the right to strike);

16. *Article 21 "Right to information and consultation".* Item "a" (workers' right to be regularly and comprehensively informed about the economic and financial situation of the enterprise);

17. Item "b" (right of workers to the consultations about the solutions proposed by the enterprise administration that can significantly affect the interests of workers);

18. *Article 22 "Right to participate in evaluation and improvement of working conditions and working environment"*, concerning the workers' right to participate in evaluation and improvement of the working conditions and working environment in the company, including the item "a" (workers' participation in the determination evaluation and improvement of working conditions, labour management and working environment);

19. Item "b" (workers' participation in ensuring labour hygiene and safety at the enterprise);

20. Item "c" (workers' participation in the social services at the enterprise);

21. The "d" (workers' participation in the rules observation monitoring);

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With a view to ensure effective exercise of the right to fair working conditions, the Parties commit to:

1. establish normal working hours and the working week and gradually reduce the working week, in so far as productivity growth and other relevant factors allow it.

According to the part 5 of the art. 37 of the Russian Constitution everyone has the right to rest. A person having a job contract is guaranteed the statutory working time duration, days off and holidays, and paid annual vacation.

Article 2 of the Labour Code of the Russian Federation establishes "the right of each employee to fair working conditions, the right to rest, limited working hours, weekly rest, holidays and non-working holidays, paid annual leave" as the basic principles of legal regulation of labour relations and any other directly related relations.

Definition of working hours is given in article 91 of the Labour Code of the Russian Federation. According to it, ***working hours*** is the time during which the employee, in compliance with internal labour rules and conditions of contract, shall perform his or her duties, as well as other time periods that the legislation of the Russian Federation consider working time.

Normal working hours in normal working conditions may not exceed ***40 hours per week***.

The procedure for calculating working hours norms for certain periods of time (month, quarter, year), taking into account the established working hours per week, is determined by the federal executive body, which is in charge of developing state policy and normative-legal regulation in the sphere of labour (at the present moment this is the Ministry of Labour and Social Protection of the Russian Federation).

Time tracking is carried out by the employer.

Reduced working hours are established for the following employees:

- under 16 — no more than 24 hours a week;
- 16 to 18 — no more than 35 hours a week;
- disabilities groups I and II — no more than 35 hours a week;
- employed in jobs with hazardous or dangerous working conditions — no more than 36 hours per week in accordance with the procedure established by the Government of the Russian Federation, taking into account the views of the Russian Tripartite Commission on regulation of social and labour relations (RTC).

In accordance with the Decree of the Government of the Russian Federation dated Nov 20, 2008, No. 870 "On establishing reduced working hours, additional annual paid leave, increased pay for workers employed in hard labour, work in harmful or hazardous and other special labour conditions", workers employed in hard labour, in harmful or hazardous and other special working conditions, upon the job evaluation results are entitled to reduced working hours — no more than 36 hours a week, in accordance with article 92 of the Labour Code of the Russian

Federation.

At the present moment the List of manufactures, shops, professions and jobs with harmful working conditions, which entitles you to extra leave and reduced working hours, adopted on Oct 25, 1974 is effective (with amendments and additions). Employees, of some professions and positions are entitled to reduced working hours if the productions and workshops they work for, are on the relevant parts of the List, regardless of what industry they belong to. The list is mandatory for all the organizations, regardless of their form of ownership and organisational structure.

Working hours for students of educational institutions under 18, who work during the school year in their spare time may not exceed half the stipulated norm for their peers.

The law may set shorter working hours for other categories of workers too (e.g. employees of educational, health-care institutions, etc.). So, the Russian Federation Government Decree dated Feb 14, 2003. No. 101 sets reduced working hours for health-care workers depending on position and (or) specialty:

- 36 hours a week — according to the list No. 1 (infectious hospitals, dermatovenereological clinics, HIV diagnostics laboratories, etc.);

- 33 hours a week — according to the list No. 2 (working with medical ultra short-wave frequency generators "UKVC" with the power of over 200 Watts, dental clinics, etc.);

- 30 hours a week — according to the list No. 3 (tuberculosis hospitals, autopsy departments, etc.).

Upon the agreement between the job contract parties (employee and employer) ***part-time*** (part-time working day or part-time working week) may be agreed. Employer is obliged to establish a part-time working schedule at the request of a pregnant woman, one of the parents (guardian) of the child under 14 (or a disabled child under 18), as well as those taking care of a sick family member, in compliance with the medical report.

When working on a part-time basis the employee's wages are calculated in proportion to the duration of working time or depending on the amount of work he/she performed.

Working part-time does not entail any limits on the duration of basic annual leave, calculation of length of service and other labour rights for employees.

For certain categories of workers maximum duration of daily working hours is set. According to article 94 of the Labour Code of the Russian Federation reduced working day (shift) may not exceed:

- for employees aged 15 to 16 — 5:0 hours, and at the age of 16 to 18 — 7:0 hours;

- for students of general educational institutions, primary and secondary professional education institutions, who work and study during the academic year, aged from 14 to 16 — 2.5 hours, aged from 16 to 18 — 4:0 hours.

It is set according to the medical report for persons with disabilities.

For employees working in hazardous or dangerous working conditions, where reduced working hours are established, the maximum duration of the

working day (shift) may not exceed:

- 36-hour working week — 8 hours;
- 30-hour working week — 6 hours;.

Working day (shift) length of the employees of creative media, cinematography, television and camera crews, theatres, concert organizations, circuses and other persons involved in the creation and (or) performance (exposure) of the works may be established through a collective agreement, a local regulating act, or job contract.

Working day (shift) length immediately preceding the day off, the holiday will be reduced by one hour.

In continuously operating organizations and certain industries, where it is impossible to reduce the working hours (shift) on the day preceding the holiday, overtime is offset through provision of additional rest periods or, with the consent of the employee, overtime payment according to the standards laid down for overtime work.

On the weekend eve working hours in a six-day working week may not exceed five hours.

An employer has the right to draw employees to work overtime.

Overtime is the work, performed by the employee on the employer's initiative outside of the working schedule established for him. Drawing employee to overtime work is allowed ***with his written consent*** in the following cases:

1) If it is necessary to perform (complete) work, which, due to unexpected delays caused by technical conditions, could not have been performed (completed) during regular working hours, if the non-compliance can result in damage to or destruction of property of the employer, state or municipal property, or endanger life and health of people;

2) while performing temporary work on repairs and rebuilding of mechanisms or structures, if their failure may interrupt the work of a substantial number of employees;

3) if a next shift worker did not show up and the work cannot be interrupted. In these cases, the employer shall immediately undertake measures to replace the worker by another employee.

Bringing an employee to overtime work ***without his consent*** is allowed in the following cases:

1) while performing the work that is required to prevent disaster, industrial accident or deal with their consequences;

2) while performing socially important work, addressing the unforeseen circumstances that obstruct normal operation of centralized systems of hot (cold) water supply, sewage, gas supply, heating, lighting, transport, communication;

3) while performing the work during the state of emergency or martial law, or emergency works in case of a disaster or threat of a disaster (fire, flood, famine, earthquake, epidemic or epizootic), and in other cases endangering the life or normal living conditions of the whole population or of a part thereof;

In other cases, overtime work is permitted ***only*** with the written consent of an employee and taking into account the views of the elected body of the primary

trade-union organization.

It is not allowed to draw following groups of workers to do overtime work:

- pregnant women;
- workers under 18;
- certain other categories of workers, according to the Labour Code and the federal laws.

Bringing persons with disabilities, women with children less than three years to overtime work is permitted only with their written consent, if it is not prohibited for them due to health reasons. At that, they must sign proving that they were familiarized with their right to refuse to do overtime work.

Overtime hours must not exceed 4 hours for two days in a row and a total 120 hours a year per each employee.

Employer is obliged to ensure the accurate accounting of overtime hours per each employee.

Shift work is a work in two, three or four shifts. It is introduced, when the duration of the production process exceeds the permissible duration of daily work and in order to use equipment more efficiently, or to increase production or service delivery.

During shifts each group of employees should work within the established working hours, in accordance with the shift schedule.

While drawing up schedules of shifts the employer takes into account the opinion expressed by the representative body of employees (usually trade union). Shift schedules are usually attached to the collective agreement. Shift schedules are brought to the attention of the employees no later than one month prior to putting them into action. It is prohibited to work two shifts in a row.

When, due to the production (working) conditions, it is impossible to observe daily or weekly working schedule, it is allowed to introduce the ***summed up accounting*** working time, so that the working hours during the accounting period (month, quarter or other periods) would not exceed the normal regular number of working hours. Accounting period may not exceed one year.

Introduction of the summed up accounting of the total working time is set forth by the internal labour regulations.

In certain cases, the introduction of the summed up accounting of the working time is stipulated by the law, for instance, when the ***shift work method*** of work is used (art. 300 of the Labour Code of the Russian Federation). Rotational team method is a special form of labour process outside of the workers' place of residence, when their daily return to the place of residence cannot be ensured. Rotational team method is used to reduce the terms of construction, repair or reconstruction of industrial, social and other facilities in the wild, remote areas or areas with special environmental conditions (Far North), as well as for implementing certain other kinds of a production activity. While staying at the production site, employees live in the purpose-built camps erected by the employer.

The rotational team work period includes the time of actual work and the leisure time in between the shifts. The rotational work period duration should not

exceed one month. In exceptional cases at certain facilities the rotational work period duration may be increased by up to three months, taking into account the opinion of the elected body of the primary trade-union organization.

Workers under the age of eighteen, pregnant women, women with children less than three years old, persons with the respective contraindications (due to respective medical record) cannot be drawn to work by the rotational team work method.

During the rotational work the summed up accounting of the working hours is introduced for a month, a quarter or a longer period, but no more than for one year. Accounting period covers the working time, commuting to and from the place of work, as well as rest time per given calendar period.

It is employer's duty is to keep a record of working hours and rest periods for each employee, who works by the rotational work method, on a monthly basis and for the entire accounting period.

Working time and time of rest, within the accounting period, are regulated by the shift schedule. The working schedule stipulates the time required for bringing workers to and from the place of work.

Each day of the rest due to working overtime, within the rotational work schedule (a rest day between working days) is paid at a daily rate, if a higher wage had not been established by a collective agreement, a local regulatory act or an employment job contract.

Article 2. Right to fair working conditions

With a view to ensure effective exercise of the right to fair working conditions, the Parties commit to:

3. to ensure providing a minimum of four weeks of paid annual leave;

Special section V of the Labour Code of the Russian Federation is dedicated specifically to the rest time. ***Rest time*** is defined in the article 107 of the Labour Code of the Russian Federation as the time, when the worker is relieved from performing his/hers duties and which they are free to administer at their discretion.

There are following types of rest time:

- breaks during the working day (shift);
- daily (between shift) rest;
- weekends (weekly uninterrupted rest);
- public holidays;
- vacations.

During the working day (shift) the employee must be given ***a break for having rest and taking meals*** no more than two hours long, but no less than 30 minutes long. It is not included into the working time. Break time and its specific duration is set up by the internal labour schedule rules or by an agreement between the employee and the employer.

Certain types of jobs entitle employees to special breaks during the working time, due to the job-specific technologies and labour organisation. These kinds of work, duration and rules of granting such breaks are set up by the internal labour schedule rules.

Employees working outside or in the premises without central heating during the cold time of the year, as well as the movers employed in handling, and other employees in certain cases are entitled to special breaks for getting warm and rest. These are included into the working hours. Employer must provide employees the premises for recreation and warming themselves (article 108).

Employees are granted ***annual leave*** of 28 calendar days, during which their job (position) is preserved and the average wage is paid (article 114 of the Labour Code).

All the workers without exceptions (including temporary, seasonal, part-time workers, distant workers, etc.) are entitled to leaves of absence. Any agreement aimed at limiting the right to leave of absence, or replacing it with an additional payment is illegal.

Seasonal and temporary workers are granted leaves at two calendar days per each month of work.

Certain categories of employees are granted extended leaves of the following duration:

- underage workers younger 18 — 31 calendar days at their convenience;
- people with disabilities — 30 calendar days;
- pedagogical workers — 42 and 56 calendar days etc.

Workers employed in jobs with hazardous or dangerous working conditions (working under ground, in conditions of radioactive environment, etc.), the list of

which is approved by the Goskomtrud (State Labour Committee) of the USSR on Oct 25, 1974, are entitled to *extra paid annual leave.* Minimum duration of leave and the conditions thereof are established taking into consideration of the opinion of the Russian Tripartite Commission on regulation of Social and Labour Relations into account (article 117 of the Labour Code). In accordance with the Government Decree of the Russian Federation dated Nov 20, 2008, No. 870 "On establishing reduced working hours, additional annual paid leave, increased pay for workers employed in hard labour in harmful or hazardous and other special labour conditions", workers employed in hard labour in harmful or hazardous and other special working conditions, upon the workplace evaluation, are entitled to extra paid leave per annum of no less than 7 calendar days long.

Employees ***with irregular working hours*** (all categories of managers, economists, accountants, etc.) are granted ***extra paid annual leave***, the duration of which is determined by the collective agreement or the internal labour schedule rules. It cannot be less than three calendar days. If an organization is financed from the federal budget, the procedure and conditions for granting an additional annual paid leave are established by the Government of the Russian Federation. If it is financed from the budget of a constituent entity of the Russian Federation or from the local budget, they are established by the constituent entity authorities or the local self-government bodies.

The right to ***annual extra paid leave*** also have the employees, working in the regions of the Far North and areas given the same status:

- 24 calendar days for the areas of the Far North;
- 16 calendar days for the areas given the same status as the Far North.

With regard to its industrial and financial opportunities, employers may establish additional leaves for their employees. The procedure and conditions for providing these leaves are established in collective agreements or local regulations, which are adopted with due consideration given to the views of the elected body of the primary trade-union organization.

Duration of an annual leave is calculated in calendar days and is not have a cap. Public holidays that coincide with the main annual or additional annual paid leave, are not included into the leave and rather extend it.

Additional paid leaves are added to the annual basic paid leave.

Paid leave must be granted to workers on an annual basis. Employee gets the right to use leave during the first year of work after six months of continuous work with the employer. Upon an agreement between the parties a paid leave may be granted to an employee even before six months of employment. After six months of continuous employment a paid leave must be granted to:

- women — before maternity leave or immediately after it;
- underage workers under 18;
- employees who had adopted a child (children) under the age of three months;
- in other cases stipulated by federal laws.

A leave for the second and subsequent years of work may be given at any time of the year according to the schedule of annual paid leaves established by the

employer (art. 122).

The order of granting paid leave is determined every year in accordance with a schedule approved by the employer, taking into account the views of the elected body of a primary trade-union organization. It is obligatory for both the employer and the employee to have a schedule of leaves. Employee must acknowledge his notification about the beginning of his leave with a signature no later than two weeks in advance.

Certain categories of workers are granted an annual paid leave at their convenience, when it is stipulated in the Labour Code of the Russian Federation and other federal laws. For example, a husband is granted his annual leave during his wife's maternity leave, regardless of the time of his continuous employment with the employer.

In the following cases a paid annual leave must be extended or moved to another date, as determined by the employer taking the employee's wishes into account:

- temporary disability (i.e. sickness) of an employee;
- execution of public duties by the employee at the time of the annual paid leave (for example, participating in the work of juries etc.), if the labour legislation provides entitles him/her to the release from work;
- in other cases stipulated by the labour laws or local regulations.

In exceptional cases, when granting a leave to the employee during the current business year could have a negative impact on the normal work of the organization or individual entrepreneur, it is allowed to postpone the leave to the next business year upon the consent of the employee. At that, this leave must be taken during no later than 12 months after the end of the business year, for which it is provided.

Failure to grant an annual paid leave to workers under 18 and workers employed in jobs with harmful and/or dangerous conditions for two years in a row, is prohibited.

Upon an agreement between the employee and the employer, an annual paid leave may be divided into parts. At that, at least one part of the leave should be no shorter than 14 calendar days.

Revoking the employee from his/her leave is allowed only upon his/her consent. An unused part of the leave must be granted at employee's convenience during the current business year, or added to a leave for the next business year. It is not allowed to revoke underage workers under 18, pregnant women and people employed in jobs with harmful and/or dangerous conditions from their respective leaves.

Part of an annual paid leave exceeding 28 calendar days may be replaced with a monetary remuneration upon the written request of an employee.

It is not allowed to replace the annual paid leave with a monetary compensation for pregnant women and workers under 18, as well as for workers employed in jobs with hazardous or dangerous working conditions (except for the payment of monetary remuneration for unused vacation at the dismissal.

Article 2. Right to fair working conditions

With a view to ensure effective exercise of the right to fair working conditions, the Parties commit to:

4. eliminate the risk associated with hazardous and harmful work, and where it has not yet been possible to eliminate or sufficiently reduce these risks, to either reduce working hours, or provide additional paid leaves for those employed in such jobs.

It follows from the contents of the Constitution of the Russian Federation that the Russian Federation is a welfare state, whose policy is aimed at creating conditions for a decent life and unobstructed development of man, occupational safety and health protection (art. 7), that everyone has the right to work in conditions that meet safety and hygiene the requirements of (item 3, art. 37). The Constitution of the Russian Federation declares also that the individual, his rights and freedoms are the supreme value. Recognition, observance and protection of human rights and freedoms is the duty of the state (article 2). Specifying this right (art. 219 of the Labour Code), the State simultaneously guarantees (art. 220 of the Labour Code) and entrusts the employer to ensure the safety and health of workers (art. 212 of the Labour Code). It also stipulates the necessity of state supervision and monitoring of compliance with labour protection requirements and establishes the responsibility of perpetrators, violating them (article 419 of the Labour Code). The guarantees of the worker's rights to labour protection are not reduced to the art. 220 of the Labour Code. Many of the guarantees established in it are logically connected to specific employee's rights provided by the section 10 of the Labour Code — "Labour safety".

An employee is entitled to a number of compensation payments, some of which are set in the following articles of the Labour Code of the Russian Federation: reduced working hours — art. 92 of the Labour Code of the Russian Federation; duration of daily work (shifts) — art. 94 of the Labour Code of the Russian Federation; an extra paid leave each year — art.117 of the Labour Code of the Russian Federation; extension or transferring of the annual paid leave — art. 124 of the Labour Code of the Russian Federation; setting wages for special working conditions — articles 146 and 147 of the Labour Code of the Russian Federation.

A draft project of the federal law "On special assessment of the working conditions", which is to come into effect in 2014 has been developed. [2]

According to the draft law, special assessment of labor conditions applies to all procedures in the field of labour protection, which are compulsory for all employers and are bound to the actual conditions of the workplace (providing workers compensation for working in harmful or dangerous conditions, providing them means of personal protection, medical examination of workers engaged in

[2] Watchdog information portal on the development of draft regulations by the federal executive bodies and the results of public debates [web-resource]: access mode: http://regulation.gov.ru/project/2476.html?point=view_project&stage=1&stage_id=1659

harmful and dangerous working conditions) as well as for those employers who employ workers entitled to early retirement.

The draft federal law regulates the procedure of working conditions special assessment, requirements for organizations and experts that carry out special assessment of working conditions, the criteria for evaluating the working conditions and occupational risks.

In order to harmonize the legislation of the Russian Federation with the Federal Law "On special assessment of working conditions"[3] amendments to the Labour Code of the Russian Federation are stipulated, along with a number of basic federal law on pensions, federal laws "On sanitary and epidemiological well-being of the population", "On compulsory social security insuring against industrial accidents and occupational diseases" and others.

2. Measures to be taken in case of failure to eliminate risks

Russian labour legislation stipulates guarantees and compensation to workers employed in the jobs with hazardous or dangerous working conditions, which are granted on the basis of:

A list of production sites, shops, professions and jobs with harmful working conditions, which entitles people to additional leave and reduced working hours, approved by the Decree of the USSR State Labour Committee and the Presidium of the All-Union Central Council Trade Unions dated Oct 25, 1974 No. 298/p-22[4], as well as the Model provision on the assessment of working conditions and the application of industry-specific lists of works, which may entitle workers to additional payments as a remuneration for labor conditions, approved by the Decree of the USSR State Labour Committee and the Presidium of the All-Union Central Council Trade Unions dated Oct 3, 1986 No. 387/22-78[5];

In 2006, a rule was included into the article 219 of the Labour Code of the Russian Federation[6]. It stipulated that compensation to workers employed in hard labour in harmful or dangerous conditions, and the conditions for receiving it are established in the order of the Government of the Russian Federation, taking into account the views of the Russian Tripartite Commission on Regulation of Social and Labour Relations.

The Russian Federation Government Decree dated Nov 20, 2008 No. 870 "On determination establishment of reduced working hours, additional annual paid leaves, increased pay for workers employed in hard labour in harmful or hazardous and other extreme conditions"[7] stipulates a minimum amount of compensation set up upon the workplace certification.

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[3] Ibid.

[4] The document has not been published. See legal reference system KonsultantPlus.

[5] The document has not been published. See legal reference system KonsultantPlus.

[6] Federal Law dated June 30, 2006 N 90-FZ (rev. July 2, 2013), "On amendments to the Labour Code of the Russian Federation, recognition of certain USSR regulations as inapplicable in the territory of the Russian Federation and the renunciation of certain legislative acts (provisions of legislative acts) of the Russian Federation" // Legislation Bulletin of the Russian Federation, July 3, 2006, No. 27, art. 2878.

[7] Legislation Bulletin of the Russian Federation, Dec 1, 2008, No. 48, art. 5618

The procedure of workplace certification was approved on the basis of article 209 of the Labour Code of the Russian Federation by the Ministry of Health and Social Development order dated Apr 26, 2011 No. 342n[8].

The Constitutional Court of the Russian Federation with its ruling of Feb 7, 2013 No. 135-O regarding the complaint of the citizen Pyotr Iosifovich Silantyev, who had complained on infringement of his constitutional rights, stipulated in the article 117 of the Labour Code of the Russian Federation[9], determined that an additional paid annual leave of at least 7 calendar days should be provided to all workers employed in jobs with hazardous or dangerous working conditions, including those workers, whose profession or type of performed work does are not included into a list of production sites, shops, professions and jobs with harmful working conditions, which entitles workers to additional leaves and reduced working hours, but whose work in harmful and dangerous conditions of industrial environment and labour process is confirmed by the results of workplace certification.

The Supreme Court of the Russian Federation, with its ruling dated Jan 14, 2013 No. AKPI12-1570[10], explained that if in the course of the workplace certification class 3 of the hazard degree was established, then, regardless of whether or not the relevant profession, position is included into the list of 1974, worker is entitles to an appropriate compensation in the amount no less than specified in the Russian Federation Government resolution dated Nov 20, 2008 No. 870. However, in the cases when the List specifies higher compensation to workers of certain profession, employed in jobs with harmful working conditions, List overrides other decrees, because so far regulatory act pursuant to paragraph 2 of the said decree, which would allow to differentiate types and amounts of compensation depending on the degree of hazard class of working conditions, has not been adopted yet.

Statistical data.

The number of workers employed in harmful labour conditions in the basic sectors of the economy — end of 2012[11].

- Processing industry — 33.4% of the total number of employees
- Transportation — 35.1% of the total number of employees
- Mining — 46.2% of the total number of employees.

A share of workers entitled to remuneration for work in harmful or dangerous conditions — end of 2012[12]:

- a number of employees, who are entitled to at least one form of remuneration — 41.8% of the total number of employees;
- an additional leave — 31.1% of the total number of employees;
- a reduced working day — 3.7% of the total number of employees;

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[8] Rossiyskaya Gazeta, No. 135, June 24, 2011

[9] Official legal reference Internet-portal [web-resource]: access mode: http://www.pravo.gov.ru, Mar 4, 2013.

[10] The document has not been published

[11] The Russian Ministry of Labour library [web-resource]: access mode: http://www.rosmintrud.ru/

[12] The Federal State Statistics Service [web-resource]: access mode: http://www.gks.ru

– free nutrition out of medical-prevention reasons — 1.8% of the total number of employees;

– free milk or other equivalent nutrition products — 18.8% of the total number of employees;

– a higher salary — 27.5% of the total number of employees;

– a total number of employees receiving free protective clothing, special footwear and other means of personal protection — 76.6% of the total number of employees.

– an early retirement — 18.9% of the total number of employees.

There are 48.7 million jobs in Russian economy, employing 68 million workers. There are 26.6 million jobs with hazardous working conditions (according to peer review, taking into account the results of the workplace certification that has been conducted since 2008).

According to the official data provided by the Federal Service of State Statistics[13] the number of industrial accident victims by 2012 makes up:

– 2010 — 47.7. thousand people;

– 2011 — 43.6. man thousand people.

[13] The Federal State Statistics Service [web-resource]: access mode: http://www.gks.ru

Article 2. Right to fair working conditions

With a view to ensure effective exercise of the right to fair working conditions, the Parties commit to:

5. to ensure weekly rest, which should, whenever possible coincide with the day of the week traditionally recognized in the country or region as a day off.

Uninterrupted weekly rest period may not be less than 42 hours.

All employees are granted days off (weekly uninterrupted rest). In a 5-day working week employees are granted two days off per week, in a six-day working week one day is a day off.

Common day off is Sunday. The second day off of the five-day working week is established through a collective agreement or by the internal labour schedule rules. Both days off are usually granted in a row.

Those employers, who cannot take a weekend break in the operations due to technical and organizational circumstances, grant days off on different days of the week alternating between the groups of workers according to internal labour schedule rules.

Certain categories of employees are entitled to *additional days off*. For example, donors after the day of blood donation (art. 186 of the Labour Code), parents, guardians or trustees taking care of children with disabilities (art. 262 of the Labour Code), etc.

According to the article 112 of the Labour Code, ***public holidays*** in the Russian Federation are:

January 1st, 2nd, 3rd, 4th, 5th, 6th and 8th — New Year holidays;

January 7th — Christmas;

February 23rd — Fatherland Defender's Day;

March 8th — International Women's Day;

May 1st — Labour Day;

May 9th — Victory Day;

June 12th — Day of Russia;

November 4th — National Unity Day.

Taking into account national traditions, customs and laws of the constituent entities of the Russian Federation, more public holidays may be introduced. For example, Day of the Republic day, Constitution Day, Bayram (Eid al-Fitr) and Kurban Bayram — in the Republic of Bashkortostan.

If a day off and public holiday fall for the same day, day off is transferred to the next working day after the holiday. Russian Federation Government Decree on transferring days off to other days is subject to official publication no later than one month prior to respective calendar year. If it is transferred within the course of the year, the decree must be published no later than two months prior to the date of the day off.

Workers, except for employees on salary (official rate of pay), shall be paid *additional remuneration* for public holidays, during which they had not been called to work. The amount and procedure of paying remuneration is determined by a

collective agreement, other agreements, local regulatory acts, taking into account the views of the elected body of the primary trade-union organization, employment contract. Expenditures for additional remuneration for public holidays are a part of the full salary costs.

Public holidays do not make a sufficient ground for reducing the wages of employees on salary (official rate of pay).

Working on weekends and public holidays is prohibited, except for the cases stipulated in the Labour Code of the Russian Federation.

Calling employees to work on weekends and public holidays is allowed *upon their written consent,* if it is necessary to perform some unexpected urgent work that normal operation of the organization, as a whole or of its separate structural divisions, depends upon.

Calling employees to work on weekends and public holidays ***without their consent*** is permitted in the following cases:

1) in order to prevent a disaster, an industrial accident or to deal with their consequences;

2) in order to prevent accidents, destruction of or damage to property of the employer, state or municipal property;

3) to perform the work of urgent nature due to enacting the state of emergency or martial law, or emergency works in the case of a disaster or threat of a disaster (fire, flood, famine, earthquake, epidemic or epizootic), and in other cases endangering the life or normal living conditions of the entire population or a part thereof;

Calling to work during the weekends and public holidays employees of creative media, cinematography, television and camera crews, theatres, concert organizations, circuses and other people involved in the creation and (or) performance (exposure) of the works, is permitted through a procedure, stipulated in a collective agreement, a local regulatory act, or an employment contract.

In other cases, overtime work is permitted only with the written consent of an employee and taking into account the views of the elected body of the primary trade-union organization.

On public holidays it is permitted to suspend the works, which cannot be performed due to production and technical conditions (continuously operating organizations), caused by the necessity to address the public needs, as well as urgent repair and loading-unloading operations.

Drawing people with disabilities and women with children under three to overtime work is permitted only with their written consent, if it is not prohibited for them due to health reasons. At that, people with disabilities and women with children under three, must be familiarized with their right to turn down the work on weekends or public holidays, and acknowledge that by signing a corresponding document.

Calling employees to work on weekends and public holidays is done upon the written instructions of the employer.

Article 2. Right to fair working conditions

With a view to ensure effective exercise of the right to fair working conditions, the Parties commit to:

6. to inform employees in writing as soon as possible and no later than two months prior to the date of commencement of their employment about significant aspects of an employment contract or labour relations.

Annex: The parties may provide that this provision shall not be applied:

a) to workers with an employment contract or those, whose labour relations are not supposed to last longer than one month and/or those, whose working week does not exceed eight hours;

b) to people with an employment contract or labour relations of occasional and/or specific nature, provided that the non-application of this provision is justified by objective circumstances.

In accordance with article 67 of the Labour Code of the Russian Federation, *employment contract must be concluded in a* ***written form***, it is drawn up in two copies; each of them is signed by both parties. One copy of an employment contract is given to an employee, the other is kept by the employer. An employee must confirm receiving a copy of his/her employment contract by signing the employer's version of the employment contract.

An employment contract without a written copy shall be deemed concluded if an employee started working after notifying or upon receiving instructions from an employer or his representative. If an employee was actually permitted to start working the employer has to conclude an employment contract in writing *no later than three working days after the date of the actual admission of the employee to work.*

The following conditions are to be included into an employment contract on a compulsory basis:

- the place of employment specifying particular structural unit and its location;
- working duties (job position according to the staff schedule, profession, skills with a specified qualification; a particular kind of delegated work);
- the employment commencement date, and, upon the conclusion of a fixed-term employment contract, its duration and the causes for concluding a fixed-term employment contract;
- payment conditions (including the size of the flat rate or salary (official rate of pay), benefits, bonuses and incentive payments);
- *working hours and rest time* (if it is different from the common regulations applied by the employer for this particular employee);
- remuneration for hard labour and work in harmful or dangerous conditions, while the features of working conditions are to be defined at the workplace;
- conditions defining the nature of the work (mobile, involving business trips, out-of-the-office, other kinds of work);
- condition on compulsory social insurance for workers;
- other conditions.

If while concluding an employment contract, some information and (or) terms have not been included into it, it does not make a sufficient ground for deeming it null and void or terminating it. The missing information and/or terms are to be included into the employment contract then.

An employment contract may only contain such supplementary terms, which do not affect the employee's position against the legislation, collective agreement, other agreements or local regulatory acts, in particular:

- on clarifying the duty station (indicating the business unit and its location) and (or) the workplace;
- on trial (probatory) period;
- on non-disclosure of secrets (state, official, commercial or other);
- on obligation of the employee to work no less than the contract stipulates upon the completion of a training period, if the training was carried out at the expense of the employer;
- on the kinds and terms for additional insurance of the worker;
- on improvement of social and living conditions of the worker and his family;
- on clarification of the rights and responsibilities of employees and employers, established by labour legislation and other regulatory legal acts containing norms of labour law, in regard of the working conditions of this particular employee .

Article 2. Right to fair working conditions

With a view to ensure effective exercise of the right to fair working conditions, the Parties commit to:

7. To ensure that workers employed on night shifts receive benefits, taking into account the special nature of night work.

In accordance with article 96 of the Labour Code of the Russian Federation ***night time is the time*** from 10 PM to 6 AM. Duration of night work (shifts) is reduced by one hour without further working off.

There is no reduction of night work (shifts) for those workers, who have reduced working hours, as well as for the employees, hired specifically for night work, unless provided otherwise by a collective agreement.

Following categories of employees are not permitted to do night shifts:

- pregnant women;
- workers under the age of 18, except for those involved in the creation and (or) performance of works of art;
- certain other categories of workers, according to the Labour Code and the federal laws.

The following categories of employees may be allowed to do night shifts upon their written consent, provided that it is not prohibited for them due to health reasons:

- women with children under three years;
- people with disabilities;
- workers, who have children with disabilities;
- workers caring for sick family members;
- single parents and guardians of children under five,

These categories of workers must be informed of their right to turn down night shifts in written form.

The schedule and procedure of the night shifts of employees of creative media, cinematography, television and camera crews, theatres, concert organizations, circuses and other persons involved in the creation and (or) performance (exposure) of the works may be established through a collective agreement, a local regulating act, or job contract.

Article 4. The right to a fair remuneration for work

With a view to ensure effective exercise of the right to fair working remuneration for work, the Parties commit:

2. to recognize the workers' right to an increased overtime pay, except for special cases.

Overtime work is a particular case of performing work under conditions that are different from the regular ones[14], and therefore must be remunerated at a higher rate[15]. Overtime work is performed by an employee at employer's initiative outside of the employee's working hours: daily work (shifts), and if summed up accounting of the working hours is used — excess of a regular number of working hours for the accounting period[16].

Increased overtime pay rule is stipulated by the art. 152 of the Labour Code of the Russian Federation and according to it the payment amount must be differentiated. The law grants employer the right to set specific amount of overtime pay, establishing them in a collective agreement, local regulatory act or an employment contract. The law guarantees a minimum amount of overtime payment: no less than a 50% higher wage rate for the first two hours, and at least a double-up wage for the following hours. Thus, if an employer does not define the amount of overtime payment in a collective agreement, local regulations or an employment contract, article 152 of the Labour Code is applied.

When summed-up accounting of working time is used[17] it is permitted to excess daily or weekly working hours, provided that the total hours for the accounted period does not exceed the normal number of hours for the said period. Work Is not considered to be overtime if it is performed within the shift schedule, although it exceeds the duration of a regular 8-hour working day. If a summed-up working time accounting is applied the definition of the overtime work is the kind of work carried out by the employee at the employer's initiative over a normal number of working hours for the accounting period.

The law stipulates a possibility to replace, upon the worker's request, monetary compensation with extra rest time, specifying the condition that this period of rest shall not be less than the time of overtime work.

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[14] Art. 149 of the Labour Code of the Russian Federation.

[15] Passing the judgment on overtime payment at a higher rate, among other sources the courts refer to the article 4 of European Social Charter. See, e.g.: The ruling of the Potchinkovsky District Court of Smolensk Region on Apr 25, 2012 in the case No. 2-213/2012; Ruling of the Pinezhsky District Court in Arkhangelsk Region dated May 14, 2012 in case No. 2-90/2012; Ruling of the Oktyabrski District Court of Murmansk dated Aug 14, 2012 in case No. 2-4524/2012; Ruling of the Yipatovski District Court dated Aug 8, 2012 of the Stavropol territory in the case No. 2-548/2012.

[16] Part 1, art. 99 of the Labour Code of the Russian Federation.

[17] Art. 104 of the Labour Code of the Russian Federation.

Article 4. The right to a fair remuneration for work

With a view to ensure effective exercise of the right to fair working remuneration for work, the Parties commit:

3. to recognize right of employees — both male and female — to equal pay for performing work of equal value

In the Russian Federation the right to remuneration for labour without discrimination of any kind and in the amount no less than the federal minimum wage has the status of constitutional law.[18] The Constitution of the Russian Federation also recognizes that men and women have equal rights and freedoms and equal opportunities to exercise them;[19]

Labour Code of the Russian Federation establishes the prohibition of employment discrimination and equality of rights and opportunities of workers (art. 2) as fundamental principles of legal regulation of the employment relations and other relevant relations .

According to the article 3 of the Labour Code of the Russian Federation, everyone has equal opportunities to exercise their labour rights. Nobody may be subject to restrictions in labour rights and liberties or gain any advantages regardless of sex, race, colour of skin, nationality, language, origin, property, family, social status and occupational position, age, place of residence, attitude to religion, views, affiliation or failure to affiliate with public associations or other social groups, as well as other circumstances not pertaining to the business properties of the employee.

Labour Code of the Russian Federation not only contains a general prohibition of discrimination, but also establishes a special rule in relation to wages: there must be no discrimination when establishing and changing payment conditions.[20] One of the key responsibilities of the employer is to provide workers with "equal payment for performing work of equal value".[21]

Labour Code of the Russian Federation entitles people, who consider themselves subjected to labour discrimination, to appeal to the court claiming to restore the violated rights, reimburse material damage and compensate for the moral damage.[22]

Russian legislation does not set specific criteria for determining compensation for wage discrimination. There are general recommendations for courts to determine the amount of compensation for moral damage taking into account particular circumstances of each case, nature and amount of moral and physical suffering caused to employee, degree of employer's fault, other important circumstances, as well as the requirements of reasonableness and fairness.[23]

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[18] Part 3, art. 37 of the Constitution of the Russian Federation, adopted through popular vote on Dec 12, 1993.
[19] Part 3, art. 19 of the Constitution.
[20] Part 2, art. 132 of the Labour Code of the Russian Federation.
[21] Para. 6, part 2, art. 22 of the Labour Code of the Russian Federation.
[22] Part 3, art. 3 of the Labour Code of the Russian Federation.
[23] Item 63 of the regulation of the Russian Federation Supreme Court plenary session dated Mar 17, 2004 No. 2 "On application of the Labour Code of the Russian Federation by the courts of the Russian Federation".

With regard to legal liability for infringement of equal rights of men and women to receive equal pay for performing work of equal value, the Russian Federation Code of Administrative Offence sets the general rule that establishes administrative liability for violating the legislation on labour and labour protection,[24] without pointing out violation of the principle of equal pay for performing work of equal value as an entire offence.

Official salary statistics for Russia are published at the website of the Federal State Statistics Service (hereinafter Rosstat).[25]

When conducting a sample survey of organizations in October 2011, data on the average wages of men and women, broken into groups according to the economic activity types, were accumulated. Within the survey framework, average wages of women (including lump-sum payments) accounted for 64% of the average wage of men. Once broken into groups according to the economic activity types, the ratio varied from 54% to 89%. This is explained by the predominance of women in low-salary industries.

Table 1.

Average accrued salary of men and women broken into groups according to the economic activity for October of 2011

	Average accrued salary, rubles		*Women-to-men salary ratio %*	*Employees distribution by gender %*	
	Men	*Women*		*men*	*women*
Total for the surveyed types of activity	**30005**	**19219**	**64.1**	**45.2**	**54.8**
Mining	44723	33375	74.6	78.4	21.6
Manufacturing industry	27878	19551	70.1	58.4	41.6
Production and distribution of electricity, gas and water	28260	23432	82.9	66.8	33.2
Construction	31243	26804	85.8	82.1	17.9
Wholesale and retail commerce; repair of motor vehicles motorcycles, household	33274	22458	67.5	38.3	61.7

[24] Art. 5.27 of the Code of Administrative Offences.
[25] http://www.gks.ru/wps/wcm/connect/rosstat_main/rosstat/ru/statistics/wages/labour_costs/

utilities and goods for personal use					
Hotels and restaurants	27472	20902	76.1	25.6	74.4
Transport and communications	34703	25003	72.0	62.8	37.2
Real estate operations, rental and services	37016	29005	78.4	52.0	48.0
Scientific research and development	41054	29051	70.8	50.1	49.9
Education	16932	15062	89.0	21.7	78.3
Health care and public services	19339	16113	83.3	16.9	83.1
Amusement and recreation activities, culture and sports	28273	15330	54.2	35.4	64.6

According to a sample survey among employees of organizations who worked full time getting full salary all working days of October 2011, and had wages accrued (excluding lump-sum payments) for all the categories of surveyed personnel, average wages of men exceeded those of female workers. So, in the leadership category women's wages made up 69% of men's wages. This ratio varied, depending upon the economic activity type, from 64% of amusement and recreation, culture and sports organizations to 94% in the organizations involved into production and distribution of electricity, gas and water.

Table 2.

Ratio of average women's wages and average men's wage by staff category for October of 2011

	Managers	*Specialists*	*Other White-collar workers*	*Blue-collar workers*
Total for the surveyed types of economic activity	**68.9**	**68.7**	**74.5**	**57.7**
Mining	85.9	72.9	107.4	60.2
Manufacturing industry	78.	71.	8	7

	3	8	7.8	0.3
Production and distribution of electricity, gas and water	93.5	81.0	115.6	72.4
Construction	88.6	78.3	98.9	66.8
Wholesale and retail commerce; repair of motor vehicles, motorcycles, household utilities and goods for personal use	69.8	75.5	103.7	78.0
Hotels and restaurants	75.9	77.0	77.9	80.7
Transport and communications	65.2	75.2	83.5	61.3
Real estate operations, rental and services	75.9	75.5	97.2	67.3
Scientific research and development	69.0	80.3	105.9	70.8
Education	79.8	91.4	88.9	88.6
Health care and public services	88.8	82.7	109.4	74.2
Amusement and recreation organization activities, culture and sports	64.3	62.9	97.8	74.1

Ratio of women's and men's wages among specialists ranged from 63% for amusement and recreation, culture and sports industries, and up to 91% — in education. Among the blue-collar workers it ranged from 60% for mining companies to 89% in education area; for other workers — from 78% in hotels and restaurants up to 116% in organizations engaged in production and distribution of electricity, gas and water.

Women's wages were lower than men's for all aggregated occupational groups of employees. Ratio of women's wages to men's wages ranged from 57% among average-skill workers up to 84% among unskilled workers.

Actual salary differences between men and women is explained with objective reasons, in particular, the fact that men receive compensatory payments for working in harmful, dangerous and difficult working conditions, where it is prohibited to employ women,[26] for overtime work, work on weekends and public

[26] Art. 253 of the Labour Code of the Russian Federation.

holidays, which is prohibited for certain categories of women;[27] women with young children have less professional and territorial mobility, they are not always able to work full-time, etc. Partially this phenomenon may be fraught with subjective reasons —traditionally, women have been less competitive on the high-salary market.

[27] Part 5, art. 99, part 7, art. 113 of the Labour Code of the Russian Federation.

Article 4. The right to a fair remuneration for work

With a view to ensure effective exercise of the right to fair remuneration for the labour, the Parties commit to:

4) recognize that all workers are entitled to being informed beforehand, within a reasonable period of notice, of termination of their employment.

Annex: This provision should be interpreted as not precluding an immediate dismissal for serious misconduct.

Russian legislation stipulates informing employees about dismissal on certain grounds, namely:

- when an organization is eliminated or staff is reduced — two months in advance[28];
- when a labour agreement is concluded for up to two months — three calendar days in advance[29];
- for seasonal workers — seven calendar days in advance[30];
- due to the termination of a fixed-term labour agreement — three days in advance (ending the term)[31];
- in case of unsatisfactory results of trial period — three days in advance[32];
- upon the dismissal of a part-time employee in case of employment another person for doing the same job full-time — two weeks in advance[33].
- beforehand notice period for dismissal of employees working for individual employers[34], and employees of religious organizations — according to the terms of a labour agreement[35], are established by a labour agreement.

Attention should be paid to the fact that in the Russian legislation protection of workers against dismissal is based on a fundamentally different scheme, than in the majority of member-states of the Council of Europe, who have ratified the Charter. In this case the main means of protecting workers' right to work in Russia is not a warning of dismissal, but rather a restrictive list of the grounds listed in the act, and paying compensations, when dismissal is not related to delinquent action. Thus, workers from other Council of Europe member-states are better protected in case of dismissal in progress, initiated by the employer, but it is actually easier to fire someone in these countries, than in Russia. In fact, we can talk about two different approaches to the protection of the workers' rights upon termination of employment in Russia and the majority of the post-Soviet states, compared to the countries with "traditional" market economies. For employers the advantage of

[28] Part 2, art. 180 of the Labour Code of the Russian Federation.
[29] Part 2, art. 292 of the Labour Code of the Russian Federation.
[30] Part 2, art. 296 of the Labour Code of the Russian Federation.
[31] Part 1, art. 79 of the Labour Code of the Russian Federation.
[32] Part 1, art. 71 of the Labour Code of the Russian Federation.
[33] Art. 288 of the Labour Code of the Russian Federation.
[34] Part 2, art. 307 of the Labour Code of the Russian Federation.
[35] Part 2, art. 347 of the Labour Code of the Russian Federation.

Russia's approach is in the greater level of predictability with respect to the consequences of the dismissal, the disadvantage then is in lower flexibility.

The need to inform an employee about the termination of employment, is secured by the general rules on labour rights protection: worker's opportunity to apply to a court for reinstatement in the event of unlawful dismissal[36], through state monitoring of observation of labour legislation through a system of labour inspections[37], overall supervision of the compliance with the law by the public prosecutions office, collective protection of workers by trade unions[38] and other public organizations.

[36] Chapter 60 of the Labour Code of the Russian Federation.
[37] Chapter 57 of the Labour Code of the Russian Federation, 1947 ILO Convention concerning labour inspection in the industry and commerce (No. 81).
[38] See proposals for the national report regarding articles 5, 6, 21, 28 and 29.

Article 4. The right to a fair remuneration for work

With a view to ensure effective exercise of the right to fair working remuneration for work, the Parties commit:

5. allow deductions from salaries only under conditions and to the extent prescribed by national laws, regulations, collective agreements or arbitration decisions.

According to the annex to the European Social Charter (revised), "The scope of the European Social Charter (revised) in respect of people under its protection", item 5 of article 4 should be interpreted on the basis of the fact that "it is understood that a Party may assume the obligation provided for in this item, if the deductions from the salaries of the vast majority of workers are not permitted either by law or by collective agreements or arbitration decisions, except for those cases, when the acts do not apply".

Russian legislator establishes all the more efficient safeguards intended to protect the employee's salary from deduction, because it does not provide for the possibility of establishing rules on wage deductions at the level of by-laws or collective agreements. According to the Russian legislation, deductions from employee's salary shall be made only in cases stipulated by the Labour Code of the Russian Federation and other federal laws.[39]

According to the part 2 of art. 137 of the Labour Code, employer can only make deductions from employee's salary to pay off his debt in the following cases:

to reimburse the unearned advance payment, provided to the employee on the account of his salary;

to pay off the advance payment, issued due to a business trip or transfer to another job in another locality, as well as in other cases, if this payment was not spent or not returned in time;

to return the money unduly paid to the employee due to accounting errors, as well as the money unduly paid to the employee, in case of recognition if a body authorized to deal with individual labour disputes finds an employee guilty of non-compliance with labour standards or standing idle;

to make up for uncleared days of leave, upon the dismissal of an employee before the end of a working year, during which he had already received a paid annual leave. Deduction for these days are not made, if the employee is dismissed on the grounds provided for by item 8 of article 77 and items 1, 2 or 4 of part 1 of article 81, item 1, 2, 5, 6 and 7 of article 83 of the Labour Code of the Russian Federation.

Besides the Labour Code, there is a number of federal laws stipulating the employer obligation to deduct money from the employee's salary:

1) employer as a tax agent deducts the calculated amount of income tax from the employee's salary;[40]

[39] Part 1, art. 137 of the Labour Code of the Russian Federation.

[40] Art. 226 of the Tax Code of the Russian Federation (part two).

2) respective amount of money is deduced from the salary of an employee, who owes money to an employer, according to the requirements contained in a writ of execution;[41]

3) on a monthly basis respective amount of alimony is deduced from the salary of an employee, who is obliged to pay alimony, which is proven by a notarized alimony agreement or a writ;[42]

4) respective amount of money is deduced from the salary of convicted employees, the amount of which is specified by the court;[43]

5) respective amount of money is deduced from the salary of employees convicted to corrective labour, the amount of which is specified by the court. Reimbursement of running costs is also deduced from their salaries;[44]

6) respective amount of money is deduced from the salary of employees convicted to imprisonment, in order to reimburse the running costs[45]

7) extra money unduly paid previously is deduced from the salary of employee having children and receiving state allowances, if the overpayment occurred due to his fault;[46]

8) upon presenting written statements of unionized employees, employer monthly transfers membership fees to trade union account. These fees are deduced from the employees' salaries according to the collective agreement.[47]

Labour Code restricts the employer's right to deduct money from the employee's salary in three ways. Firstly, an employer may decide to make a deduction no later than one month from the deadline for returning the advance payment or unduly calculated payments. Secondly, this deduction is only possible provided that employee does not dispute the justification and the amount of deduction.[48] Thirdly, the deduction amount is limited: total size of all the deduction for each salary payment may not, as a general rule, exceed 20% of the employee's salary.[49]

Justification and amount of deduction are specified in his payroll.[50] .Yet another guarantee is established by the part 4 of Article 137 of the code: wages unduly paid (including those made due to the improper application of labour legislation or other regulatory acts containing labour law rules) cannot be recovered, except for the following cases:

counting error;

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[41] Part 3 art. 98 of the Federal Law No. 229-FZ dated Oct 2, 2007 "On executive proceedings"
[42] Art. 109 of the Family Code of the Russian Federation.
[43] Part 2 art. 40 of the Penitentiary Code of the Russian Federation.
[44] Part 1 art. 60.10 of the Penitentiary Code of the Russian Federation.
[45] Item. 1. 107 of the Penitentiary Code of the Russian Federation.
[46] Part 2, art. 19 of the Federal Law No. 81-FZ dated May 19, 1995 (rev. July 2, 2013) "On State Benefits for Citizens with Children".
[47] Part 3, art. 28 of the Federal Law No. 10-FZ dated Jan 12, 1996 (rev. July 2, 2013) "On Trade Unions, their rights and operational guarantees".
[48] According to the Russian Federation Labour and Employment Service (hereinafter Rostrud), in this case, salary is charged upon the written consent of the employee Rostrud Letter No. 3044-6-0 dated Aug 9, 2007).
[49] Part 1, art. 138 of the Labour Code of the Russian Federation.
[50] Part 1, art. 136 of the Labour Code of the Russian Federation.

if a body authorized to deal with individual labour disputes recognizes employees's guilt in non-compliance with labour standards or standing idle;

if the salary was unduly paid to an employee due to his unlawful actions, recognized as such by the court.

Rostrud believes that only arithmetical errors may be considered counting errors, that is, mistakes made due to incorrect application of the rules of maths[51]. Courts generally do not recognize the following kinds of errors as counting:

- when the same amount was paid twice due to a technical error;[52]
- when a previous payment had not been not taken into account;[53]
- when incorrect input data were used for calculation — for instance, incorrect tariff or rate,[54] wrong number of days;[55]
- doubled salary was accrued due to a calculation algorithm error;[56]
- when the rules of local regulatory act of the organization have been applied incorrectly.[57]

Also, a deduction amount is exclusively determined by the federal legislation. When establishing the deduction limits Russian legislators took a differentiated approach, establishing the following rule in the art. 138 of the Labour Code of the Russian Federation .

Total amount of each deduction from each payment cannot exceed 20%, and in the cases stipulated in the federal legislation — 50% of the salary, which is to be paid to an employee. While making salary deduction due to several writs [58]an employee must get at least 50% of the salary.

Amount of the salary deductions is calculated from the amount remaining after the taxes.[59]

Restrictions imposed by the art. 138 of the Labour Code of the Russian Federation, are not extended to deductions from the salaries paid during the corrective labour, recovery of alimony for underage children, compensation for the injuries caused to another person, compensation for the damage caused by the death of a breadwinner and compensation for damage caused by crime. Salary deduction in these cases may not exceed 70%.[60] It is clear that increasing the maximum amount of deduction to 70% is referred to exceptional cases exhaustively listed in the act.

Salary deductions should be distinguished from the recovery of a compensation for the damage caused by an employee. If an employee caused

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[51] Letter from the Rostrud No. 6/1/1286 dated Nov 1, 2012.
[52] Ruling of the Supreme Court of the Russian Federation No. 59-B11-17 dated Jan 20, 2012.
[53] Ruling of the Sverdlovsk Region Court No. 33-2365/2012 dated Feb 16, 2012; cassational ruling of the Krasnodar Regional Court No. 33-3340/12 dated of Feb 14, 2012.
[54] Appeal ruling of the Orel Region Court No. 33-1068 dated June 20, 2012.
[55] Cassational ruling of the Khabarovsk District Court No. 33-847/2012 dated Feb 8, 2012.
[56] Appellate ruling of the Bryansk Region Court No. 33-1077/12 dated May 3, 2012.
[57] Moscow City Court appellate ruling No. 11-12/13827 dated July 16, 2012.
[58] Executive documents include enforcement orders issued by the courts, writs, orders issued by authorities (officials) entitled to consider administrative offence cases, notarized agreements on alimony payment, rulings of executive officer of justice).
[59] Art. 99 of the Law on executive proceedings.
[60] Ibid.

material damage to an employer, and the amount of damage does not exceed the average monthly salary, an employer may issue an order for recovery of the amount of damage without the consent of an employee.[61]

[61] Part 1, art. 248 of the Labour Code of the Russian Federation.

Article 5. Right of association

In order to ensure or promote freedom of workers and employers in establishing local, national or international organizations for protection of their economic and social interests and freedom of joining these organizations, the parties commit to guarantee that the national legislation does not contain rules restricting this freedom, and the existing regulations do not apply to limit it. The extent to which the guarantees provided for in this article are applied to the police is to be determined by national laws or regulations. The principle regulating the application of these guarantees to military personnel and the extent to which they might be applied, are also to be determined by national laws or regulations

According to the Constitution of the Russian Federation, everyone has the right to association, including the right to create trade unions in order to protect one's interests. Freedom of public associations activities is guaranteed (part 1 of article 30). No one may be forced to join any association or stay in it (part 2 of article 30).

Establishment and activities of trade unions is regulated by the Federal Law No. 10-FZ dated Jan 12, 1996 "On trade unions, their rights and functioning guarantees" [62], which is an ad hoc act for Russian legislation on establishing public associations. Establishment and activities of public associations are regulated by the Federal Law "On public associations"[63]; the trade unions are subject to the provisions of the Federal Law "On non-profit organizations"[64].

Federal Law "On trade unions, their rights and operating guarantees" (hereinafter — Trade Union Act) regulates public relations emerging in connection with the implementation of the constitutional right for association, creation, functioning, reorganization and elimination of trade unions and their associations affiliations (associations), primary trade union organizations (trade unions).

Trade union is a voluntary association of citizens bound by common trade or professional interests due to their occupation, which is created to represent and protect their social and labour rights and interests[65].

The right to join trade unions is widely recognized in Russia. ***Every person***, who reached the age of 14 and who performs labour (professional) activity has the right to establish trade unions of his own choice to protect his interests, to join them, to engage in trade union activities and to leave trade unions[66]. Article 3 of the Trade Union Act defining the key terms, describes a trade union member as a person *(employee, temporary unemployed, retired*) being a member of a primary

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[62] Federal Law "On trade unions, their rights and operational guarantees" No. 10-FZ dated Jan 12, 1996. "Legislation Bulletin of the Russian Federation" dated Jan 15, 1996, No. 3, art. 148.

[63] Federal Law No. 82-FZ "On public associations" dated May 19, 1995. "Legislation Bulletin of the Russian Federation" dated May 22, 1995, No. 21, art. 1930.

[64] Federal Law No. 7-FZ dated Jan 12, 1996 "On non-commercial organizations". "Legislation Bulletin of the Russian Federation" dated Jan 15, 1996, No. 3, art. 145.

[65] Part 1, art. 2 of the Law on trade unions.

[66] Part 2, art. 2 of the Law on trade unions.

trade-union organization. In practice, charters of many trade unions stipulate the possibility of membership not only to persons directly engaged in professional activity, but also of students, unemployed, retirees.

Article 2 of the Trade Union Act guarantees all the citizens of the Russian Federation living outside of it the right to be members of Russian trade unions (part 3); to foreign citizens and stateless persons residing on the territory of the Russian Federation — the right to be members of Russian trade unions, except for the cases stipulated by federal laws or international treaties of the Russian Federation.

Establishment of trade unions and employers' associations.

In general, Russian legislation reflects the approach according to which workers and employers are guaranteed ***freedom of association***.

According to the article 6 of the Trade Union Act, apart from the Constitution of the Russian Federation and the specified federal laws, rights of trade unions in relations with state authorities, local self-government bodies, employers, their associations (unions, associations), other public associations and guarantees of their activities are also stipulated in other federal laws and laws of constituent entities of the Russian Federation. Legislation of the constituent entities of the Russian Federation cannot restrict rights of trade unions and guarantees of their activity, provided by federal laws. If the international treaties of the Russian Federation, the International Labour Organization conventions ratified by the Russian Federation establish other rules than the ones stipulated by this Federal Law, regulations of the international agreements and conventions override the Federal Law.

Trade Union Act establishes special rules for ***the establishment and registration of trade unions*** as opposed to other public associations, as well as to commercial organizations.

Trade union organization, just like any other public association, is created due to initiative of at least three individuals (art. 18 of the Federal Law “On public associations”). Trade Union (just like any other public association) is considered to be created after its founders decide on the establishment of a trade union; approval of its charter; creation of administrative and supervisory bodies of the union. Since then it may perform its statutory activity, acquire rights, except for the rights of a legal entity, and assume the obligations stipulated by the Federal Law “On public associations” (part 3 of article 18). In particular, all public associations that don’t have the rights of a legal entity, may perform the following activities (part 2 of art. 27 the Federal Law “On public associations”): freely disseminate information on its activities; hold meetings, rallies and demonstrations, street processions and pickets; represent and defend their rights, legal interests of its members and participants in government bodies, local self-government bodies and public associations; exercise other kinds of authority in case if this authority is unequivocally referred to in the federal laws on public associations; come up with initiatives on the matters that are relevant to the implementation of their statutory purposes; to file proposals to the state bodies and bodies of local self-government.

Besides that, a union also has the right to represent the interests of the workers, to carry out collective bargaining and to exercise other rights and duties regardless of the registration as a legal entity. It is clearly said in item 9 of part 1 of the article 8 of Trade Union Act that trade unions, their associations, and the primary trade union organizations have the right not to register. In this case, they do not acquire the rights of a legal entity.

If the union decides to complete the procedure of state registration for the sake of acquiring legal entity status and rights, it is to be carried out according to the art. 8 of the Trade Union Act, Federal Law dated Aug 8, 2001 No. 129-FZ "On the state registration of legal entities and individual entrepreneurs".

State registration of a trade union, associations of trade unions or a primary trade-union organization as a legal entity is carried out **in a notifying order.**

According to paragraph 9 of part 1 of article 8 of the Trade Union Act, a federal body of state registration and its regional branches in the constituent entities of the Russian Federation, an authorized registration authority **have no right to control the activities of trade unions**, their affiliations (associations), primary trade union organizations, or to refuse to register them.

According to part 2 of article 8 of the Trade Union Act in case of denial of state registration or evasion from it trade unions, their affiliations (associations), primary trade union organizations may lodge a complaint to the court.

State fee for registration of a trade union as a legal entity is 4,000 rubles (a little less than 100 euro)[67].

In order to complete the state registration of trade unions, their affiliations (associations), primary trade union organizations present the following documents (the list is defined by the article 8 of the Trade Union Act) to the federal executive body responsible for state registration of public associations, or its regional branch in the constituent entities of the Russian Federation, where the respective trade union body is located: original or a notarized copy of the statutes or regulations of primary trade union organizations, notarized copies of the decisions of conventions (conferences, assemblies) on the establishment of trade unions, their affiliations (associations), primary trade union organizations, documents on approval of the statutes or regulations of primary trade union organizations, lists of participants, of the relevant trade unions and their associations affiliations (associations).

Authorized state body for registration of trade unions is the Ministry of Justice of the Russian Federation exercising its activities directly and/or through its regional branches (Decree of the President of the Russian Federation dated October 13, 2004, No. 1313 "Matters of the Ministry of Justice of the Russian Federation").

Trade unions, their associations, and primary trade union organizations file the aforementioned documents within one month from the date of their creation.

If there are provisions which, according to the Ministry of Justice, its regional branches, do not comply with applicable legislation, relevant documents

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[67] Art. 333.33 of the Tax Code of the Russian Federation. Part 2. "Legislation Bulletin of the Russian Federation" dated Aug 7, 2000, No. 32, art. 3340.

are to be passed to the Prosecutor's Office. Prosecutors are examining the justice agencies for compliance with the current legislation, and in case of discrepancies, the union is to be informed about the need to eliminate violations.

In certain cases trade unions eliminate the identified violations. A trade union can decline the prosecutor's order, if it disagrees with it. In this case, prosecutor files his claim according to article 45 of the Civil Procedure Code of the Russian Federation requesting to acknowledge the noncompliance of certain paragraphs of the trade union charter with the effective legislation. Further on the issue of compliance of the charter with the legislation is considered before the courts of general jurisdiction in the course of action proceedings.

As it was mentioned earlier a trade union organization, just like any other public association, is created according to the initiative of **at least three individuals** (art. 18 of the Federal Law "On public associations"). The legislation does not specify any other ***requirements for the minimum number of members.*** However, it defines the requirements to trade unions and their regional, interregional and federal associations.

The Russian legislation contains the norms guaranteeing trade unions ***autonomy in the matters of their establishment and activities.***

In particular, according to article 5 "Independence of trade unions" of the Trade Union Act, trade unions are independent in their activities from the executive authorities, local self-government bodies, employers, their affiliations (unions, associations), political parties and other public associations; they are not accountable to or controlled by them (part 1). Interference of state authorities, local self-government bodies and their officials in the activities of trade unions, which may entail a restriction of trade union rights or impede the lawful exercise of their statutory activities (part 2 art. 5) is prohibited.

The legislation contains no provisions that would restrict the right of trade unions to hold ***election and choose their representatives***, including the restrictions on national grounds, belonging to a certain profession, working experience, etc. According to parts 2 and 3 of article 7 of the Trade Union Act, issues like that are to be regulated by the charter of the Trade Union (in particular, following matter are to be settled: conditions and procedure of establishment of a trade union, trade union membership and withdrawal, rights and duties of trade union members; organizational structure; order of establishment and competence of trade union bodies, their terms of office) or trade union associations charter (in particular, establishment procedure must be provided for trade union bodies along with their competence; location of a trade union body; terms of office of a trade union body).

The legislation does not restrict the ***use of trade union property***. On the contrary, art. 24 of the Trade Union Act sets down several guaranteed property rights of trade unions:

Trade unions, their affiliations (associations) and primary trade-union organizations possess, use and dispose of their property assets, including funds, required for implementation of its statutory goals and objectives, and have referred to them in accordance with the established procedure for economic asset management (part 1 article 24);

Recognition, immunity, protection of trade union property rights and conditions for exercising these rights on equal basis with other legal entities are guaranteed, regardless of their form of ownership, according with federal laws, the laws of the Russian Federation constituent entities, regulatory legal acts of local self-government bodies. Executive authorities have no financial control over the trade union funds, except for control over funds proceeding from business activities. Limitation of independent financial activity of trade unions is not allowed. Trade union property can only be expropriated through a court decision (part 2 of art. 24);

Trade unions are not liable for the obligations of the organizations, state bodies and local self-government bodies, which in turn are not liable for the obligations of the trade unions (part 3 article 24);

Sources, procedure of property formation and use of trade union funds are defined by their respective charters, provisions on primary trade union organizations (part 4, article 24);

Trade unions may possess land, buildings, structures, facilities, resorts, travel, sports, health care institutions, cultural, scientific and educational organizations, housing organizations, including publishing houses, printing plants, as well as securities and other property necessary for the statutory activities of trade unions (part 5, article 24);

Trade unions have the right to establish banks, solidarity funds, insurance, cultural foundations, education and training foundations, and any other foundation, relevant permitted by their statutory goals (part 6, article 24).

Lawful limits of trade union property use only include the following requirement stipulated in part 7, article 24 of the Trade Union Act — that business activity of trade unions may only be exercised through organizations they had established to that end and in order to achieve the objectives of the union charter that are relevant to these objectives.

There are no regulations in the Russian legislation that would establish a ***relationship between trade unions and its members*** or limit the grounds for a trade union to undertake disciplinary measures against its members. Such matters are regulated through charters of trade unions and their associations.

According to the part 5 of article 2 of the Trade Union Act, trade unions are guaranteed ***the right to form their own associations*** on branch, regional or other industry-specific grounds — Russian national associations, interregional associations, regional associations. Article 3 of the Trade Union Acts defines the concepts of Russian national associations of trade unions, interregional associations of trade unions and regional associations of trade unions. The definition of trade union association types on a territorial basis is in line with the approach defined in article 14 of the Federal Law “On public associations”, according to which Russian national, inter-regional, regional and local voluntary associations are established and operate in the Russian Federation .

As for entering international trade union associations, art. 3 of the Trade Union Act stipulates that trade unions and their associations have the right to collaborate with trade unions of other countries, join international trade unions and

other associations and organizations, strike contracts, and conclude agreements with them. Similar provisions are contained in article 46 of the Federal Law "On public associations". These provisions are also respected in practice.

Article 29 of the Trade Union Act guarantees judicial protection of trade union rights. It stipulates that cases of trade union rights violations are considered by the court upon an application of the prosecutor or a claim of a respective trade union body, the or a primary trade-union organization. Thus, not just the trade union itself, whose rights have been violated, may stand up in defense of its interests, but the prosecutor as well — at the request of the trade union or at its own initiative.

According to the norms of the Code of Civil Procedure of the Russian Federation (articles 36, 46) and the Federal Law "On public associations" (article 27), trade unions that are not registered as a legal entity may also apply to the court to protect their rights and interests, as well as their members and participants in the government bodies, local self-government bodies and public associations, whether it is a legal entity or not.

According to the article 356 of the Labour Code of the Russian Federation, the state labour supervisory commission carries out state supervision and monitoring of compliance with the labour law and other regulatory legal acts containing standards of labour law by the employers by means of inspections, surveys, issuing mandatory directions to eliminate violations, drawing up reports on administrative offences within the limits of their authority, compiling other materials (documents) on making the violators answerable in accordance with the federal laws and other regulatory legal acts of the Russian Federation;

Freedom to join or not to join a trade union

Trade Union Act and other laws of Russia do not impose legal restrictions on the right to free decisions on workers' membership in trade unions.

Part 2 of article 30 of the Russian Federation unequivocally states that no one may be forced to join any association or stay in it.

"Closed-shop" agreements are not common in Russian, practical examples of that have not been encountered either.

Provisions related to deduction of membership fees from the salaries and transfer to trade unions are contained in parts 5 and 6 of article 377 of the Labour Code of the Russian Federation. According to part 5 of art. 377 of the Labour Code of the Russian Federation, upon presenting written statements of unionized employees, employer monthly transfers membership fees to trade union account free of charge. Procedure of transferring them is determined by a collective agreement. An employer has no right to delay the transfer of the funds. Thus, in order to retain and transfer membership fees of an employee a personally expressed written consent of the said employee is required.

Due to the fact that, according to part 3 of art. 43 of the Labour Code of the Russian Federation, a collective agreement applies to all employees of the organization (branch office, representative office, a separate structural unit), part 6 art. 377 of the Labour Code of the Russian Federation stipulates that employers, who have concluded collective agreements or those subject to industry-specific

(cross-industry) arrangements, upon a written request of the non-unionized workers, should monthly transfer funds deducted from salaries of employees to the account of the trade union under conditions and pursuant to procedure established through collective negotiations, industry-specific (cross-industry) arrangements. Thus, in this case transferring funds is only possible on the basis of a written application of an individual employee.

Rules aimed at protection against trade union membership-related or trade union activities-related discrimination, also ensure the right to freely join or not to join a trade union.

According to the Labour Code of the Russian Federation, principle of employment discrimination prohibition is one of the fundamental principles of legal regulation of labour relations and other relevant relations (art. 2 of the Labour Code of the Russian Federation). Prohibition of discrimination due to membership in public associations is established in the article 3 of the Labour Code of the Russian Federation. Article 64 of the Labour Code of the Russian Federation establishes the prohibition of discrimination, when setting up an employment contract, art. 132 of the Labour Code of the Russian Federation prohibits salary discrimination. All of these norms prohibit discrimination on any grounds, including the one related to membership in trade unions or engagement trade union activities. A list of general anti-discrimination rules include article 5.62 of the Code of Administrative Offences, and article 136 of the Criminal Code, establishing the respective administrative and criminal responsibility for discrimination.

Special regulations that protect workers against discrimination based on belonging to a trade union or engagement in trade union activities have been also established. According to art. 9 of the Federal Law "On trade unions, their rights and operational guarantees", belonging or not belonging to a trade union does not entail any restriction of the social, political and other rights and freedoms of citizens guaranteed by the Constitution of the Russian Federation, federal laws and laws of constituent entities of the Russian Federation[68]. It is prohibited to hire, promote or dismiss people because of their membership or non-membership in a trade union[69].

As a positive factor in the recent legislation development, it should be noted that at the end of 2011, the norms of the Code of Administrative Offences were supplemented by an article 5.62[70], establishing liability for discrimination, a violation of rights, freedoms and lawful interests of individuals and citizens on the basis of sex, race, colour of skin, nationality, language, origin, property, family, social or professional status, age, place of residence, attitude to religion, beliefs, membership or non-membership in public associations or social groups. Previously, administrative responsibility for discrimination was not stipulated at

[68] Part 1, art. 9 of the Law on trade unions.
[69] Part 2, art. 9 of the Law on trade unions.
[70] Federal Law dated Dec 7, 2011 No. 420-FZ "On amendments to the Criminal Code of the Russian Federation and certain legislative acts of the Russian Federation". Rossiyskaya Gazeta, issue No. 278, dated Dec 9, 2011.

all, while article 136 of the Criminal Code have not been applied due to severity of stipulated sanctions.

The adoption of the Federal Law dated June 2, 2013, No. 162-FZ[71] is also an event of great importance — it introduced rules aimed at improving protection against employment discrimination. In particular, article 25 of the law of the Russian Federation "On employment in the Russian Federation" was supplemented by part 6, which establishes the prohibition of disseminating information about job vacancies, containing a discriminatory requirement. A new article was added to the Code of Administrative Offences, article 13.11.1 on "Dissemination of information on job vacancies or posts that contain restrictions of a discriminatory nature", which provides for the imposition of an administrative fine of up to 15,000 rubles for legal entities, up to 5,000 rubles and up to 1,000 rubles for citizens.

Activities of trade unions

Trade unions are independent in their activities from the executive authorities, local self-government bodies, employers, their affiliations (unions, associations), political parties and other public associations; they are not accountable to or controlled by them. Interference of state authorities, local self-government bodies and their officials in the activities of trade unions, which may entail a restriction of trade union rights or impede the lawful exercise of their statutory activities is prohibited[72].

Trade unions are free and independent in the issues promoting partnership with other organizations and trade unions both in Russia and in other countries. According to part 5 of article 2 of the Trade Union Act, trade unions have the right to form their own associations on branch, regional or other industry-specific grounds — Russian national associations, interregional associations, regional associations. Trade unions and their associations have the right to collaborate with trade unions of other countries, join international trade unions and other associations and organizations, strike contracts, and conclude agreements with them.

Part 1 of article 7 of the Trade Union Act provides that trade unions and their associations independently draft and approve their charters, provisions of the primary trade union organizations, their structure; form a trade union bodies, organize their activities, hold meetings, conferences, congresses and other events.

Suspending or prohibiting the activities of trade unions by administrative order of any kind of authority is not allowed. Trade union activities may be suspended for up to six months, or be prohibited by a decision of the Supreme Court of the Russian Federation or of the Court of Justice of the Russian Federation upon the request of Prosecutor General of the Russian Federation, public prosecutor of a constituent entity of the Russian Federation only when it

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[71] Federal Law dated July 2, 2013 No. 162-FZ "On amendments to the Law of the Russian Federation 'On employment in the Russian Federation' and certain legislative acts of the Russian Federation". Rossiyskaya Gazeta, issue No. 145, dated July 5, 2013.

[72] Art. 5 of the Law on trade unions.

runs counter to the Constitution of the Russian Federation, constitutions (charters) of constituent entities of the Russian Federation, federal laws[73].

Russia recognizes trade union pluralism; any number of trade unions can be established and act on any level, state does not interfere in this matter through imposing any legal prohibitions or restrictions. Art. 2 of the Trade Union Act provides that all trade unions have equal rights. Equality of rights is restricted, for example, when the question of the right to collective bargaining and the conclusion of a collective treaty or agreement is raised. In these and certain other issues trade union organizations that unite the majority of workers, or are mandated to represent the interests of the organization at a general meeting (conference), have more extensive rights to represent the interests of workers.

The legislation contains several guarantees in regard of ***trade union representatives access to workplaces of trade unions members***.

According to the part 5.11 of Trade Union Act, trade union representatives have the right to visit organizations and workplaces, where members of the relevant trade unions work, for implementing statutory tasks and exercising trade unions rights.

3. Article 19 of Trade Union Act stipulates that trade union labour inspectors are entitled to unimpeded access to the organizations regardless of their form of ownership or affiliation of the members of this trade union, to inspect compliance with labour legislation and legislation on trade unions, along with observance of the collective treaties or agreements by employers.

Part 2, article 20 of the law on trade unions provides trade unions the right to exercise trade union control over labor and environmental protection through their bodies, commissioners (trustees) on occupational safety and occupational safety inspections of its own. To this end, they have the right, inter alia, to visit organization regardless of their form of ownership or affiliation, their structural units, workplaces, staffed by members of the trade union.

The right of Assembly is guaranteed by articles 7 and 14 of the Trade Union Act. Procedure of implementing this right is not regulated by the law and is practically implemented on the terms agreed with the employer.

Representativeness of trade unions

The Russian legislation contains requirements, according to which trade unions and their associations are recognized as Russian national, interregional or regional in terms of territorial scope of their activities. The criteria for recognition are defined in the law, particularly in article 3 of the Trade Union Act. It defines the trade unions of Russian national level, associations of trade unions, interregional trade unions, interregional associations of trade unions, regional associations of trade unions, territorial structure of trade unions.

Appropriate status gives trade unions and their associations the right to participate in social relations of partnership at the respective level and to conclude agreements.

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[73] Part 3, art. 10 of the Law on trade unions.

Social partnership in Russia is practiced on a federal; interregional; regional; industry-specific; territorial and local level[74]. General, interregional, regional, industry-specific, territorial agreements and collective agreements are concluded at their appropriate levels. Appropriate social partnership bodies, which include representatives of trade unions and employers' organizations are also established at these levels.

The **Russian Tripartite Commission** [75]has been established and operates at the federal level. It comprises of representatives of the all-Russian associations of trade unions, the all-Russian employers' associations, government of the Russian Federation, which independently decide on the representation of the parties to the Commission. Each duly registered all-Russian association of trade unions or employers' association, has the right to send one of its representatives in the relevant part of the Commission, and, upon an agreement with other members of their delegation, all-Russian employers' associations can may increase the number of its representatives to the Commission. All-Russian association of trade unions have the right to increase the number of its representatives in the Commission (within the established number of members of their party) in proportion to the number of trade union members united.

Personal framework

All provisions related to the right of associations are applied to equal extent in both public and private sectors. According to the article 4 of the Trade Union Act, which defines the scope of the Act, it applies to all organizations at the territory of the Russian Federation, as well as to Russian organizations abroad and other organizations, according to international treaties of the Russian Federation.

Trade Union Act allows for the stipulating relevant feature of federal laws on trade unions, representing the following categories: servicemen; employees of domestic security agencies of the Russian Federation; employees of the State firefighting service within the Ministry of Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters of the Russian Federation; officers of the Federal Security Service; customs officers; officers of Drug Control Service of Russia; members of the Investigative Committee of the Russian Federation; judges; prosecutors.

However, the special legislation, which the Trade Union Act refers to, does not restrict the right of these categories of workers to associate into trade unions; they are subject to the Trade Union Act, when it comes to regulating establishment and activities of trade unions.

Military people can become a member of a Trade Union after the military service dismissal. Policemen can also join a Trade Union in accordance with the Federal Law “Concerning the Police”.

The right to form employers' associations

[74] Art. 26 of the Labour Code of the Russian Federation.

[75] Federal Law No. 92-FZ dated May 1, 1999 of the Russian Tripartite Commission on regulation of social and labour relations. “Legislation Bulletin of the Russian Federation”, dated May 3, 1999, No. 18, art. 2218.

Establishment and activities of associations of employers are regulated by the Federal Law No. 156-FZ "On employers' associations" dated Nov 27, 2002[76] (hereinafter the Employer Association Act).

In accordance with the part 2 of this law, employers have the right, without requesting prior permission of public authorities, local government bodies and other bodies, voluntarily establish employers' associations to represent the legitimate interests and rights of their members within the framework of social and labour relations and their economic relations with the trade unions and their associations, bodies of state power, bodies of local self-government.

The Employers Association Act provides for the establishment of associations of territorial (regional and interregional), industry-specific, cross-industry, and combined territorial and industry-specific character. Article 4 of the Act regulates the criteria under which an association may be recognized as national, national industry-specific (cross-industry), interregional (industry-specific, cross-industry), regional, regional industry-specific, territorial and territorial industry-specific. Criteria are a number of constituent entities of the Russian Federation, where an employers' association operates. There are two alternative criteria for national employers' organizations: national industry-specific (cross-industry) association is an association created on a voluntary basis by employers representing a specific industry (industries) or form(s) of activity, which collectively operate at the territory of more than a half of the constituent entities of the Russian Federation and (or) which has an employment relationship with at least half of the workers in this industry (industries) or form(s) of activity.

Activity of employers' associations is carried out according to the principle of voluntary accession and withdrawal of employers and(or) their associations (art. 5 of the law). Employers' associations are independent in determining the objectives and directions of its activity. Interaction between employers' associations, trade unions and their associations, bodies of state power and bodies of local self-government in the sphere of social and labor relations and related economic activity is based on the principles of social partnership.

Employers' organizations operate **independently** from public authorities, local self-government bodies, trade unions and their associations, political parties and movements, other public organizations (associations). In order to ensure such independence the legislation prohibits state authorities, bodies of local self-government and their officials to interfere in the activities of employers' associations, which may entail a restriction of the rights of employers' organizations established through international treaties of the Russian Federation and Russian legislation.

Employers' associations are established by a decision of its founders. Both employers and employers' associations may act as founders. Two founders are enough for establishment of an association. In those cases, when employer associations are involved, they also establish employers' association, rather than a

[76] "Legislation Bulletin of the Russian Federation" dated Dec 2, 2002, No. 48, art. 4741.

union or affiliation, although such a possibility exists, of course, under the Civil Code and the Federal Law “On public associations”. The difference is in the purpose for which the respective affiliation is established.

Structure, procedure of establishment, the mandate of employers' organization leadership, and the decision-making process are established by employers’ association separately and are reflected in their charters. The Charter of association may also provide for the liability of a member of employers’ association for a failure to comply with the provisions of the charter, decisions of the employers' association leadership.

The capacity of employers' association as a legal entity emerges at the moment of its state registration.

Members of the employers' associations all have equal rights. Besides the rights, related to participation in the management of an association and membership in it (to participate in the creation of management bodies; to introduce proposals to the leadership concerning the activities of employers' associations, participate in their consideration, as well as in the adoption of relevant decisions; freedom to leave employers' association), it is important to note a number of rights concerning participation in the conclusion and implementation of the association agreements, concluded within the framework of social partnership.

So, the rights of a member of an employers' associations include: the right to participate in determining the content and structure of employers’ association agreements; to receive information on the activities of employers' association, the agreements it concluded, as well as the texts of these agreements; to be assisted by an employers' association in the implementation of the legislation that regulates employment relations and other relevant relations, in development of local regulatory acts containing rules of employment law, collective bargaining agreements, as well as the resolution of individual and collective labour disputes.

Members of the employers' associations are required to comply with the requirements of the employers' associations, as well as to comply with the terms of the agreements entered into by employers and to comply with the obligations proceeding from these agreements.

Renouncing the membership in the employers’ association does not free an employer from the obligations proceeding from agreements he entered into during the period of membership in the association, as well as from the responsibility for violation or failure to comply with obligations.

If an employer joins the association, while previously concluded agreements are in effect, the employer is also subject to obligations under these agreements, and is responsible for the violation or failure to comply with relevant obligations.

Numerous trade unions are registered and operate in Russia. The most numerous is the Federation of Independent Trade Unions of Russia (hereinafter FITUR). It brings together 46 national trade unions. 78 territorial associations of trade unions operate in the republics, territories and regions of the Russian Federation. Together with industry-specific trade unions they are member organizations of the FITUR. Trade unions, united by the FITUR consist of more than 22 million members — about 95% of all trade union members in Russia.

FITUR is a membership organization of the General Confederation of Trade Unions (GCTU) of CIS countries. FITUR is the largest member organization of the International Trade Union Confederation (ITUC), which currently has 301 national trade union centres and comprises of 151 countries worldwide with a total manpower of more than 176 million members of trade unions. M.V. Shmakov, FITUR Chairman is the Vice President and a member of the Executive Committee of the ITUC[77].

Another notable and influential national trade union association is the Russian Labour Confederation (hereinafter RLC) — which promotes the interests of trade unions and acts since 1995. Currently, RLC integrates more than 20 nationwide and interregional trade unions[78]. Manpower of the RLC is about two million people.

[77] Official website of the Federation of independent trade unions of Russia. http://www.fnpr.ru/n/252/4890.html. Reference date — Sep 23, 2013.
[78] Website of the Russian Labour Confederation. http://www.ktr.su/about/. Reference date — Sep 23, 2013.

Article 6. The right to make collective agreements.

Item 1. With a view to ensure effective exercise of the right to make collective agreements, the Parties commit to:

1. promote joint consultation between workers and employers;

Social partnership is established by the law. It is regulated by a number of. First of all it's the second part of the Labour Code of the Russian Federation, including the section II "Social partnership in the field of labour", which, in turn, consists of nine chapters regulating specific matters of social partnership. Social partnership in the field of labour is understood as a system of relations between workers (their representatives), employers (their representatives), state bodies and local self-government bodies. Its aim is to balance the interests of employers and employees within the framework of labour relations management and other directly linked relations[79].

According to article 26 of the Labour Code of the Russian Federation social partnership is carried out at the federal, interregional, regional, industry-specific, territorial and local levels; thus, at the present moment, the law establishes a complete list of social partnership levels. Two features — territorial and industry-specific — are taken into account, while determining the levels. In practice, however, parties sometimes negotiate at other levels — considered the most appropriate and convenient at the moment.

Art. 27 of the Labour Code of the Russian Federation establishes a list of social partnership kinds. These include:

1) collective negotiations on the preparation of draft collective agreements, contracts and collective bargaining agreements;

2) mutual consultation (negotiations) on the regulation of labour relations and other directly related relations, providing guarantees of the workers' labour rights and improving labour laws and other regulatory legal acts containing employment and labour law;

3) participation of workers, their representatives in the organization management;

4) participation of workers' representatives and employers in the settlement of labour disputes.

This list is not exhaustive in fact; the parties are free to choose the most convenient forms of interaction. In practice, the following means are used to monitor the implementation of social partnership obligations: permanent advisory and coordination bodies that act on parity grounds; participation of social partners in the governance of state non-budgetary funds; employers and public authorities scrutinize and record the proposals brought forth by trade unions; participation of the social partners in the establishment and implementation of state policy in the field of labour (art. 35-1 of the Labour Code of the Russian Federation), etc.

[79] Art. 23 of the Labour Code of the Russian Federation.

Mutual consultation (negotiations) are held on the issues of regulation of labour relations and other directly related relations, providing guarantees of the workers' labour rights and improving labour laws and other regulatory legal acts containing employment and labour law; Consultations are held within the framework of various procedures and forms of interaction; specific forms of which derive from the norms of the Labour Code of the Russian Federation and several other federal laws, collective treaties and agreements.

Tripartite consultations take place within the framework of the work of *Commissions on regulation of social and labour relations (see below)*. Consultations touch upon the following issues, inter alia: development and (or) discussion of draft legislative and other regulatory acts, socio-economic development programmes, other acts issued by state bodies and bodies of local self-government (article 35.1 of the Labour Code of the Russian Federation)[80]. Within the framework of the Russian Tripartite Commission consultations are held on drafting federal laws and other state normative legal acts in the field of social and labour issues, federal programmes in the field of labour, employment of the population, workforce migration and social security;

Consultations are held at the regional and other levels. For instance, Moscow law "On social partnership in Moscow"[81] puts the development of measures of socio-economic reforms in the city of Moscow and their implementation, along with the regulation of social, labour and other relevant relations under the authority of the Moscow Tripartite Commission.

Tripartite consultations take place within the framework of deciding whether employers support or turn down the industry-specific tariff agreement (art. 48 of the Labour Code of the Russian Federation) and the agreement on the minimum wage in the constituent entities of the Russian Federation (article 133.1 of the Labour Code of the Russian Federation).

In accordance with the art. 21 of the Russian law "On employment in the Russian Federation"[82] executive authorities, employers, hold mutual consultation on employment upon receiving appropriate proposals from the trade unions and other representative bodies of workers; as a result of consultations agreements that stipulate measures for population employment promotion might be signed.

Commissions on the regulation of social and labour relations are formed out of representatives of the social partnership parties. Their goal is to regulate social and labour relations, to host collective bargaining, to draft collective agreements, to conclude them and monitor their implementation[83].

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[80] Participation in creation and implementation of state labour policy may be regarded as an independent form of social partnership. See, e.g.: I.I. Brodin Forms of social partnership and their place in the system of social partnership / "Trudovoye pravo", 2007, No. 1. C.

[81] The law of the city Moscow dated Nov 11, 2009 No. 4 "On social partnership in Moscow". Legal reference system KonsultantPlus.

[82] Law of the Russian Federation dated Apr 19, 1991 No. 1032-1 "On employment in the Russian Federation". "Bulletin of the Russian People's Deputies Congress and the Supreme Council of the Russian Federation". May 2, 1991, No. 18, art. 566.

[83] Art. 35 of the Labour Code of the Russian Federation.

Committees are established on the parity basis upon the decision of the parties. They may be established at any level of social partnership, be it bilateral or trilateral; they may act on a permanent basis or serve temporary purposes; may be created as a general authority body (multi-functional) or a specialized (purpose-built) one. Commissions consist of representatives entrusted with appropriate mandates from each side.

Since 2006[84] commissions have been entitled to participate in the establishment and implementation of state policy in the field of labour. They have the right to participate in development and (or) discussion of draft legislative and other regulatory acts, socio-economic development programmes, other labour-related acts issued by state bodies and bodies of local self-government. Purpose of their participation is to harmonize the interests of employees (their representatives), employers (their representatives) and the state on the regulation of social and labour relations and related economic issues.

State and local self-government bodies, which legislate on the labour issues must do the following (according to the art. 35-1 of the Labour Code of the Russian Federation):

- send draft acts, regulatory and other acts of the executive authorities and local self-government bodies legislating on labour issues, along with relevant documents and materials to appropriate commissions for further consideration;

- never fail to review the decisions of respective commissions.

Parties of social partnership establish the following commissions:

1) at the federal level — Russian Tripartite Commission on Regulation of Social and Labour Relations;

2) at the regional level — regional tripartite commissions on regulation of social and labour relations;

3) at the industry-specific (cross-industry) level — industry-specific (cross-industry) commission on regulation of social and labour relations. They can be established at different levels of the social partnership — federal, interregional, regional, territorial levels;

4) at the territorial level — regional tripartite commissions on regulation of social and labour relations;

5) at the local level — commissions for collective bargaining, for drafting collective agreements and conclusion of collective agreements.

Besides that, various commissions are established to discuss and resolve specific issues in the field of social and labour relations**:** employment coordination and promotion committees (art. 20 of the Law on employment[85]); Commission on

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[84] Federal Law dated June 30, 2006 No. 90-FZ, "On amendments to the Labour Code of the Russian Federation, recognition of certain USSR regulations as inapplicable at the territory of the Russian Federation and the renunciation of certain legislative acts (provisions of legislative acts) of the Russian Federation". Legal reference system KonsultantPlus.

[85] Law of the Russian Federation dated Apr 19, 1991 No. 1032-1 "On employment in the Russian Federation". "Bulletin of the Russian People's Deputies Congress and the Supreme Council of the Russian Federation". May 2, 1991, No. 18, art. 566.

occupational safety (art. 218 of the Labour Code of the Russian Federation); commission on labour disputes (art. 384 of the Labour Code of the Russian Federation); any other specialized commissions may be established upon reaching an agreement between an employer and employees (or their representatives).

Russian Tripartite Commission (RTC) was established under the Federal Law dated May 1, 1999 "On Russian Tripartite Commission for regulation of social and labour relations"[86]. Commission consists of representatives of the all-Russian associations of trade unions, the all-Russian employers' associations, government of the Russian Federation, which independently decide on the representation of the parties to the Commission. Each duly registered all-Russian association of trade unions or employers' association, has the right to send one of its representatives in the relevant part of the Commission, and, upon an agreement with other members of their delegation, all-Russian employers' associations can may increase the number of its representatives to the Commission. All-Russian association of trade unions have the right to increase the number of its representatives in the Commission (within the established number of members of their party) in proportion to the number of trade union members united. Number of Commission members from each of the parties should not exceed 30 people. Representatives of the parties are members of the Commission.

RTC is formed on the basis of voluntary participation principles supported by national associations of trade unions and employers' associations in all of its activities; mandate of the parties; autonomy and independence of each of national trade union associations, each of national employers' association, government of the Russian Federation while determining the make-up of their representatives in it.

There are seven working groups within the RTC. They include representatives of each party and experts nominated by each of the parties:

I. Working group for economic policy;

II. Working group for incomes, salaries and living standards of the population;

III. Working group for labour market development and employment safeguards;

IV. Working group for social insurance, social protection, social industry;

V. Working party for labour rights protection, occupational safety, environmental, and industrial safety protection;

VI. Working group for dealing with socio-economic problems of the northern regions of Russia;

VII. Working group for social partnership and coordination between parties to the agreement.

[86] Federal Law No. 92-FZ dated May 1, 1999 "On the Russian Tripartite Commission on regulation of social and labour relations". Rossiyskaya Gazeta. May 12, 1999, No. 90.

Meetings of the working groups and the Commission itself are held on a monthly basis.

RTC has the following rights[87]:

1) to hold consultations on issues related to the development and implementation of socio-economic policies with the federal state authorities in the previously agreed order;

2) to develop and submit proposals to enact federal laws and other regulatory legal acts of the Russian Federation in the field of social and labour relations to the federal authorities in the previously agreed order;

3) harmonize the interests of Russian national associations of trade unions, employers' associations, federal executive authorities while drafting the general agreement, implementation of this agreement, implementation of RTC decisions;

4) collaborate with industry-specific (cross-industry), regional and other commissions on regulation of social and labour relations during the collective bargaining process, drafting of general agreement and other agreements governing social and labor relations, implementation of these agreements;

5) request the information on contracts and agreements governing labor relations and collective agreements from the executive authorities, employers and trade unions in order to make RTC recommendations for the development of collective-contractual regulation of social and labour relations, organizing the activity of industry-specific (cross-industry), regional and other commissions on regulation of social and labour relations;

6) monitor the implementation of its decisions;

7) to receive information on the socio-economic situation in the Russian Federation and constituent entities of the Russian Federation from the federal executive bodies in accordance with the procedure established by the government of the Russian Federation for the sake of collective bargaining and drafting of general agreement, organizing monitoring of the implementation of the said agreement, devising regulatory acts of the Russian Federation, as well as the projects of federal laws and other regulatory acts of the Russian Federation in the field of social and labour relations;

8) in an accord with the government of the Russian Federation participate in the preparation of draft federal laws and other regulatory acts of the Russian Federation in the field of social and labour relations, and, in coordination with the committees and commissions of the Federal Assembly Chambers — in its preliminary review of draft laws and prepare them for consideration by the State Duma of the Federal Assembly of the Russian Federation;

9) in an accord with the national trade unions associations, national employers' associations and the federal state authorities participate in the meeting of the said associations and bodies, where issues of regulation of social and labour relations are considered;

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[87] Part 1, art. 4 of the Federal Law No. 92-FZ dated May 1, 1999.

10) invite representatives of national trade unions association, national employers' organizations and federal agencies that don't belong to the commission, as well as scientists and experts, representatives of other organizations to participate in its work;

11) establish working groups inviting third-party scientists and experts;

12) take part in national, inter-regional meetings, conferences, congresses, seminars on social and labour relations and social partnership as agreed with the organizers of these activities.

RTK establishes its own rules of procedure independently[88]. There are regulations of individual departments, providing a consistent order of data interaction between departments and the RTC[89]. RTC operation is secured by the Staff of the Government of the Russian Federation. The procedure of RTC operation is regulated by a special Governmental Decree[90]. In practice, RTC meets several times a year and discusses changes in labour and social-security legislation, as well as other issues affecting social and labour sphere[91].

Regional tripartite commission on regulation of social and labour relations are set up on the similar principles — on the basis of legislation on social partnership of the constituent entities of the Russian Federation. Territorial commissions act within municipalities, industry-specific commission — in certain spheres of economic activities at various levels. Educational principles of such commissions are common for any level. Bilateral commissions for collective bargaining, drafting collective agreements and conclusion of collective agreements are established at a local level. The procedure of their establishment and operation are defined by the parties themselves. They are free to form any other kind of specialized commissions to address more specific issues. According to currently developing supranational levels of social partnership respective authorities are established.

Consultation with workers' representatives are carried out on the subject of joining/refusal to join the industry-specific agreement at the federal level (art. 48 of the Labour Code of the Russian Federation), as well as the regional agreement on the minimum wage (art. 133.1 of the Labour Code of the Russian Federation). While making industry-specific agreements at the federal level, at the suggestion of the parties to the agreement, the head of the federal executive body, exercising the functions of state policy and legal regulation of labour, after publication of the agreement, has the right to offer employers, not involved in the conclusion of the agreement, to accede to the agreement.

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[88] Part 2, art. 4 of the Federal Law No. 92-FZ dated May 1, 1999.

[89] E.g.: Order of the Russian Federation Ministry of Health and Social Development dated May 13, 2005 No. 336 (rev. Apr 12, 2008) "On approval of the cooperation establishment procedure between the Russian Federation Ministry of Health and Social Development and Russian Tripartite Commission on regulation of social and labour relations.

[90] Russian Federation Government Decree No. 1229 dated Nov. 5, 1999 (rev. June 22, 2004) "On support of Russian Tripartite Commission (RTC) activities on regulation of social and labour relations" // Legislation Bulletin of the Russian Federation, dated Nov 15, 1999, No. 46, art. 5572.

[91] See extracts from the minutes of RTC meetings at its official web site: http://government.ru/department/141/docs/.

The procedure of publishing federal-level industry-specific agreements and proposals of acceding to the agreements is established by the Order of Russian Federation Ministry of Health and Social Development dated Apr 12, 2007 No. 260[92]. In accordance with this procedure the Federal Service on Labour and Employment sends the text of the agreement and its registration information for posting on the official website of the Ministry of Health and Social Development (www.minzdravsoc.ru)[93] and publishing it in The Occupational Health and Economics magazine within 3 calendar days since the date of registration of the agreement (changes and additions to it), as well as for publishing in The Russian Industrialist magazine and The Solidarity newspaper. After publishing in The Occupational Health and Economics magazine and posting at the official website of the Ministry (www.minzdravsoc.ru), the parties to the agreement are entitled to propose to the Minister of health and social development of the Russian Federation to appeal to employers operating in the industry concerned and not involved in the agreement, to accede to it. If employers operating in the industry do not present a motivated written refusal to accede to the agreement within 30 calendar days since the day of official publication of the proposals, the agreement is considered effective and applied to them since the day of official publication of the proposal.

If an employer refuses to accede to the agreement, he should attach the records of consultations of an employer with the elected body of primary trade-union organization of workers of this employer, to the letter stating his refusal. In this case a representative of an employer and a representative of the elected body of the relevant primary trade-union organizations may be invited to the Ministry of Labour for consultations; such consultations are compulsory. The similar distribution mechanism is provided for a regional agreement on the minimum wage, which could be concluded at the constituent entity of the Russian Federation (article 133.1 of the Labour Code of the Russian Federation). Check articles 21, 22, 29 of the Charter for getting information on consultations at the organization level.

[92] Order of the Russian Federation Ministry of Health and Social Development dated Apr 12, 2007 No. 260 (rev. Apr 9, 2012) "On approval of the procedure for issuing federal-level industry-specific agreements and proposals of acceding to the agreement". Legal reference system KonsultantPlus.

[93] In 2012, the Ministry of Health and Social Development was reformed; a Ministry of Labour and Social Protection, the Federal agency responsible for setting and implementing state policy and normative-regulatory functions in the field of demographics, employment, standards of living and income, salaries etc. However, necessary changes to the detuning order have not been introduced.

Article 6. The right to make collective agreements.

With a view to ensure effective exercise of the right to make collective agreements, the Parties commit to:

2. to promote, where necessary and appropriate, establishment of mechanisms for voluntary negotiations between employers or employers' organizations on the one hand, and workers' organizations on the other, with a view to regulate conditions of employment through collective agreements.

Collective bargaining about conclusion of collective agreements is the most important form of social partnership in Russia and its tradition stretch far back into history. Collective bargaining is conducted at all levels of the social partnership from a local to the federal one. In accordance with the law on collective bargaining [94], the right to conclude several collective agreements is recognized in Russia. Once Labour Code of the Russian Federation enters into force, the legislation provides for the conclusion of one collective agreement, in an organization, a branch office, a representative office, a separate structural unit, which applies to all employees.

In chapter 6 of the Labour Code of the Russian Federation "Collective bargaining" the state sets the legal framework for collective bargaining. The legislation supports the idea of free and voluntary collective bargaining. So, article 24 of the Labour Code of the Russian Federation establishes principles of social partnership. These include, in particular: equality of the parties; respect to the interests of the parties involved; intention of the parties involved to build contractual relations; state assistance for strengthening and developing social partnership in a democratic manner; mandate of the representatives of the parties; freedom of choice while discussing labour matters; voluntary commitments made by the parties; feasibility of the obligations assumed by the parties; mandatory implementation of the collective agreements; monitoring implementation of collective contracts and agreements; responsibility of the parties, their representatives for failure to comply with the collective agreements at their own fault.

Any of the parties (representatives of workers or employers) has the right to take the initiative to conduct collective bargaining[95]. A proposal to initiate collective bargaining must be sent in writing. In practice, collective bargaining initiative comes from the workers in most cases.

The Labour Code of the Russian Federation guarantees free collective bargaining by prohibiting, inter alia, collective bargaining and the conclusion of collective contracts and agreements on behalf of individuals representing the interests of employers, as well as organizations or bodies established or financed by employers, executive power bodies, local self-government bodies, political

[94] The Russian Federation law "On collective treaties and agreements" dated March 11, 1992, No. 2490. Lost effect due to adoption of the Federal Law dated June 30, 2006 No. 90-FZ.

[95] Part 1, art. 36 of the Labour Code of the Russian Federation.

parties, except for the cases stipulated by the Labour Code of the Russian Federation[96].

Representatives of the party receiving the proposal to start collective negotiations are required to enter negotiations within seven calendar days since the date of receiving the proposal. Failure to perform duties on entering the collective bargaining processes entails administrative responsibility.

Labour Code of the Russian Federation regulates the procedures for determining the workers' representative responsible for collective bargaining. After introducing changes to the Labour Code of the Russian Federation in 2006,[97] the priority to represent the interests of employees in collective bargaining process is given to a trade union, uniting the majority of the employees of a particular employer. If several trade unions uniting more than a half of workers, exist within one organization, active primary trade union organizations may create a single representative body (part 2 of art. 37 of the Labour Code of the Russian Federation); either the primary trade-union organization uniting more than a half of employees, may through a decision of its elected body propose an employer (his representative) to start collective bargaining on behalf of all the workers without first creating a unified representative body (part 3 of article 37 of the Labour Code of the Russian Federation). In the first case two or more primary trade union organizations, uniting a total of more than half of the employer's employees, by resolution of their elected bodies can create a single representative body for holding collective bargaining, implementation of all the future development-related procedures and conclusion of the collective agreement. United representative body is established on the basis of a principle of proportional representation, depending on the number of trade union members. At the same time, the body must include representatives from each of the primary trade union organizations that created this united representative body. United representative body has the right to send the employer (or his representatives) a proposal to start collective bargaining for the preparation, conclusion, or amendment to a collective agreement on behalf of all employees.

If none of the primary trade union organizations or all the primary trade union organizations combined do not represent more than a half of workers, the employee representative is determined through a general meeting (conference) of workers (part 4 of article 37 of the Labour Code of the Russian Federation). The general meeting (conference) members can determine the primary trade union organization through a secret ballot, which, given the consent of the elected body, is entrusted to propose the employer (his representative) to begin collective bargaining on behalf of all employees. If a primary trade union organization like

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[96] Part 3, art. 36 of the Labour Code of the Russian Federation.

[97] Federal Law dated June 30, 2006 No. 90-FZ, "On amendments to the Labour Code of the Russian Federation, recognition of certain USSR regulations as inapplicable at the territory of the Russian Federation and the renunciation of certain legislative acts (provisions of legislative acts) of the Russian Federation". "Legislation Bulletin of the Russian Federation". July 3, 2006, No. 27, art. 2878.

that is not defined or the workers are not united into a trade union, a general meeting (conference) of employees may elect another representative (representative body) from among the employees through a secret ballot and give him/it appropriate mandate.

The representative, who initiated the talks, should, simultaneously with proposing the employer (his representative) begin collective bargaining, inform all the trade union organizations of workers and employers about that, and with their consent establish a unified representative body or include them into an existing unified representative body within the next five working days. If primary trade union organizations neither present their decision, nor refuse to send its representatives to the united representative body within this period, collective bargaining begin without their participation. At that, primary trade union organizations that do not participate in collective bargaining retain the right to send its representatives to a united representative body within one month since the commencement of collective bargaining[98].

The right to hold collective bargaining and conclude agreements at levels above the one of an organization (local) is granted to trade unions and trade union associations of respective levels (national, interregional, regional). If several trade unions (trade-union associations) exist at the appropriate level, each of them is granted representation within a single representative body, established in accordance with the number of trade union members they represent. However, in contrast to local negotiations, in the absence of an agreement on the creation of a united representative body, the right to negotiate is granted to the trade union (association), with the biggest number of members[99].

Collective bargaining procedures are determined by the parties themselves based on reciprocal arrangements. Labour Code of the Russian Federation establishes only the most basic positions. In particular, it is established that the first day of collective bargaining is the day after receiving the aforementioned response by the initiator of the collective bargaining[100]. Parties themselves determine the procedure of negotiations, what representatives of each party to be included to the commission, frequency and location of commission meetings, distribution of work responsibilities during the negotiations, procedure of signing the harmonized draft collective agreement. Parties also decide independently on the approval of the collective agreement.

The Parties pledge to provide each other all the information they dispose, necessary for collective bargaining, no later than two weeks since receiving the request[101]. The parties may not refuse a request for information, referring to the fact that the information is a secret protected by law. Parties to collective bargaining, other persons involved in collective bargaining should not disclose the obtained information, if its secrecy (state, official, commercial or other) is

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[98] Part 5, art. 37 of the Labour Code of the Russian Federation.
[99] Part 6, art. 37 of the Labour Code of the Russian Federation.
[100] Part 2, art. 36 of the Labour Code of the Russian Federation.
[101] Part 7, art. 37 of the Labour Code of the Russian Federation.

protected by law. People disclosing the information, are subject to disciplinary, administrative, civil and criminal liability[102] (art. 147, 183, 283 of the Criminal Code).

The Labour Code of the Russian Federation establishes guarantees and compensations for those involved in collective bargaining. People involved in collective bargaining, drafting of a collective treaty or agreement, both from the side of workers and an employer, are exempt from work while retaining average salary for a period determined by agreement of the parties, but for no longer than three months. All the expenses caused by participation in collective bargaining are reimbursed in accordance with the labour laws and other legal regulatory acts containing employment and labour law, collective treaty or agreement. Payment for services of experts, specialists and brokers is made at the expense of the inviting party, unless provided otherwise by a collective treaty or agreement. As for workers' representatives involved in collective bargaining, additional safeguards are installed for them. During the negotiations they may not be subjected to disciplinary punishment, transferred or dismissed at the initiative of employer unless there is prior consent of an authority body that delegated them the right of representation, except for the cases of termination of employment for misconduct, which, in accordance with the present Code or, other federal laws, entails dismissal[103].

The day when collective bargaining is finished is the day, when collective treaty, agreement or discrepancy report is signed.

The legislation restricts terms for collective bargaining. Within three months from the date of the beginning of negotiations, the parties should sign a collective agreement on the agreed terms. All issues, upon which no agreement has been reached, should be registered in the minutes, which is to be signed simultaneously with the collective agreement[104]. Signing the discrepancies report may become a ground for starting a collective labour dispute, otherwise parties may agree to extend collective bargaining for an indefinite term.

At the end of 2012 limit for duration of the negotiations on agreement conclusion was introduced[105]. According to the new revision of article 47 of the Labour Code of the Russian Federation, if no agreement is reached between the parties on individual provisions of the draft agreement within three months of the commencement of collective bargaining, and collective bargaining on a draft general agreement within six months from the date of their beginning, the parties must sign an agreement on agreed terms along with the discrepancy report.

Workers and employers, through their representatives, conclude collective agreements at a local level and treaties at the levels above. A collective agreement may include rules governing labor relations of employees and employers, as well

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[102] Part 8, art. 37 of the Labour Code of the Russian Federation.
[103] Part 3, art. 39 of the Labour Code of the Russian Federation.
[104] Art. 40 of the Labour Code of the Russian Federation.
[105] Federal Law dated Dec 3, 2012, No. 234-FZ "On amendments to the article 26.3 of the Federal Law 'On general principles of establishing legislative (representative) and executive state bodies of the constituent entities of the Russian Federation' and the Labour Code of the Russian Federation". Rossiyskaya Gazeta, No. 283, Dec 7, 2012.

as the regulations governing the relationship of the parties of the collective agreement, and their mutual commitments. The Labour Code of the Russian Federation provides a list of conditions, which may be established in a collective agreement; they are listed in the article 41 of the Labour Code of the Russian Federation: forms, systems and wages; paying benefits, compensation; mechanism for regulating remuneration, taking into account price growth, inflation, indicators set out in the collective agreement; employment, training, conditions of labour exemption; working and rest time, including condition and duration of the leaves; improvement of working conditions, occupational health and safety of workers, including women and young people; needs and interests of the employees during the privatization of state and municipal property; environmental safety and health of workers; guarantees and benefits for those workers, who combine work and learning; health care and recreation activity for workers and members of their families; partial or full financing of workers' meals; other issues identified by the parties. Besides that, certain articles of the Labour Code of the Russian Federation provide over 80 references that regulate various issues through local regulations or collective agreements.

In a collective agreement that takes into account financial and economic situation, employers may establish incentives and benefits for workers, more favourable working conditions compared to those set forth by laws, other regulatory acts and agreements (part of 2 art. 41 of the Labour Code of the Russian Federation).

The conditions that regulate the relations between the parties of the collective agreement, and their mutual obligations, include the following: monitoring the implementation of the collective agreement; procedure of making amendments to the collective agreement; responsibility of the parties; ensuring decent conditions of workers' representatives; procedure of informing employees on the implementation of the collective agreement. A collective agreement may include **peaceful commitment of employees —** their waiver of strikes, so far as the collective agreement is fulfilled.

A collective agreement is concluded for a definite **term** of no longer than three years. In practice, collective agreements are concluded for a term of one to three years, the average term of the collective agreement being two years. Parties have the right to extend a collective agreement for a term of no more than three years, although the law does not limit the number of extensions . The legislation also regulates a collective agreement's rules if an organization name changes, in case of its restructuring through transformation, as well as in case of termination of the employment contract with the head of the organization. When organizations changes a form of property, collective agreement remains in force for three months since the date of property rights transition. While restructuring the organization through a merger, accession, division or separation, a collective agreement remains in force for the duration of the restructuring. In the course of reorganization or change of ownership, any of the parties has the right to propose to another side concluding a new collective agreement or extending the previous for three years

onward. When an organization is eliminated, a collective agreement remains in effect for the duration of the elimination procedure[106].

At federal, interregional, regional, industry-specific (cross-industry) and territorial levels of social partnership representatives of workers' and employers' organizations conclude agreements within their jurisdiction (art. 45 of the Labour Code of the Russian Federation). Agreements may be trilateral and bilateral. The Labour Code of the Russian Federation explicitly provides for concluding the following types of agreements: general (national level), interregional (level of two or more constituent entities of the Russian Federation), regional (at the level of a constituent entity of the Russian Federation); industry-specific (cross-sectoral) (at the federal, interregional, regional, territorial levels), territorial (municipal level). It is possible to conclude other arrangements not stipulated explicitly in the Labour Code of the Russian Federation.

The content and structure of an agreement is determined through an agreement between the representatives of the parties, who are free to choose the range of issues to be discussed and included into the agreement. An agreement should include provisions on its term and procedures for monitoring its implementation.

An agreement may include the obligations of the parties on the following questions: wages (including the establishment of minimum salary, tariff rates (salaries), the ratio of wages and the level of its premium part, as well as the definition of salary components, included into its flat-rate part, establishing the procedure for raising actual wage); guarantees, compensation and benefits paid to employees; working and rest schedules; employment, conditions of release; professional development of employees, including to upgrade the production; working conditions and work safety; development of social partnership, including workers' participation in management of the organization; supplemental pension insurance; other issues identified by the parties[107].

According to the Labour Code of the Russian Federation, an agreement is signed for a term of not more than three years, the parties can then extend it once for a period not exceeding three years.[108] The agreement applies to all employers, who belong to the employers' association that entered into the agreement. At that, termination of membership in the association of employers shall not release the employer from fulfilling the agreement during the period of his membership, while an employer, who joined the association during the term of the agreement, is obliged to fulfill its obligations. Apart from that, an agreement applies to employers, who do not belong to the employers' association that has entered into an agreement, who authorized the merger on their behalf to participate in collective negotiations and to conclude the agreement, as well as to those, who **acceded to the agreement** after its conclusion. The agreement also applies to state and local self-government bodies within their commitments. As for such employers as

[106] Art. 43 of the Labour Code of the Russian Federation.
[107] Art. 46 of the Labour Code of the Russian Federation.
[108] Art. 48 of the Labour Code of the Russian Federation.

federal government agencies, government agencies of constituent entities of the Russian Federation, municipal institutions and other relevant organizations financed from the budget, an agreement is also valid, when it is concluded on behalf of an appropriate authority of a state or local government body. The agreement applies to all workers, who are engaged into an employment relationship with the employer, and subject to the agreement. When employees are subject to several agreements, terms of the most favourable agreement are applied.

There is an exception from the said rules, which indicates the procedure of **extending agreements** to employers, who don't belong to the employers' association and have not authorized the latter to represent their interests. While making industry-specific agreements at the federal level, at the suggestion of the parties to the agreement, the head of the federal executive body, exercising the functions of state policy and legal regulation of labour, after publication of the agreement, has the right to offer employers, not involved in the conclusion of the agreement, to accede to the agreement. After publishing in The Occupational Health and Economics magazine and posting at the official website of the Ministry (www.minzdravsoc.ru), the parties to the agreement are entitled to propose to the Minister of Labour and social Protection of the Russian Federation to appeal to employers operating in the industry concerned and not involved in the agreement, to accede to it.

If employers operating in the industry do not present a motivated written refusal to accede to the agreement within 30 calendar days since the day of official publication of the proposals, the agreement is considered effective and applied to them since the day of official publication of the proposal.

If an employer refuses to accede to the agreement, he should attach the records of consultations of an employer and the elected body of primary trade-union organization of workers of this employer, to the letter stating his refusal. In this case a representative of an employer and a representative of the elected body of the relevant primary trade-union organizations may be invited to the Ministry of Labour for consultations; such consultations are compulsory[109]. Similar distribution mechanism is provided for a regional agreement on the minimum wage, which could be concluded at the constituent entity of the Russian Federation[110].

A collective treaty and agreement **enter into force** since the day of signing by the parties, or since the date specified in the collective agreement (part 1 article 43, part 1 article 48 of the Labour Code of the Russian Federation). However, within seven days since the date of signing of the collective agreement, it is sent to the employer, the employer's representative (employers) for the notification registration at the respective labour authority. While registering a collective treaty or an agreement, a corresponding labour authority identifies conditions which adversely affect the situation of employees in comparison with labour laws and other legal regulatory acts containing employment and labour law, and notify the

[109] Art. 48 of the Labour Code of the Russian Federation.
[110] Art. 133.1 of the Labour Code of the Russian Federation.

representatives of the signatories to the collective agreement, agreement, and relevant state labour inspection. The terms of the collective treaty or agreement, adversely affecting the situation of employees, **are invalid and are not subject to be put into effect.**

Control over the implementation of a collective treaty or agreement, is performed by the social partnership parties, their representatives, relevant labour authorities. Specific forms, mechanisms and terms for the implementation of control activities are often set in the collective agreements and treaties. Given the lack of regulation of the minuscule details of this issue, it is useful and reasonable. While exercising the specified control, representatives of the parties shall provide each other, as well as relevant labour authorities, necessary information not later than one month since the date of receiving the request (art. 51 of the Labour Code of the Russian Federation).

In the end of 2011 "Analytical information on the development of social partnership in the constituent entities of the Russian Federation" report was prepared on the basis of information provided by the constituent entities of the Russian Federation in response to a request from the Deputy Minister of Health and Social Development to coordinators of the parties of tripartite commissions representing executive authorities of the constituent entities of the Russian Federation, dated January 16, 2012, No. 22-5/10/2-195. All the materials submitted by the regions (Moscow, Bryansk region, Penza region, Republic of Khakassia have not submitted their data) were used in the document. Following is the data contained in the "Analytical information" report for 2011.

Agreements on the establishment of minimum wage

In 2011 tripartite agreements operated in a number of regions, which set the minimum wage in the region, exceeding the one established by federal legislation:

- Khanty-Mansy autonomous district — Yugra — 10,250 rubles
- Sakhalin Region — 9,500 rubles
- Murmansk Region — 7,923 rubles
- St. Petersburg — 7,300 rubles
- Khabarovsk Territory — 6,700 rubles
- Republic of Sakha (Yakutia) — 6,614 rubles
- Rostov Region — 5,797 rubles
- Tambov Region — 4,760 rubles

In 2011 a number of agreements was effective in some regions. According to them, differentiated regional standards of minimum wages were applied. Differentiation was primarily justified by sources of financing: different standards were set for the institutions financed from the regional and local budgets, institutions financed from the federal budget and non-budget enterprises. Usually regional agreements stipulated the highest minimum wage for accounting period provided for non-budget enterprises and the lowest — for institutions financed from the federal budget:

- Novosibirsk Region — 7,800 rubles (for non-budget organizations) / 5,689 rubles (for regional and local budget-funded institutions);
- Moscow Region — 7,690 rubles (for everyone except for the federal budget-financed institutions);
- Altayskiy Territory — 6,330 rubles (only for non-budget organizations);
- Kursk Region — 6,180 rubles (only for non-budget organizations);
- Ryazan Region — 5,800 rubles (for non-budget organizations) / 4,700 rubles (for budget-funded institutions);
- The Republic of Mari El — 5,652 rubles (only for non-budget organizations);
- Tyumen Region — 5,200 rubles (non-budget) / 4,710 rubles (for budget-funded institutions);

An exception from the general rule are two regions, where the regional minimum wage for employees of budget-funded institutions exceeds the minimum wage for employees of non-budget organizations:

- Belgorodskaya Region — 8,046 rubles (only for regional and local budget-funded institutions);
- Kaluga Region — 6,253 rubles (for regional and local budget-funded organizations) / 5,864 rubles (for non-budget organizations);

Its own standard of minimum wages for agricultural workers was set in Novosibirsk Region — 5,400 rubles.

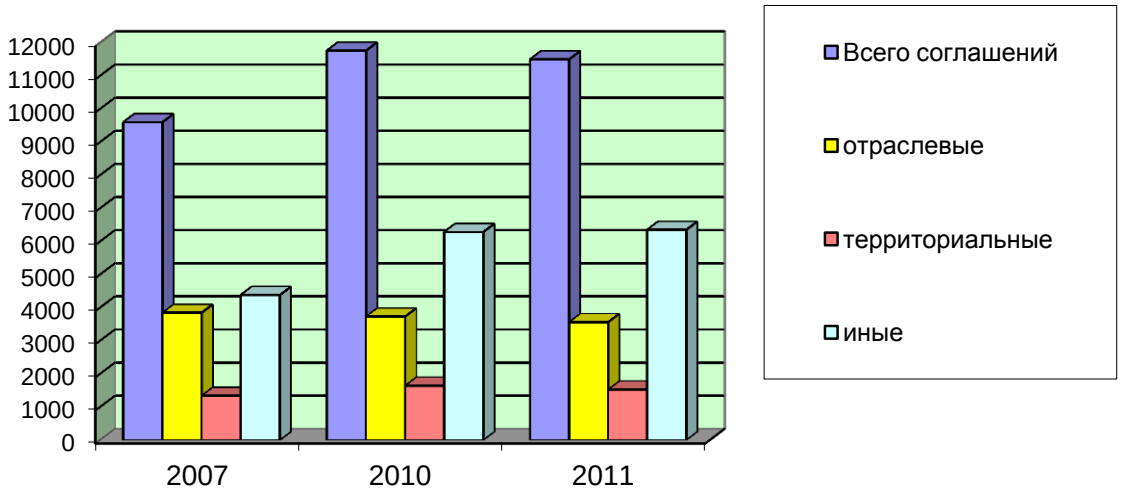
In some constituent entities of the Russian Federation agreements on regional minimum wage in the reported period have been concluded but, however, were rather formal. For example, in Chechen Republic simultaneously with adoption of the Federal law on raising the minimum wage in the Russian Federation another agreement was concluded. It established regional minimum wage in the same amount that was set by the federal law.

Number of agreements concluded at all levels of social partnership

In 2011 11.5 thousand agreements were effective in the republics, territories, regions and autonomous areas of the Russian Federation, including: 110 regional (tripartite agreements between administrations of the regions, trade unions and employers' associations), 3,565 industry-specific agreements (1,038 — concluded at the regional level, 2,527 at the territorial level), 1,529 territorial and 6,351 other agreements.

Drawing 1.

Number of agreements in the Russian Federation on the whole (dynamic)



The Southern Federal District featured the greatest number of agreements among all. In 2011, 4,776 agreements were effective there, including 7 regional, 332 industry-specific agreements at the regional and territorial level, 172 territorial and 4,319 other agreements.

366 agreements were effective in *the Central Federal District*, including 21 regional, 744 industry-specific agreements concluded at the regional and territorial levels, 271 territorial and 40 other agreements.

The North-Western Federal District — 353 agreements, including 9 regional, 239 industry-specific agreements at the regional and territorial levels, 90 territorial and 16 other agreements.

The Volga Federal District — 1,446 agreements, including 15 regional, 933 industry-specific agreements concluded at the regional and territorial levels, 463 territorial and 35 other agreements.

The Ural federal district — 443 agreements, including 10 regional and 293 industry-specific agreements concluded at the regional and territorial levels, 138 territorial and 2 other agreements.

The *Siberian Federal District* — 2709 agreements, including 16 regional and 519 industry-specific agreements concluded at the regional and territorial level, 252 territorial and 1922 other agreements.

The North Caucasian Federal District — 471 agreements, including 8 regional and 353 industry-specific agreements concluded at the regional and territorial levels, 95 territorial and 16 other agreements.

The Far Eastern Federal District — 204 agreements, including 13 regional and 142 industry-specific agreements concluded at the regional and territorial levels, 48 territorial and 1 other agreements.

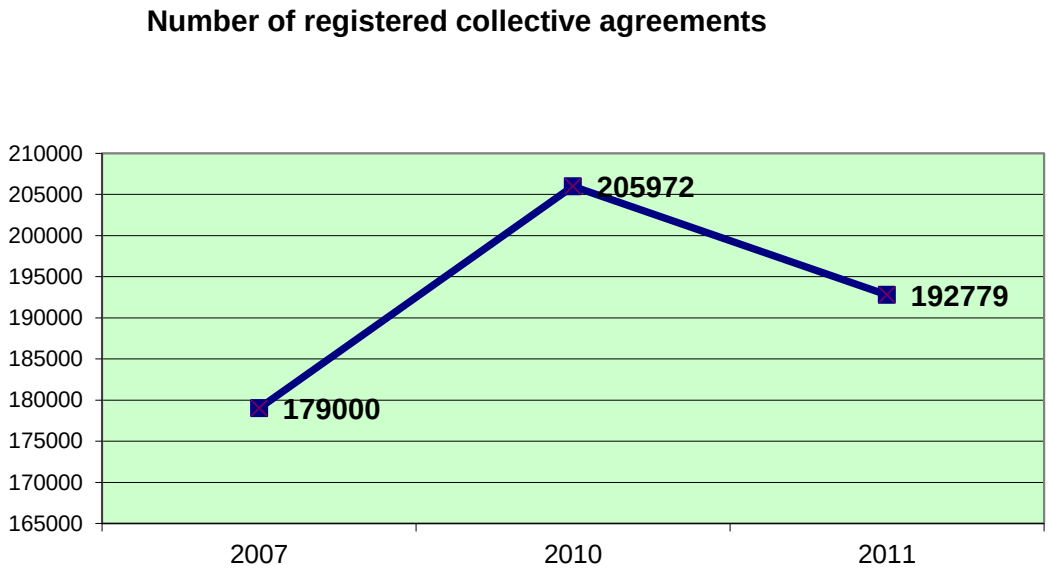
The number of currently active collective agreements that have completed notification registry procedure and efficiency assessment

In general, in the Russian Federation in 2011 the number of collective agreements that have completed notification registry procedure at the labor

authorities, in organizations of all forms of ownership, made up 192.8. thousand. Those include:

- in the Central Federal District — 37,013;
- in the North-Western Federal District — 11,356;
- in Volga Federal District — 45,085;
- in the Ural Federal District — 12,023;
- in the Siberian Federal District — 31,505;
- in the North Caucasus Federal District — 12,673;
- in the South Federal District — 32,726;
- in the Far Eastern Federal District — 10,398.

Drawing 2.

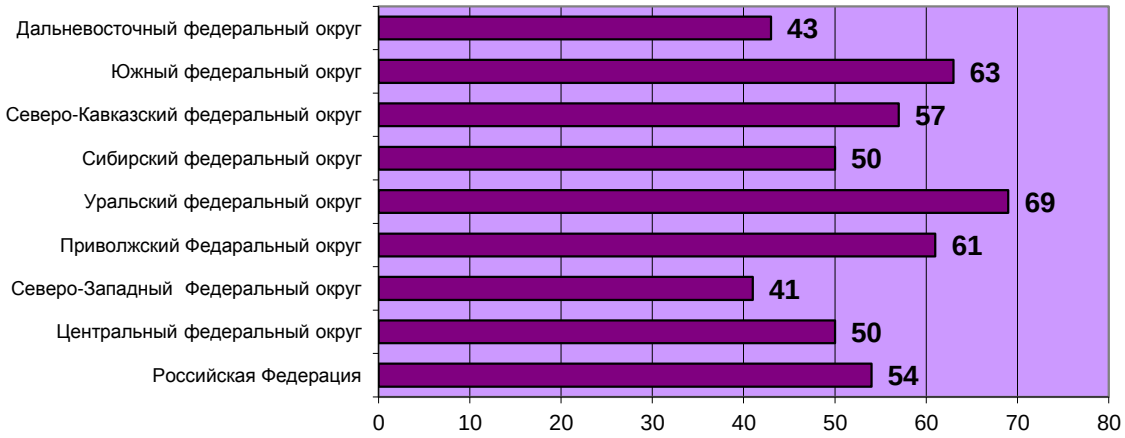


The number of employees covered by collective agreements in 2011 on average for the Russian Federation amounted to 23,127,744 people. (which amounted to 54.24% of the total number of employees). in particular:

- in the Central Federal District — 4,772,797 people; (50%);
- in the North-Western Federal District — 1,402,505 people. (41%);
- in Volga Federal District — 5,731,896 people. (61%);
- in the Ural Federal District — 3,188,367 people. (69%);
- in the Siberian Federal District — 3,437,519 people. (50%);
- in the North Caucasian Federal District — 965,094 people. (57%);
- Southern Federal District — 2,468,965 people. (63%);
- in the Far Eastern Federal District — 1,160, 601 people. (43%).

Drawing 3.

Percentage ratio of collective agreements coverage to a total number of employees



The analysis of collective contractual practices and of the content of collective agreements, concluded at agencies, demonstrates the following trends.

The following employee benefits and guarantees listed in collective agreements and exceeding the standards provided by law are worth mentioning: obligation of the employer to revise the size of tariff rates in line with price increase; additional annual paid leaves; a variety of social payments to employees (due to retirement, birth of a child, death of a close relative); material incentives for young professionals; promotion of production leaders; additional guarantees to families with children, monthly financial assistance of women on maternity leave up to 1.5-3 years; for the solution of social problems; commitment to improve the health of workers and members of their families; employment guarantees and commitments in connection with the release of the workers (suspending the process of hiring new workers, especially the elimination of jobs, giving workers time to look for a new job, training new skills, additional benefits to certain categories of employees to reduce the number of staff).

A**rticle 6. The right to conclude collective agreements.**

With a view to ensure effective exercise of the right to make collective agreements, the Parties commit to:

3) promote the establishment and use of appropriate mechanisms of conciliation and voluntary arbitration for the settlement of labour disputes;

Conciliation-mediation and arbitration procedures for settling labour disputes in Russia are applied to *Collective labour disputes*, referred to in chapter 61 of the Labour Code of the Russian Federation. According to art. 398 of the Labour Code of the Russian Federation, a collective labour dispute is "an unresolved disagreement between employees (or their representatives) and employers (or their representatives) concerning the introduction of and changes to working conditions (including wages), conclusion, amendment and implementation of collective contracts and agreements, as well as the employer's refusal to take into account the views of the elected representative body of employees when adopting local regulatory acts". Thus, collective labour disputes are disputes about interests and one of the categories of law disputes are the disputes on implementation of collective agreements. The last category of disputes may also be considered according to the procedure established for resolution of individual labour disputes, i.e. with the participation of the labour dispute commissions or in the courts of general jurisdiction[111].

Provisions of the chapter 61 of the Labour Code of the Russian Federation on conciliation procedures are applied regardless of the form of ownership of the employer (public, private, or mixed).

Before the consideration of the dispute through conciliation procedures commences, the legislation provides for *a procedure of putting forth the requirements of the workers and their representatives*. The right of nomination belongs to employees themselves and their representatives, i.e. the trade unions at the corresponding level[112], or at the level of the organization; other representatives enjoy it if this employer lacks a registered primary trade-union organization[113]. According to part 2, art. 31 of the Labour Code of the Russian Federation, the presence of a representative cannot be considered an obstacle to exercising the authority of a primary trade union organization. This clarification was made to the Labour Code of the Russian Federation in 2006, following the recommendations of ILO supervisory bodies[114]. At a local level, demands of workers of a particular employer or separate structural divisions of his are to be approved at a general meeting (conference)[115]. Since 2011,[116] given the impossibility to conduct a

[111] Art. 381 of the Labour Code of the Russian Federation.
[112] Art. 29 of the Labour Code of the Russian Federation.
[113] Art. 31 of the Labour Code of the Russian Federation.
[114] Para 914 (b), the Committee on Freedom of Association case No. 2216, Report No. 332. ILO ref. Nos. 288 GB/7 (Part II and GB. 289/9 (Part I)). ILO Database: Normlex < http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2907238 >.
[115] Part 2, art. 399 of the Labour Code of the Russian Federation.
[116] Federal Law No. 334-FZ dated Nov 22, 2011 "On amendments to the Labour Code of the Russian Federation with regard to improving the consideration and settlement of collective labour disputes" // Legislation Bulletin of the Russian Federation, dated Nov 28, 2011, No. 48, art. 6735.

meeting (conference) of workers, their representative body has the right to approve its decision, having collected signatures of more than a half of employees in favour of its claims. In particular, it is impossible to convene the general meeting or conference of employees, if employees work in shifts. In such cases, approving claims through collection of signatures is more viable.

The Labour Code of the Russian Federation contains following requirements[117] in respect of meeting (conference) of workers and passing decisions there:

- A meeting of workers is considered eligible, if it is attended by more than a half of workers.
- A conference is considered eligible, if no less than two thirds of the elected delegates are present.
- The decision on approval of requirements that were put forth is adopted by a majority of workers (delegates), present at the meeting (conference).

An employer must provide workers or their representatives appropriate premises for holding the meeting (conference), where they would put forth their claims. He cannot obstruct holding of such meetings[118]. If he fails to provide appropriate premises for holding the meeting (conference) of workers, where they intend to put forth claims, or obstructs holding of such meeting (conference), he is liable to administrative responsibility in the form of a fine in the amount of one thousand to three thousand rubles[119].

During the stage, when the workers put forth their claims, a copy of them may be sent to public authorities for the settlement of collective labour disputes, i.e. to Federal Labour and Employment Service (Rostrud), electronic copy is acceptable. In this case, a state authority body for the settlement of collective labour disputes is obliged to check whether the other party to a collective labour dispute has also received the workers' claims (their copy)[120].

Conciliation procedures include the consideration of a dispute in a conciliation commission. It may involve facilitator and (or) be considered in a labour arbitration. As a general rule, only the conciliation commission is considered a mandatory collective labour dispute resolution procedure[121]. According to part 5, art. 401 of the Labour Code of the Russian Federation, representatives of the parties, the conciliation commission and labor arbitration and state mediation authority for the settlement of collective labour disputes are obliged to use all legal possibilities to resolve a collective labour dispute.

None of the parties to a collective labour dispute is entitled to avoid participation in conciliation[122]. In case of such evasion from participation in the establishment or operation of a conciliation commission, a party to a collective labour dispute may demand holding negotiations on dispute consideration

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[117] Part 3, art. 399 of the Labour Code of the Russian Federation.
[118] Part 4, art. 399 of the Labour Code of the Russian Federation.
[119] Art. 5.32 of the Code of Administrative Offences of the Russian Federation.
[120] Part 6, art. 399 of the Labour Code of the Russian Federation.
[121] Part 2, art. 401 of the Labour Code of the Russian Federation.
[122] Part 4, art. 401 of the Labour Code of the Russian Federation.

involving mediator no later than the next working day after the day of presenting the claim[123]. In case of evading negotiations on the appointment of the mediator or from participating in the consideration of the dispute involving mediator, a party to a collective labour dispute may demand holding the negotiations on labor dispute arbitration no later than the next working day after the day of presenting the claim[124]. In case if an employer (an employers' representative) evades creating temporary employment arbitration, transmitting a collective labour dispute to a permanent labor arbitration, or from participating in the consideration of collective labour dispute by arbitration, it is considered that conciliation procedures have failed to settle down a collective labour dispute[125]. In this case, employees have the right to proceed with a strike[126]. Evasion of an employer or his/her representative from participating in conciliation procedures is the reason for imposing an administrative fine of one thousand to three thousand rubles[127].

During the consideration and resolution of a collective labour dispute, including the period of organizing and holding a strike, workers are entitled to hold mass rallies in support of their claims in compliance with the general procedure established by Federal Law No. 54-FZ dated Jun 19, 2004 "On assemblies, rallies, demonstrations, processions and picketing"[128].

The first and the only required step for resolving a collective labour dispute is its consideration by the *conciliation commission*[129]. A conciliation commission is created at the local level within up to two business days; at other levels of social partnership — within three working days since the date of a collective labour dispute commencement[130]. A conciliation commission consists of representatives of the parties to a collective labour dispute, who act on an equal ground[131]. Recommendations on the organization of a conciliation commission on consideration of collective labour disputes advise to[132] include two to five representatives from each side to the commission; these representatives are supposed to know the problem and master the art of negotiation. A conciliation commission determines its procedure rules on its own. An employer is obliged to create appropriate working conditions of work for the conciliation commission[133].

The term for consideration of a dispute at the conciliation commission at a local level is up to three working days, at other levels — up to five working days

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[123] Part 1, art. 406 of the Labour Code of the Russian Federation.
[124] Part 2, art. 406 of the Labour Code of the Russian Federation.
[125] Part 3, art. 406 of the Labour Code of the Russian Federation.
[126] Art. 409 of the Labour Code of the Russian Federation.
[127] Art. 5.32 of the Code of Administrative Offences of the Russian Federation.
[128] Legislation Bulletin of the Russian Federation, June 21, 2004, No. 25, art. 2485.
[129] Art. 402 of the Labour Code of the Russian Federation.
[130] Part 1, art. 402 of the Labour Code of the Russian Federation.
[131] Part 3, art. 401 of the Labour Code of the Russian Federation.
[132] Decree of the Russian Federation Ministry of Labour dated Aug 14, 2002, No. 57 "On approving the recommendations for organizing the consideration of collective labour dispute by a conciliation commission" // Bulletin of the Russian Federation Ministry of Labour, No. 8, 2002.
[133] Part 5, art. 402 of the Labour Code of the Russian Federation.

from the date of issuing the relevant documents on the establishment of the commission[134].

The decision of a conciliation commission is adopted through an agreement of the parties to a collective labour dispute and is binding for them[135]. If the parties have not reached an agreement in the course of the conciliation commission work, they move on to discussing the issue of considering collective labour dispute with a facilitator and (or) in labour arbitration[136].

A m*ediator or a facilitator* is an independent person, whom the parties to a collective labour dispute may invite to help them to negotiate a settlement of the dispute. Parties to the dispute should negotiate the collective labour dispute involving a mediator no later than the next working day after preparing the discrepancy report by a conciliation commission. If no agreement is reached, one of the parties or both of them prepare a denunciation protocol, thus expressing their refusal to settle the issue down through this conciliation procedure, and they start negotiating on a consideration of a collective labour dispute in labour arbitration[137].

If the parties decide to consider a dispute involving a mediator, they make an agreement about this, and within the following two working days they should agree on the candidacy of a mediator[138]. Any person, whom both parties trust, may act as a mediator. A mediator may be recommended by a public authority for settlement of collective labour disputes. If parties cannot agree on the candidate, they start negotiating on dispute consideration in a labour arbitration[139]. Collective labour disputes involving the mediator are seldom settled down.

The procedure for considering a collective labour dispute involving a mediator is defined by an agreement of the parties to a collective labour dispute involving a mediator. At that, they can apply the recommendations concerning the procedure of considering a collective labour dispute with a mediator[140]. The mediator has the right to demand necessary dispute-related documents and information from the parties to a collective labour dispute and to receive them.

Dispute mediation is limited to three working days at the local level and to five days at other levels of social partnership[141]. During the consideration of the dispute, parties keep records and, after consideration is adjourned, sign the harmonized agreement or discrepancy report. The decision adopted by the parties in a dispute involving a mediator is mandatory for the parties.

The third procedure, which the parties to a collective labour dispute may resort to a *labor arbitration*. Until 2011 labour arbitration could have been established in Russia only as a temporary (ad hoc) body. Federal law No. 334-

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[134] Part 6, art. 402 of the Labour Code of the Russian Federation.
[135] Part 7, art. 402 of the Labour Code of the Russian Federation.
[136] Part 8, art. 402 of the Labour Code of the Russian Federation.
[137] Part 1, art. 403 of the Labour Code of the Russian Federation.
[138] Part 2, art. 403 of the Labour Code of the Russian Federation.
[139] Ibid.
[140] Decree of the Russian Federation Ministry of Labour dated Aug 14, 2002, No. 58 "On approving the recommendations for organizing the consideration of collective labour dispute by a mediator" // Bulletin of the Russian Federation Ministry of Labour, No. 8, 2002.
[141] Part 5, art. 403 of the Labour Code of the Russian Federation.

FZ[142] dated Nov 22, 2011 also stipulates the right of tripartite commissions to regulate social and labour relations to establishment permanent labour arbitration, which would accelerate the process of consideration of collective labour disputes. Currently Rostrud provides training of labour arbitrators, organizes and conducts workshops for them (item 5.5.11 of The provisions of the Federal service on labour and employment[143]), and also maintains a database on labour arbitrators (item 5.5.12. of the same provision[144]) intended for use by the parties of a collective labour dispute while deciding on the composition of labour arbitration. No legal restrictions, requiring certain skill or special knowledge are applied to potential labour arbitrators. There are several permanently operating employment tribunals that were established even before 2011, in particular the Moscow Labor Court of Arbitration. For the most part it performs the functions of an advisory body on labour matters[145]. According to a general rule, labour arbitration is a *voluntary* procedure that can be carried out only if the parties to the dispute have signed an agreement on the binding nature of the decision of the labour arbitration. However, when workers do not have the right to strike[146], the labor arbitration may be binding[147].

Within one working day, the parties are required to discuss the establishment of arbitration. Then, within two or four calendar days (depending on the level of social partnership), the parties should cooperate with the state body for the settlement of collective labour disputes to establish a labor arbitration[148]. The Decree of the Russian Federation Ministry of Labour dated Aug 14, 2002, No. 59 adopted the recommendations for organizing the consideration of a collective labour dispute in a labour court of arbitration[149].

The composition of labour arbitration and rules of procedure for temporary employment arbitration are established by the decision of the parties to the dispute, and the public authority for the settlement of collective labour disputes[150], i.e. Rostrud. Rostrud is responsible for preparation and maintenance of a database on labour arbitrators[151].

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[142] Federal Law No. 334-FZ dated Nov 22, 2011.

[143] The Russian Federation Government Decree No. 324 dated June 30, 2004 "On Approval of the Statute on the Federal Service for Labour and Employment", rev. The Russian Federation Government Decree No. 559 dated Sep 5, 2007.

[144] Administrative regulation of the Federal Service on Labour and Employment activities on keeping records of labour arbitrators database, approved by the Ministry of Health and Social Development Order dated Dec 2, 2009 No. 938n.

[145] See, for example: "Practical work on resolution of collective labour disputes". Official web site of "Labour Arbitration Court for resolving collective labour disputes" http://www.trudsud.ru/ru/institution/our_activity/practical_work

[146] See commentary to item 4, art. 6 of the Charter further on.

[147] Part 8, art. 404 of the Labour Code of the Russian Federation.

[148] Part 1, 2, art. 404 of the Labour Code of the Russian Federation.

[149] Decree of the Russian Federation Ministry of Labour dated Aug 14, 2002, No. 59 "On approving the recommendations for organizing the consideration of collective labour dispute in a labour court of arbitration" // Bulletin of the Russian Federation Ministry of Labour, No. 8. 2002.

[150] Part 4, art. 404 of the Labour Code of the Russian Federation.

[151] Part 5.5.11, 5.5.12, of the Federal Service on Labour and Employment regulation, approved by the Russian Federation Government Decree dated June 30, 2004 No. 324 (rev. dated Aug 9, 2013) // Legislation Bulletin of the Russian Federation dated July 12, 2004, No. 28, art. 2901.

When compulsory labour arbitration is established, its composition and rules of procedure, as well as the decision to refer the dispute to the permanent labour tribunal, is adopted by a relevant state body for the settlement of collective labour disputes[152], i.e. Rostrud.

The representatives of the parties take part in the labour dispute arbitration. The term for consideration of a dispute is three working days at the local level and five working days at other levels[153].

The decision of labour arbitration is compulsory for both parties. Non-compliance with the decision of labour arbitration entails administrative responsibility, imposition of a fine in the amount of two to four thousand rubles[154].

Rostrud publishes statistics on collective labour disputes, registered according to the rules, approved by the order No. 180-n, and resolved with the participation of Rostrud. It is collected in accordance with the criteria established by the registration regulations, the criteria for recognition of the collective labour disputes and for certain categories of collective labour disputes[155].

Table 3.

The number of collective labour disputes registered by Rostrud since 2006 to 2012.

Years	The number of registered collective labour disputes	The number of cases resolved	
		Total	Inter alia with the participation of Rostrud
2006	18	18	8
2007	9	7	7
2008	17	16	13
2009	6	6	2
2010	9	9	7
2011	7	7	3
2012	10	9	5

At that, the number of registered labour arbitrators in Russia is much more. In general, the number of registered arbitrators in Russia as of 2012, made up 3,189 and in 2008 they were even more numerous — 4,678[156].

[152] Part 8, art. 404 of the Labour Code of the Russian Federation.
[153] Part 5, art. 404 of the Labour Code of the Russian Federation.
[154] Art. 5.33 of the Code of Administrative Offences of the Russian Federation.
[155] Federal Service on Labour and Employment. Official web site. Statistical data. The number of collective labour disputes registered by Rostrud since 2006 to 2012. URL: < http://rostrud.ru/activities/34/22831/22835.shtml >.
[156] The Federal Service on Labour and Employment. Official web site. Statistical data. The number of labour arbitrators included into Rostrud database for the period since 2008 to 2012. URL: < http://rostrud.ru/activities/34/22831/22837.shtml >.

Article 6. The right to collective negotiations.

… and recognize:

4) the right of workers and employers to collective action in cases of conflict of interest, including the right to strike, if the conditions that might arise out of previously concluded collective agreements are met.

Annex: ***It is understood that each party may, when it comes to issues that concern them directly, regulate the exercise of the right to strike by law, provided that any other possible restriction of this right can be justified under the terms of article G.***

The right to strike is established in the Constitution of the Russian Federation. Part 4 of art. 37 of the Constitution recognized the right to individual and collective labour disputes with the use of means of resolution thereof established by the federal law, including the right to strike, shall be recognized. Thus, the constitutional right to strike is not an absolute, but rather depends on the mechanism of its incorporation into the federal legislation. According to the Labour Code of the Russian Federation, *a strike* is a temporary voluntary denunciation of employees to perform their labor duties (entirely or partially) with a view to resolve a collective labour dispute[157]. Apart from a strike, the Russian labour legislation provides for the self-defense of labour rights by workers themselves by refusal to do work, which is not covered by the employment contract, work that directly endangers his life and health[158], as well as when there are delays in the payment of wages for more than 15 days take place[159].

1. A group that is authorized to call for a strike.

The decision to declare a strike is adopted at *a meeting (conference) of* the organization (branch, representative office or a separate structural unit)[160], individual entrepreneur *at the proposal of the representative body of employees*, previously authorized by them to resolve the collective labour dispute[161]. At the levels higher than the local one[162], the decision on the participation of employees of a specific employer in the strike announced by the trade union (association of trade unions), is adopted at the meeting (conference) of employees without conciliation procedures. The meeting of workers is considered eligible, if it is attended by more than a half of workers. A conference is considered eligible, if no less than two thirds of the elected delegates are present.[163] The decision is considered adopted if not less than a half of the workers present at the meeting (conference) voted for it. If it is impossible to conduct a meeting (conference) of

[157] Part 4, art. 398 of the Labour Code of the Russian Federation.
[158] Art. 379 of the Labour Code of the Russian Federation.
[159] Part 2, art. 142 of the Labour Code of the Russian Federation.
[160] The concept of a detached structural unit, see comment to the item 3, art. 6 of the Charter.
[161] Part 1, art. 410 of the Labour Code of the Russian Federation.
[162] Part 2, art. 410 of the Labour Code of the Russian Federation.
[163] Part 3, art. 410 of the Labour Code of the Russian Federation.

workers, their representative body has the right to approve its decision, having collected signatures of more than a half of employees in favour of the strike[164].

No one may be compelled to participate or refrain from participating in a strike[165]. The Code of administrative offenses of the Russian Federation establishes criminal liability for coercion to participate in or to abstain from the strike through use of violence or threats of violence, or taking advantage of the dependent status of the coerced, in the form of an administrative fine (500 to 1,000 rubles for citizens, 1,000 to 2,000 rubles for officials)[166]. Trade union membership is irrelevant from the point of view of employee's opportunity to participate in a strike. A strike may be total or partial — the Labour Code of the Russian Federation stipulates that the decision to declare a strike, inter alia, should include the *estimated* number of participating workers[167]. Thus, the body in charge of the strike, is not obliged to inform the employer neither about composition of participants, nor about their exact number.

2. Valid objectives of collective action

As stated in the legal definition (see above), strikes may only be carried out with a view to resolve a collective labour dispute. In its turn, collective labour disputes are carried out due to the introduction of and changes to working conditions (including wages), conclusion, amendment and implementation of collective contracts and agreements, as well as the employer's refusal to take into account the views of the elected representative body of employees when adopting local regulatory acts"[168].

3. Special restrictions of the right to strike

The Russian Constitution[169] states that: "1. Enumeration of the fundamental rights and freedoms in the Constitution is not to be construed as negating or diminishing other universally accepted human and civil rights and freedoms. 2. No laws that abrogate or derogate human rights and freedoms of a man and a citizen should be adopted in the Russian Federation. 3. Human and civil rights and freedoms may only be restricted by the federal law to the extent necessary to protect the foundations of the constitutional system, morality, health, rights and lawful interests of other people, ensuring the defense and national security".

i. Restrictions related to essential services/industries

ii. Restrictions for civil servants

Part 1 of art. 413 of the Labour Code of the Russian Federation provides for[170] two modes of ban on strikes in essential services and industries: *unconditional*, i.e. independent of any external circumstances[171], or established *in*

[164] Part 5, art. 410 of the Labour Code of the Russian Federation.
[165] Part 4, art. 409 of the Labour Code of the Russian Federation.
[166] Art. 5.40 of the Code of Administrative Offences of the Russian Federation.
[167] Part 9, art. 410 of the Labour Code of the Russian Federation.
[168] Part 1, art. 398 of the Labour Code of the Russian Federation.
[169] Art. 55 of the Constitution of the Russian Federation.
[170] Part 1, art. 413 of the Labour Code of the Russian Federation.
[171] Item "a", part 1, art. 413.

case if the strike poses a threat to national defense and security, life and health of people[172].

Unconditionally illegal and unacceptable are the strikes during periods of martial law[173], state of emergency[174] or special measures in accordance with the laws of the state of emergency; in the bodies and organizations of the armed forces of the Russian Federation, other military, paramilitary and other groups, organizations (branches, representative offices or other detached subdivisions), directly responsible for ensuring national defense and security, rescue emergency, search and rescue, fire-fighting operations, prevention or elimination of natural disasters and emergency management; law enforcement; in organizations (branches, offices or other detached subdivisions), directly serving ultra-hazardous activities or equipment at the first aid stations and urgent medical assistance.

Strikes at the organizations (branches, representative offices or other detached subdivisions), directly related to provision of essential services to the population (electricity, heating and heat supply, water supply, gas supply, aviation, rail and water transport, communications, hospitals) are prohibited *if they pose a threat to national defense and security, life and health of people*.

It is prohibited to the *military personnel*[175] to participate in strikes and any other kind of "failure to perform the duties of military service as means of resolving issues related to military service". However, while discharged from the duties of military service, servicemen are allowed to participate in rallies, meetings, demonstrations, processions and picketing outside the territory of a military unit[176], peacefully and unarmed.

The Federal law "On alternative civil service" indicates[177], that *citizens undergoing alternative civilian service*, are not entitled to participate in strikes and other forms of suspending their organizational operations.

Strikes are banned for *federal courier service*[178].

Strikes are banned for *civil aviation staff*, carrying out air traffic maintenance (management)[179].

The Federal law "On railway transportation"[180] establishes that a strike as a means of resolving collective labour disputes is deemed illegal and is prohibited for *employees of railway transport,* whose job is fraught with the movement of

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[172] Item "б", part 1, art. 413.

[173] This rule also appears in the Federal Constitutional Law "On Martial Law" dated January 30, 2002 No. 1-FKZ // Legislation Bulletin of the Russian Federation dated Feb 2, 2002 No. 5, art. 375.

[174] This rule also appears in the Federal Constitutional Law "On State of Emergency" dated May 30, 2001 No. 3-FKZ // Legislation Bulletin of the Russian Federation dated June 4, 2001, No. 23, art. 2277.

[175] Art. 7 of the Federal Law "On the Status of Servicemen", dated May 27, 1998, No. 76-FZ // Legislation Bulletin of the Russian Federation No. 22 dated June 1, 1998, art. 2331.

[176] Ch. 2 art. 7 of the Federal Law "On the Status of Servicemen".

[177] Part 2, art. 21 of the Federal Law "On Alternative Civil Service" dated July 25, 2002, No. 113-FZ // Legislation Bulletin of the Russian Federation No. 30, art. 3030, dated July 29, 2002.

[178] Art. 9 of the Federal Law dated Dec 17, 1994 "On the Government Courier Communication, No. 67-FZ // Legislation Bulletin of the Russian Federation, dated Dec 19, 1994, No. 34, art. 3547.

[179] Part 1, art. 52 of the Russian Air Code dated Mar 19, 1997, No. 60-FZ // Legislation Bulletin of the Russian Federation, dated Mar 24, 1997, No. 12, art. 1383.

[180] Part 2, art. 26 of the Federal Law "On Railway Transportation" dated Oct 1, 2003, No. 17-FZ // Legislation Bulletin of the Russian Federation, Jan 13, 2003, No. 2, art. 169.

trains, shunting work as well as catering the needs of passengers, shippers (senders) and receivers (recipients) of general-purpose rail transport, whose occupation is listed and defined by the federal law.

Heads of public and municipal unitary enterprises do not have the right to strike in accordance with the Federal law "On public and municipal unitary enterprises"[181].

In accordance with the Federal law "*On the use of atomic energy*"[182], rallies, demonstrations, pickets, blocking transport communication and other social events outside the territory of the nuclear installations and storage facilities, as well as strikes are prohibited, if this could compromise efficiency of a nuclear installation or storage spot, complicate the discharge of their official duties by the employees of nuclear installations or storage facilities duties or if there would be other threats to the security of the population, environment, health, rights and legitimate interests of other people.

In accordance with the Federal Law "On state civil service in the Russian Federation[183]" all *state civil servants* are forbidden to "stop the execution of their official duties in order to settle their dispute". The same ban applies to municipal employees[184]. As for civil servants, municipal workers, employees of air and rail transport industries, the government of the Russian Federation had already discussed the issue of excessive restrictions applied to the right to strike with the ILO supervisory bodies[185].

Minimum amount of necessary work (services) that are provided during the strike, is established for each specific organization through an agreement of employer (employer's representative), the representative body of employees and the local government[186]. Lists of the minimum work required from a particular organization are negotiated on the basis of industry-specific and regional lists (see below). The decision-making period for a particular organization is 3 days since the date of adopting the decision to declare a strike. The Labour Code of the Russian Federation provides for a number of requirements[187] in order to avoid extensive interpretation of the types of works to be included into the minimum amount of necessary work:

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[181] Part 2, art. 21 of Federal Law "On State and Municipal Unitary Enterprises" dated Nov 14, 2002, No.-161FZ // Legislation Bulletin of the Russian Federation, Feb 12, 2002, No. 48, art. 4746.

[182] Art. 39 of the Federal Law dated Nov 21, 1995 No. 170-FZ "On the Use of Atomic Energy" // Legislation Bulletin of the Russian Federation, dated Nov 27, 1995, No. 48, Art. 4552.

[183] Part 15, art. 17 of the Federal Law "On State Civil Service in the Russian Federation" dated July 27, 2004, No.79-FZ // Legislation Bulletin of the Russian Federation dated Aug 2, 2004, No. 31, art. 3215.

[184] Art. 11 of the Federal Law No. 8-FZ "On the Basics of Community Service in the Russian Federation" dated Aug 8, 1998 // Legislation Bulletin of the Russian Federation dated Jan 12, 1998, No. 2, art. 224.

[185] International Labour Office (ILO). Administrative Council. 288th session, Geneva, November, 2003 — (document ILO– GB.288/7), 332nd report of the Committee on Freedom of Assembly, case 2199, par. 992; ILO. Administrative Council. 289th session, Geneva, 2004- — (document ILO-GB. 289/9) 333rd report of the Committee on Freedom of Assembly in the case of 2251, par. 992.

[186] Part 5, art. 412 of the Labour Code of the Russian Federation.

[187] Ibid.

– Inclusion of work (services) into the minimum necessary amount of work (services) should be motivated by probability of causing harm or threatening lives of citizens.

– Minimum necessary work (services) cannot include works (services), which are not provided by the relevant lists of the minimum necessary work (services).

If, during the 3-day period the agreement is not reached, the minimum necessary work (services) is established by an executive authority of the constituent entity of the Russian Federation. A list of minimum necessary work (services) to be provided by employees, whose activity is fraught with human security, ensuring their health and vital interests of the society in each industry (subindustry) of economy, is developed and approved by a federal executive body entrusted with the coordination and regulation of activities in the industry (subindustry) of economy, upon its harmonization with a relevant trade union[188]. The procedure of development and approval of such lists is established by the government of the Russian Federation[189]. Currently[190] approximately 30 lists for various industries are approved: in the shipbuilding industry[191]; in the conventional arms industry[192]; in the industries of munitions and special chemicals[193]; in light industry[194]; in the medical and biotechnology industry[195]; in the engineering industry[196]; in the chemical and petrochemical industry[197]; in the forest industry[198];

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[188] Part 3, art. 412 of the Labour Code of the Russian Federation.

[189] In accordance with the Russian Federation Government Decree dated Dec 17, 2002 No. 901 "On the Procedure of Developing and Adopting a List of Minimum Necessary Works (Services) in the Industry (Sector) of Economy, Provided during Strikes in the Organizations, Branches and Representative Offices" // Legislation Bulletin of the Russian Federation, dated Dec 23, 2002, No. 51, art. 5090.

[190] Information is quoted as of September of 2013.

[191] Ministry of Industry and Trade of the Russian Federation (hereinafter Minpromtorg of Russia) order dated June 28,/ 2011, No. 870 "On approval of the list of minimum required work (services) in the shipbuilding industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on Aug 18, 2011, No. 21664.

[192] Minpromtorg of Russia order dated May 28, 2010 No. 452 "On approval of the list of minimum required work (services) in the conventional arms industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on July 20, 2010, No. 17914.

[193] Minpromtorg of Russia order dated May 28, 2010 No. 453 "On approval of the list of minimum required work (services) in the industry of munition and purpose-specific chemistry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation No. 17907 on July 19, 2010.

[194] Minpromtorg of Russia order dated June 18, 2009, No. 531 "On approval of the list of minimum required work (services) in the light industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on July 23, 2009, No. 14390.

[195] Ministry of Industry, Science and Technologies of the Russian Federation (hereinafter Minpromnauki of Russia) order dated May 28, 2003 No. 127 "On approval of the list of the minimum required work (services) in the medical and biotechnology industry, guaranteed during strikes in the organizations, branches and representative offices"; Minpromtorg of Russia order dated June 4, 2009, No. 492 "On approval of the list of the minimum required work (services) in the medical and biotechnology industry, guaranteed during of strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and the fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on July 6, 2009, No. 14201.

[196] Minpromtorg of Russia order dated June 28, 2009, No. 449 "On approval of the list of minimum required work (services) in the machine building industry, guaranteed during strikes in the organizations, branches and

in the federal state institutions and federal state enterprises subordinate to the Ministry of Culture of the Russian Federation; in the organizations subordinate to the Ministry of Natural Resources of Russia[199]; in organizations, branches and representative offices of the rocket and space industry; in agriculture and fishery organizations[200]; in the organizations, branches and representative offices of education[201]; in the peat industry[202]; in the gas distribution companies[203]; in electric power industry[204]; in health care organizations[205]; in oil, oil-refining, gas industries and oil products supply industry[206]; in the coal industry[207]; in the steelmaking

representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on July 09, 2009, No. 14299.

[197] Minpromnauki order dated Apr 24, 2003 No. 106 "On approval of the list of minimum necessary works (services) in the chemical and petrochemical industry, guaranteed during strikes in the organizations, branches and representative offices"; Minpromtorg order dated May 21, 2009 No. 423 "On approval of the list of minimum necessary works (services) in the chemical and petrochemical industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health, and the fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on July 10, 2009, No. 14315.

[198] Ministry of Industry and Energy of the Russian Federation (hereinafter Minpromenergo of Russia) order dated Mar 27, 2006, No. 57 "On approval of the list of minimum necessary works (services) in timber, woodworking and pulp-and-paper industry guaranteed during strikes in the organizations, branches and representative offices". Registered in the Ministry of Justice of the Russian Federation on May 4, 2006, No. 7779.

[199] Ministry of Natural Resources and Environment of the Russian Federation dated Apr 18, 2003 No. 330 "On the list of the minimum required work (services) guaranteed by the organizations subordinate to the Ministry, during strikes". Registered in the Ministry of Justice of the Russian Federation on July 19, 2003, No. 4565.

[200] Ministry of Agriculture of the Russian Federation order dated Jan 19, 2006. "On approval of the list of minimum necessary works (services) provided at the time of strikes in the agricultural and fishery organizations". Registered in the Ministry of Justice of the Russian Federation on June 6, 2006, No. 7908.

[201] Ministry of Education and Science of the Russian Federation (hereinafter Minobrnauki of Russia) order dated Nov 22, 2005, No. 285 "On approval of the list of minimum necessary works (services) in timber, woodworking and pulp-and-paper industry guaranteed during strikes in the organizations, branches and representative offices". Registered in the Ministry of Justice of the Russian Federation on Feb 1, 2006, No. 7431.

[202] Ministry of Energy of th Russian Federation (hereinafter Minenergo of Russia) order dated Sep 2, 2003, No. 365 "On approval of the list of minimum required work (services) in the peat industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on Sep 18, 2003, No. 5085.

[203] Minenergo of Russia order dated June 11, 2003, No. 351 "On approval of the list of minimum required work (services) in the gas-distribution industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on Sep 08, 2003, No. 5053.

[204] Minenergo of the Russian Federation order dated Aug 11, 2003, No. 350 "On approval of the list of minimum required work (services) in the power industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on Sep 8, 2003, No. 5052.

[205] Ministry of Health of the Russian Federation (hereinafter Minzdrav) order dated July 25, 2003 No. 326 "On approval of the list of minimum necessary works (services) in health care institutions during strikes". Registered in the Ministry of Justice of the Russian Federation on Sep 10, 2003, No. 5061.

[206] Minenergo of the Russian Federation order dated Sep 2, 2003, No. 306 "On approval of the list of minimum required work (services) in the oil and gas, oil-refining and oil product supply industries guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on July 28, 2003, No. 4929.

[207] Minenergo of Russia order dated May 20, 2003, No. 193 "On approval of the list of minimum required work (services) in the coal industry, guaranteed during strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on June 3, 2003, No. 4624.

industry[208]; in the transport industry[209]; in the industry of hydrometeorology[210]. For some industries there are separate regional lists of the minimum amount of necessary work (services)[211].

Part 2 of art. 412 of the Labour Code of the Russian Federation stipulates that the lists are adopted *by an agreement* with all the acting in the industry (sub-sector) of economy between the all-Russian trade unions.

iii. Intervention of parliament or the government to end the strike

In accordance with the part 4 of art. 413 of the Labour Code of the Russian Federation, the decision about declaring the strike illegal is adopted in the superior courts of republic, territorial, regional courts, courts of cities of federal importance, courts of autonomous regions and autonomous areas on the application of employer or a prosecutor. The court decision about declaring the strike illegal, once entered into legal force, is subject to immediate execution. Employees have to stop the strike and get to work no later than the next day after the body that leads the strike[212] receives a copy of the court decision. If an imminent threat to the life

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[208] Minpromnauki of Russia order dated May 15, 2003 No. 118 "On approval of the list of the minimum required work (services) in the metallurgical industry, guaranteed during of strikes in the organizations, branches and representative offices"; Minpromtorg of Russia order dated De 12, 2005, No. 341 "On approval of the list of the minimum required work (services) in the metallurgical industry, guaranteed during of strikes in the organizations, branches and representative offices, whose activity is fraught with the safety, health and the fundamental interests of society". Registered in the Ministry of Justice of the Russian Federation on Feb 8, 2006, No. 7478.

[209] Ministry of Transportation of the Russian Federation (hereinafter Mintrans of Russia) order dated Oct 7, 2003, No. 197 "On approval of the list of minimum necessary works (services) at transportation industry institutions guaranteed during strikes in the organizations, branches and representative offices". Registered in the Ministry of Justice of the Russian Federation on Jan 6, 2004, No. 5379.

[210] Federal Service for Hydrometeorology and Environmental Monitoring of Russia (hereinafter Roshydromet) order dated Dec 5, 2003 No. 244 "On the introduction of the minimum necessary works (services), provided by Roshydromet institutions and agencies during strikes". Registered in the Ministry of Justice of the Russian Federation on Jan 6, 2004, No. 5382.

[211] St. Petersburg government decree No.392 dated Apr 13, 2009 "On approval of the regional list of minimum necessary works (services) provided by health care institutions employees (branch offices, representatives, other detached structural units) or individual entrepreneurs in the field of medical and biotechnology industries during strikes"; St. Petersburg government decree No.44 dated Jan 13, 2007 "On approval of the regional list of minimum necessary works (services) provided by health care institutions employees (branch offices, representatives, other detached structural units) or individual entrepreneurs engaged into the transportation system of St. Petersburg, public road utilities, urban and suburban public transportation, intercity passenger service, traffic organization in St. Petersburg during strikes, whose activity is fraught with safety, health and fundamental interests of the society"; St. Petersburg government decree No.1088 dated Aug 26, 2008 "On approval of the regional list of minimum necessary works (services) provided by health care institutions employees (branch offices, representatives, other detached structural units) or individual entrepreneurs in the gas-distribution industry during strikes"; St. Petersburg government decree No.391 dated Apr 14, 2009 "On approval of the regional list of minimum necessary works (services) provided by health care institutions employees (branch offices, representatives, other detached structural units) or individual entrepreneurs in the field of health care during strikes"; St. Petersburg government decree No.1089 dated Aug 26, 2008 "On approval of the regional list of minimum necessary works (services) provided by health care institutions employees (branch offices, representatives, other detached structural units) or individual entrepreneurs in the field of education during strikes"; St. Petersburg government decree No.207 dated Feb 24, 2008 "On approval of the regional list of minimum necessary works (services) in power industry provided during strikes by institutions employees, branch offices and representatives, whose activity may be fraught with safety or health issues, or prove vital to the fundamental interests of the society"; Moscow Region Labour Department (hereinafter Mosobltrud) decree dated July 6, 2011, No. 26-R "On approval of the regional list of minimum necessary works (services) in provided during strikes by institutions employees, (branch offices and representatives or other detached structural units), whose activity may be fraught with safety or health issues, or prove vital to the fundamental interests of the society in Moscow Region" and others;

[212] Part 6, art. 413 of the Labour Code of the Russian Federation.

and health of people occurs, court has the right to postpone the scheduled strike for up to 15 days, and to suspend the one that had already started for the same period. As for the jurisprudence on acknowledging strikes as illegal see below.

Besides that, in cases of particular importance to the protection of fundamental interests of Russia or its territories, the government has the right to suspend the strike pending the trial, but for no more than ten calendar days[213]. By the time of writing this material, there were no cases of government suspension of strikes pending court decision on its legality or suspension.

4. Consequences of the strike

The court decision about declaring the strike illegal, once entered into legal force, is subject to immediate execution. Employees have to stop the strike and get to work no later than the next day after the body, leading the strike[214] received a copy of the said court decision. Strike-related responsibility of workers and trade unions may not occur due to the very fact of participating in an illegal strike, but for only ignoring the decision of the court to end it. Workers, who have started a strike or have not interrupted it on the next working day after the authority leading the strike is informed about the court decision ruling the strike illegal and demanding to defer or suspend the strike, which had entered into legal force, may be subject to disciplinary action for violations of labor discipline[215], i.e. fired for absenteeism[216]. A representative body of employees, which has called for and terminated the strike, after declaring it illicit, should compensate the damages caused by the illegal strike to the employer, at the expense of its funds in an amount determined by the court[217].

As indicated in the Labour Code of the Russian Federation[218], employee's participation in a strike does not constitute a violation of the working discipline and does not make a reason for termination of an employment contract, except in cases of neglecting the obligation to stop the strike in accordance with part 6 of article 413 of the Labour Code of the Russian Federation. It is prohibited to apply disciplinary measures to workers participating in the strike, except in the cases provided for in the part 6. of article 413 of the Labour Code of the Russian Federation[219]. An employer has the right not to pay salaries to employees during their participation in the strike, with the exception of the mandatory minimum work (services)[220]. Thus, an employer has no right to withhold bigger amount from the employee's salary than the share of his pay during the strike.

In November 2011, the law was passed, making amendments to the Labour Code of the Russian Federation, intended to facilitate the settlement of collective

[213] Part 8, art. 413 of the Labour Code of the Russian Federation.
[214] Part 6, art. 413 of the Labour Code of the Russian Federation.
[215] Part 1, art. 417 of the Labour Code of the Russian Federation.
[216] Items "a", item 6, part 1, art. 81 of the Labour Code of the Russian Federation.
[217] Part 2, art. 417 of the Labour Code of the Russian Federation.
[218] Part 1, art. 414 of the Labour Code of the Russian Federation.
[219] Part 2, art. 414 of the Labour Code of the Russian Federation.
[220] Part 4, art. 414 of the Labour Code of the Russian Federation.

labour disputes[221]. Amendments to the procedure of resolution of collective labour disputes can be summarized as follows:

First, the new law provides the possibility to create not only a temporary (ad hoc) labour arbitration to settle down collective labour disputes, but also the standing labour tribunals to address the tripartite commissions on the regulation of social and labour relations in these commissions[222].

Second, a provision was included that excluded the need to indicate the expected duration of the strike, while notifying the employer[223].

Third, the opportunity of adopting the decision on nominating requirements to collective labour dispute through collecting signatures of more than a half of workers, when it was impossible to convene a meeting (conference), was introduced[224].

Fourth, terms for conciliation procedures were significantly reduced, while their differentiation depending on the level of collective labour dispute — local level or higher — was introduced simultaneously.

Table 7.

The terms of collective labour dispute settlement through conciliation procedures in the new and the old revisions of the Labour Code of the Russian Federation (in working days)[225]

Actions in the course of resolving a collective labour dispute through conciliation procedures	**Local level**	**Other levels**	**Pre-2011 revision of the Labour Code of the Russian Federation.**
Establishment of a conciliation commission	*2*	*3*	*3*
Consideration of a dispute by a conciliation commission	*3*	*3*	*5*
A decision to invite a mediator	***1***	***1***	3
Selecting the mediator	2	2	
Consideration of a dispute with a facilitator	3	5	7
A decision on passing the dispute to a labour arbitration	***1***	***1***	7
Picking up members of a labor arbitration	2	4	
Consideration of a labor dispute in a labor arbitration.	3	5	5

[221] Federal Law No. 334-FZ dated Nov 22, 2011.
[222] Part 1, art. 404 of the Labour Code of the Russian Federation.
[223] Part 9, art. 410 of the Labour Code of the Russian Federation.
[224] Part 3, art. 399 of the Labour Code of the Russian Federation.
[225] Dates of mandatory procedures are in italic.

The listed changes have simplified the procedure for settling collective labour disputes and strikes.

Numbers, statistics and other relevant information about the case.

Table 8.

Progress of cases for recognizing strikes as illegal and reimbursement of harm damages caused[226]

			Considered with the judgment passed					
	Submitted cases	Remaining from previous year	Total	Claims met (number / % of considered cases)	Claims denied	Discontinued	Left without consideration	Completed
2009	79	20	64	40 / 62.5%	24	18	4	90
2010	38	9	34	24 / 70%	10	8	3	45
2011	39	2	31	21 / 67%	10	7	3	41
2012	100	0	27	19 / 70%	8	65	4	97

Statistical analysis shows that 62–70% of claims declaring the strike illegal are met.

Table 9.

Number of strikes in Russia according to Rosstat[227]

Year	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**
The number of organizations that were on strike	80	67	5933	2575	8	7	4	1	0	2	6

[226] The table was set up on the basis of the data of the Judicial department at the Supreme Court of the Russian Federation, published at the official website www.cdep.ru. Statistics for earlier periods has not been published. URL: < http://www.cdep.ru/index.php?id=79&item=1775 >.

[227] See 2011, 2012. Website of the Federal Service of State Statistics (hereinafter Rosstat). Russian Statistical Yearbook 2011: < http://www.gks.ru/bgd/regl/b11_36/IssWWW.exe/Stg/d1/05-12.htm >; The Russian statistical year-book 2012: <http://www.gks.ru/bgd/regl/b12_13/IssWWW.exe/Stg/d1/05-29.htm >; Socio-economic situation in Russia, 2012 year <http://www.gks.ru/bgd/regl/b12_01/IssWWW.exe/Stg/d12/3-2.htm>.

Article 21. The right to information and consultation

With a view to ensure effective exercise of the workers' right to information and consultation at the enterprise, parties pledge themselves to adopt or encourage measures giving workers or their representatives, in accordance with national law and practice, an opportunity to:

a) regularly or at the appropriate time and in an accessible form receive information on economic and financial situation of the enterprise they work for, realizing that they would be denied access to certain information, the disclosure of which could harm the company or it may be provided on a confidential basis;

b) receive timely advice on proposed decisions that could substantially affect the interests of workers, especially the decisions, which could have a serious impact on the employment situation at the enterprise.

Bilateral consultations at the local level *can* be carried out on any subject the parties deem appropriate. Such cases may be determined through collective agreements, contracts, other agreements between the parties.

Organizations can establish a bilateral commission not only for collective bargaining, drafting of collective agreements and its conclusion, as stipulated in the part 6 of art. 35 of the Labour Code of the Russian Federation, but a permanent commission for ongoing consultations on any subject, which the parties deem appropriate for that.

Compulsory bilateral consultations are foreseen by the legislation in two cases: while taking into account an opinion of a respective trade union body by an employer (art. 371 of the Labour Code of the Russian Federation), which is required while adopting local regulations, as well as while terminating employment contract between an employer and trade union members on the grounds provided for in items 2, 3 and 5 of the part 1 of article 81 of the Labour Code of the Russian Federation.

Procedure of **taking into account the views of the elected body of primary trade-union organization, while adopting local regulations** is stipulated by the article 372 of the Labour Code of the Russian Federation. Prior to making the decision, an employer sends the draft local regulation act and its justification to an elected body of primary trade-union organization that represents the interests of all or the majority of the employees.

An elected body of a primary trade-union organization sends the employer a justified opinion on the project in writing no later than five working days since the date of receiving the draft of the specified local regulatory act . In case the justified opinion of an elected body of primary trade-union organization does not accept the draft local regulation or contains suggestions for its improvement, the employer may agree with it, or has to hold further consultations with an elected body of primary trade-union organization of employees in order to achieve a mutually acceptable solution, within three days since receiving the justified opinion.

If no agreement is reached, emerged controversy is registered in the records; then the employer has the right to adopt local regulatory legislation, which an

elected body of primary trade-union organization may lodge a complaint against; this complaint may be forwarded to the state labour inspection or to the court. An elected body of a primary trade-union organization also has the right to initiate a collective labour dispute.

Upon receiving a complaint (application) from an elected body of primary trade-union organization must, state labour inspection is obliged to carry out an inspection within one month since the date of receiving a complaint (application), and if any violations are found, to bind an employer to abolish the local regulatory act.

Views of the primary trade-union organization are to be taken into consideration, while adopting the following local regulations of an employer:

- rules of employee certification[228];
- a list of employees on flextime schedule, established through a collective agreement or by an employer — after prior preliminary consultations with a trade union[229];
- breaking the working day into parts if necessary for technical or organizational reasons[230];
- acts on additional payment (apart from the allowances set out in the act) for the work carried out during weekends and public holidays, at night, in harmful or dangerous conditions, on paid leaves and relocation costs (for persons working in the Far North)[231];
- vacation schedule[232], list of additional paid leaves[233] (art. 116);
- acts establishing the payment system, as well as the form of a payroll[234];
- acts of workload standards[235];
- internal work regulations[236];
- forms of training and continuing professional development of employees, the list of professions and specialties[237];
- safety instructions[238];
- rules on additional (compared to legislative requirements) provision of special clothes, footwear and other personal protection equipment to employees[239];
- acts on additional payment and operating schedule for employees working shifts[240] etc.

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[228] Art. 81 of the Labour Code of the Russian Federation.
[229] Art. 101 of the Labour Code of the Russian Federation.
[230] Art. Art. 105 of the Labour Code of the Russian Federation.
[231] Art. 112, 147, 153, 154, 325, 326 of the Labour Code of the Russian Federation.
[232] Art. 123 of the Labour Code of the Russian Federation.
[233] Art. 116 of the Labour Code of the Russian Federation.
[234] Art. 135, 136 of the Labour Code of the Russian Federation.
[235] Art. 162 of the Labour Code of the Russian Federation.
[236] Art. 190 of the Labour Code of the Russian Federation.
[237] Art. 196 of the Labour Code of the Russian Federation.
[238] Art. 212 of Labour Code of the Russian Federation.
[239] Art. 221 of the Labour Code of the Russian Federation.
[240] Art. 297, 301, 302 of the Labour Code of the Russian Federation.

Justified opinions are to be taken into account while dismissing workers, who are members of a relevant trade union, items 2, 3, 5 of part 1 of the article 81 of the Labour Code of the Russian Federation[241]. The listed grounds foresee layoffs in cases of downsizing the staff or workforce of an organization, an individual entrepreneur (item 2); inaptitude of an employee to an office or job held due to inadequate qualification, confirmed by the results of an certification (item 3); repeated breach of duty without a justified cause, if an employee already has been subjected to a disciplinary penalty (p. 5).

In these cases,employer sends an elected body of primary trade-union organization, which the worker belongs to, draft order, as well as copies of documents that justify the adoption of that decision.

Elected body of primary trade-union organization addresses this issue and sends the employer its justified opinion in writing within seven working days since the date of receiving draft order and copies of documents. An employer does not take into account opinion that is not presented within seven-day period.

If an elected body of a primary trade-union organization expressed his disagreement with the expected decision of the employer, further consultations with the employer or his representative are held; their results are to be recorded in the records within three working days. If no general agreement is reached through consultations, after 10 working days since the moment when an elected body of primary trade-union organization sent draft order and copies of the documents, the employer has the right to take a final decision, which may be appealed at a respective state labour inspection. The State labour inspection considers the layoff case within ten days since the date of receiving a complaint (application) and, if it deems it illegal, gives employer a binding order on the restoration of an employee in his rights and compensating him the forced absence. Observing this procedure does not deprive an employee or an elected body of primary trade-union organization that represents the interests thereof of the right to appeal the layoff directly at the court, while employer- still has the right to appeal to the court against a requirement of a state labour inspection.

An employer may terminate an employment contract no later than one month since the date of receiving the reasoned justified opinion of the an elected body of primary trade-union organization. This period does not include periods of temporary incapacity of an employee, time of his leave and other periods of absence, when the employee's position is retained.

Apart from clearly settled employee voice procedures, while adopting local regulations and terminating the employment contract with trade union members at the employer's initiative on a number of grounds, the Labour Code of the Russian Federation provides procedures for notification and consultation on a number of other issues as a form of participation of employees in the organization management.

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[241] Article 373 of the Labour Code of the Russian Federation.

Article 53 of the Labour Code of the Russian Federation defines the basic forms of participation of employees in the management of the organization.

1. According to article 53 of the Labour Code of the Russian Federation workers' representatives have the right to obtain information on issues that directly affect the workers' interests from an employer.

In accordance with the part 2 of article 53 of the Labour Code of the Russian Federation workers' representatives have the right to obtain information on the following issues from an employer:

- restructuring or liquidation of an organization;
- the introduction of technological changes that entail a change of working conditions of employees;
- vocational training, retraining, and improvement of professional skills of employees;
- on other issues stipulated by the Labour Code of the Russian Federation, other federal laws, the constituent documents of an organization, collective bargaining, agreements.

According to part 3 of article 53 of the Labour Code of the Russian Federation workers' representatives have the right to introduce relevant proposals to organization management bodies and to participate in their consideration[242].

The right to obtain information on those matters is stipulated in respect of employees' representatives, i.e. both trade unions and other employee's representatives, specified in the article 31 of the Labour Code of the Russian Federation, may receive this information.

2. According to article 53 of the Labour Code of the Russian Federation, representatives of workers have a right to hold consultations on essential issues[243]:

- to discuss with the employer organizational issues, making suggestions on its improvement;
- to discuss social and economic development plans with employee representative body.

Legislation does not provide for mechanisms for implementation of these rights, however, they may be regulated by collective contracts, agreements.

Same applies to the right of workers' representatives to introduce proposals on reorganization or elimination to organization management; introduction of technological changes, entailing a change of working conditions of employees; vocational training, retraining and improvement of professional skill of employees and other issues stipulated by the Labour Code of the Russian Federation, other federal laws, the constituent documents of an organization, a collective contract,

[242] We believe that the right to submit proposals to the government on the issues outlined in part 2 of article 53 of the Labour Code of the Russian Federation, and the right to take part in the meetings of the said bodies during their examination should be considered as a form of employee engagement into the labour management process of the company, although it is not explicitly listed in the part 1 of article 53 of the Labour Code of the Russian Federation.

[243] Though these forms of discussion are not explicitly defined as consultations in the Labour Code of the Russian Federation.

agreements, and also to participate in the meetings of the governing bodies and the consideration of these issues[244].

Chapter 9 of the Labour Code of the Russian Federation specifies that the representatives of the parties bear responsibility in the form of a fine, amount and procedure of which are established by federal law, for failure to provide necessary information for collective bargaining and to monitor the implementation of the collective treaty or agreement[245]. The standards are a reference to the Russian Federation Code on Administrative Offenses (Code of Administrative Offenses)[246]. According to article 5.29 of the Code of Administrative Offenses, failure to provide the information required for collective negotiation and monitoring compliance with the collective agreement within the established time-limit, an employer or his representative may be brought to justice and receive a warning or a fine in the amount of 1 up to 3 thousand rubles (about €25–80).

With regard to the discussion of productivity and efficiency, it should be noted that in 2013 new mechanism for consultation with employees on this issue was established.

In 2012 discussions on the establishment of **production boards began**. On May 7, 2012 President of the Russian Federation signed the Decree No. 597 "On measures on implementation of the state social policy", subitem "h" (originally 'з') of item 1, which prescribes that the government of the Russian Federation "in order to increase the participation of workers in management of organizations", in particular, "to prepare, in advance of by December 1, 2012 proposals to amend the legislation of the Russian Federation concerning the establishment of production boards and their authorities; develop a set of measures for the adjustment of self-governing institutions, and adoption of codes of professional ethics". The Government of the Russian Federation prepared a bill pursuant to this decree and in January 2013 introduced it to the State Duma.

The Federal law dated May 7, 2013, No. 95-FZ "On introducing changes to article 22 of the Labour Code of the Russian Federation"[247] legalized the opportunity to establish production boards. The establishment of a production board is considered to be an employer's right; all employers, except for individuals, possess it.

At that, the production board is believed to be an advisory body voluntarily established by an employer from among his employees, usually those, who have distinguished themselves.

Mandate of the council cannot include issues which, in accordance with the federal laws, are subject exclusively to the jurisdiction of organization bodies. According to paragraph 9 of part 1 of article 22 of the Labour Code of the Russian

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[244] Part 3, art. 53 of the Labour Code of the Russian Federation.
[245] Part 2, art. 54 of the Labour Code of the Russian Federation.
[246] Code of Administrative Offences of the Russian Federation dated Dec 30, 2001, No. 195-FZ.
[247] Federal Law No. 95-FZ dated May 7, 2013 "On amendments to the art. 22 of the Labor Code of the Russian Federation". Rossiyskaya Gazeta, No. 99, May 13, 2013

Federation issues of representation and protection of social and labour rights and interests of workers, which, in accordance with the Labour Code of the Russian Federation and other federal laws fall into the competence of trade unions, relevant primary trade union organizations and other employees' representatives, cannot be classified in terms of the production board.

The laws leaves it to an employer to regulate mandate, members, procedure of production board and its interaction with an employer; they may adopt local regulatory acts on these issues. Fields of activity and mandate of the production board are restrained with two decrees of paragraph 9 of part 1 of article 22 of the Labour Code of the Russian Federation, defining its role as a deliberative body on the matters of productivity:

- the production board is set up for preparing proposals on improvement of the productive activities of individual production processes, technological innovations and new technologies, increasing overall productivity and skills;
- the employer is obliged to inform the production board on the results of consideration of proposals from production board and on their implementation.

In Russia there are no restrictions on application of all the mentioned standards at small enterprises and organizations.

Article 22. The right to participate in the evaluation and improvement of the working conditions and environment.

With a view to ensure effective exercise of the workers' right to improve working conditions and environment at the enterprise, parties pledge themselves to adopt or encourage measures providing workers or their representatives, in accordance with national law and practice to participate:

a) in evaluation and improvement of working conditions, labour management and working environment;

b) in ensuring occupational safety and health at the enterprise;

c) in the organization of social and socio-cultural services and creating appropriate environment for that at the enterprise;

d) in observation of compliance with the rules and regulations on these issues.

Analysis of the current Russian legislation

a) in evaluation and improvement of working conditions, labour management and working environment

In the Russian Federation, the right of workers and their representatives to take part in the evaluation and improvement of working conditions and working environment is implemented at different levels of social partnership.

According to art. 27 of the Labour Code of the Russian Federation labour safety regulation may be implemented in the following forms:

- collective bargaining;

- participation of workers and their representatives in the organization management;

- through the participation of social partnership bodies in development and (or) discussion of draft legislative and other regulatory acts, socio-economic development programmes, other labour-related acts issued by state bodies and bodies of local self-government (art. 35.1 of the Labour Code of the Russian Federation).

Federal Law dated May 1, 1999, No. 92-FZ "On Russian Tripartite Commission on regulation of social and labour relations "[248] (RTC), provides for the right of the commission to participate in the preparation of legal acts and directly affect the most important regulatory decisions of the Russian Federation government on the employees management.

The Labour Code of the Russian Federation requires taking into account the views of RTC on issues that determine, in particular, the following: the procedure for reduced working hours for the workers engaged in work in harmful or dangerous conditions (art. 92); a procedure for development, approval and modification of regulatory legal acts containing state requirements for occupational safety and health at work (art. 211); rules for providing free milk or equivalent food products, as well as healthy and dietary food (art. 222); a procedure of training employers in occupational health and safety requirements and assessing

[248] Legislation Bulletin of the Russian Federation, May 3, 1999, No. 18, art. 2218,

their knowledge (article 225); a list of industries, occupations and jobs with harmful or hazardous working conditions, where women's labour is used and the list of maximum allowed loads for women when lifting and moving manually heavy objects(art. 253); a list of jobs, where it is prohibited to employ workers under the age of 18 and limited weights to be carried by workers under the age of 18 (art. 265).

According to the article 218 of the Labour Code of the Russian Federation, at the initiative of an employer and/or employees or their representative body, occupational safety committees/commissions are established. Being established on a parity basis, they include representatives of an employer and representatives of an elected body of primary trade-union organization or another representative body of employees.

The occupational safety committee/commission shall organize joint actions of the employer and employees to meet the occupational safety requirements, prevent accidents at work and occupational diseases; it also organizes conducting inspections of the working conditions and occupational safety, informing employees of the results of these inspections and collecting proposals on the relevant part of the collective occupational safety agreement (treaty).

Legal status of committees (commissions) for labour protection is regulated in details by The Model Provisions on committee (commission) for labour protection, approved by an order of Ministry of Health and Social Development of the Russian Federation dated May 29, 2006 No. 413[249].

According to The Model Provisions, the commission is an integral part of the safety management system of an organization, as well as one of the forms of participation of employees in its management, when it comes to labour protection. Each party has one vote, regardless of the number of representatives of the parties. The commission's structure is determined on the basis of the number of employees in an organization, specific production features, the number of business units and other features, according to a mutual agreement of the parties, representing the interests of employers and employees.

The commission's activity is regulated on the basis of The Model Provisions through local regulations of an organization.

Labour protection planning is a development of specific activities for a certain period of time, specifying the employees in charge and the funds required for implementation of activities. The amount of funding is determined by art. 226 of the Labour Code of the Russian Federation and makes no less than 0.2% of the manufacturing costs for products (work, services).

b) in ensuring occupational safety and health at the enterprise

An employee's right to work in conditions that meet health and safety requirements are specified in the art. 219 of the Labour Code of the Russian Federation and backed up by the guarantees contained in art. 220 of the Labour Code of the Russian Federation. In particular, each worker is entitled to:

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[249] Labour and social legislation bulletin of the Russian Federation, No. 6, 2006

- ✓ a workplace that meets occupational safety requirements;
- ✓ obtaining accurate information from an employer, relevant State bodies and public organizations on the working conditions and occupational health and safety in the workplace, on the existing risk of damage to health, as well as on protection measures against exposure to harmful and (or) hazardous production factors;
- ✓ training in safe work methods and techniques at the expense of the employer;
- ✓ making a request for checking the conditions and protection of labour at his workplace to bodies of state control (supervision);
- ✓ bringing the matter of occupational safety before the governmental bodies of the Russian Federation, governmental bodies of the constituent parts of the Russian Federation and local self-government bodies, to the employer, employers' associations and trade unions, associations thereof and other authorized representative bodies of workers on occupational health and safety;
- ✓ personal participation or participation through their representatives when considering issues related to providing safe working conditions at the workplace and in the investigation of accidents at work in which they are involved or occupational diseases etc.

The Ministry of Health and Social Development Order dated May 17, 2012 No. 558n "On approval of the procedure for conducting state expertise of working conditions in the Russian Federation and the list of documents and materials presented for state expert review"[250] provides that an employee may act directly as an applicant. In this case, state inspection of working conditions is carried out against the working conditions at his/her workplace (workplaces). Objects of expertise are:

- ✓ the quality of workplace certification,
- ✓ the accuracy in providing compensation to workers
- ✓ actual working conditions of employees.

c) in observation of compliance with the rules and regulations on these issues.

In the Russian Federation public health monitoring exists and it is implemented by:

- trade unions (at all levels);
- other representative bodies;
- legal labour inspection;
- technical labor inspection of trade unions;
- committees (commissions) for labour protection, pertaining to organizations, enterprises and institutions;

[250] The document has not been published

- authorized (trusted) persons in charge of occupational safety and health, who are members of trade unions and other authorized employees' representative bodies.

Regulatory and legal base for implementation of control is: The Labour Code of the Russian Federation (art. 370), Federal Law "On trade unions, their rights and operational guarantees" No. 10-FZ dated Jan 12, 1996.[251]

Russian national trade unions, as well as their associations, interregional, territorial affiliation (association) at the territory of the Russian Federation, may establish legal and technical trade union inspections. In accordance with art. 370 of the Labour Code, authorized (trusted) trade unions members in charge of occupational safety and health have the right to check compliance with the health and safety requirements at work, to introduce proposals on elimination of revealed violations, which are mandatory for consideration by officials.

The working procedure of authorized (trusted) persons in charge of labour safety is carried out in accordance with the art. 370 of the Labour Code, Federal Law dated January 12, 1996 No. 10-FZ "On trade unions, their rights and operating guarantees"[252] and the Federal law dated July 24, 1998 No. 125-FZ (rev. dated July 2, 2013) "On compulsory social insurance against industrial accidents and occupational diseases"[253] stipulate practical assistance to employees, their representative bodies and employers in exercising public supervision over the process of labour protection.

Participating in the working process and being among the employees of their manufacturing units, officials of the trade union or other representative body authorized by employees may carry out constant supervision over the compliance with legislative and other state regulatory acts on labour protection, status of occupational health and safety including the supervision over how employees fulfill their duties in this area.

[251] Legislation Bulletin of the Russian Federation, Jan 15, 1996, No. 3, art. 148,
[252] Ibid.
[253] Legislation Bulletin of the Russian Federation, Aug 3, 1998, No. 31, art. 3803

Article 28. Right of workers' representatives to protection and employment benefits

With a view to ensure effective exercise of the workers' representatives right to carry out their functions, parties pledge themselves to ensure that workers' representatives at enterprises:

a) enjoy effective protection against acts aimed against them, including dismissal because of their status or activities as workers' representatives at the enterprise;

b) receive adequate tools and possibilities that would enable them to fulfill their duties quickly and effectively, taking into account the system of labour relations in the country and the needs, size and capabilities of the company.

Annex: For the purposes of applying these articles, the term "workers' representatives" defines persons who are recognized as such by the national legislation or practice.

Regardless of trade union membership, guarantees are provided to persons involved in collective bargaining. According to the art. 39 of the Labour Code of the Russian Federation, people involved in collective bargaining, drafting of a collective treaty or agreement, both from the side of employees and an employer, are exempt from work while retaining average salary for a period determined by the agreement of the parties, but for no longer than three months.[254] Besides that, the Code[255] establishes that all the expenses caused by participation in collective bargaining are reimbursed in accordance with the labour laws and other legal regulatory acts containing employment and labour laws, collective treaty or agreement. However, there exist no federal legal acts stipulating the procedure of implementation of such compensation. The services of experts, specialists and brokers are paid at the expense of the inviting party, unless provided otherwise by a collective treaty or agreement. According to part 3 of the art. 39 of the Labour Code of the Russian Federation workers' representatives, who participate in collective bargaining may not be subjected to disciplinary punishment, transferred or dismissed at the initiative of the employer during the negotiation, unless prior consent of an authority body that delegated them the right of representation was obtained, except for the cases of termination of employment for misconduct, which, in accordance with the Labour Code of the Russian Federation or, other federal laws, entails dismissal[256].

During the settlement of a collective labour dispute, members of a conciliatory commission, labour arbitrators are exempt from work while retaining

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[254] Part 1, art. 39 of the Labour Code of the Russian Federation.

[255] Part 2, art. 39 of the Labour Code of the Russian Federation.

[256] I.e. were fired for repeated failure to perform their duties without any grounds to do so (item 5, part 1 ,article 81 of the Labour Code of the Russian Federation); any flagrant major violation of labour duties in the form of worker's absenteeism, appearing at work place in the condition of alcohol, narcotic or any other kind of intoxication; disclosure of secrets protected by the law, including the disclosure of personal data of another employee; stealing at the workplace; violations of worker safety requirements item 6, part 1, article 81 of the Labour Code of the Russian Federation), as well as on a number of other special occasions applied to certain groups of workers.

average salary for a period not exceeding three months within one year[257]. Workers' representatives and their organizations, participating in the settlement of a collective labour disputes, may not be subjected to disciplinary punishment, transferred or dismissed by the employer during settlement of a collective labour dispute without prior consent of a body that delegated them as representatives[258].

According to art. 374 of the Labour Code of the Russian Federation special protection applies to heads (and their deputies) of elected bodies of primary trade union organizations, collegiate bodies of trade union and the respective structural units of organizations (that represent at least at a workshop level and in similar units) are not exempted from their primary work.

In May 2013, the Labour Code of the Russian Federation was amended[259], entitling employers to establishment of a industrial board, i.e. "a deliberative body, formed on a voluntary basis, from among the employees of a particular employer — usually among those with certain labour achievements — for the preparation of proposals on improvement of production activities of individual production processes, technological innovations and new technologies, increasing productivity and skills. No special measures for protection of such representatives are established in the legislation, apart from the general prohibition of discrimination.

[257] Part 1, art. 405 of the Labour Code of the Russian Federation.
[258] Part 2, art. 405 of the Labour Code of the Russian Federation.
[259] Federal Law No. 95-FZ dated May 7, 2013 "On amendments to the art. 22 of the Labor Code of the Russian Federation". // Legislation Bulletin of the Russian Federation, dated May 13, 2013, No. 19, art. 2322.

Article 29. The right of workers to information and consultation during layoffs for the sake of staff reduction

With a view to ensuring effective exercise of workers' right to be informed and consulted during layoffs for the sake of reduction of staff, parties pledge themselves to ensure that employers inform workers' representatives in advance of the upcoming collective dismissals and consult with them about ways and means of reduction and mitigation of the effects of such separations, for example through implementing social measures aimed, in particular, at promotion of employment or retraining of workers.

Annex: For the purposes of applying these articles, the term "workers' representatives" defines persons who are recognized as such by the national legislation or practice.

The notion of a collective layoff and downsizing of the workforce

The Labour Code of the Russian Federation does not provide valid reasons for downsizing the workforce. Nevertheless, court practice proceeds from a notion that the use of item 2 of part 1 of article 81 as "fictitious", i.e. situations when the purpose of a dismissal is not an actual reduction of a production function, but, for instance, getting rid of an out-of-favour employee, shall not be considered legitimate[260].

Notification about the staff reduction

According to part 3 of art. 81 of the Labour Code of the Russian Federation, dismissal on item 2 of part 1 of the article 81 of the Labour Code of the Russian Federation is permitted, if it is not possible to transfer an employee with his or her written consent to another existing job of this employer (both a vacant position or job requiring relevant qualifications and a vacant position or a lower paid job), which a worker is able to perform given his health condition. At that, an employer must offer an employee all vacancies available in this area that meet the specified requirements. An employer has to offer jobs in other areas, only if it is provided by a collective agreement or an employment contract.

Besides that, while making a decision to reduce the number of employees, an employer must notify the elected body of a primary trade-union organization no later than two months prior to the commencement of the relevant events[261] (two months prior to the event is to be understood as two months before the termination of the employment contract with the employee[262]), or, if the decision to reduce the number of employees may lead to layoffs — no later than three months prior to the

[260] See the report of HSE National Research University Professor, judge of the Supreme Court of the Russian Federation, Chairman of the Court of Labour and Social Affairs of the Civil Cases Board of the Supreme Court of the Russian Federation B. A. Gorokhov on the subject of "Topical issues of jurisprudence on the application of labour law", held in October 18, 2013 in HSE National Research University. It has not been published.
[261] Part 1, art. 82 of the Labour Code of the Russian Federation.
[262] The ruling of the Constitutional Court of the Russian Federation dated Jan 15, 2008.

commencement of the relevant activities. The criteria for layoffs are defined in industry-specific and/or territorial agreements[263].

Dismissal of *trade union members* due to a number of grounds, including staff reduction, or on the basis of a reasoned justified opinion of an elected body of primary trade-union organization[264]. The procedure of taking the views of an elected body of a primary trade-union organization into account are established in a separate article of the Labour Code of the Russian Federation[265].

According to this rule, while making a decision on the possible termination of an employment contract due to the said grounds, an employer sends the draft order, as well as copies of documents that make grounds for adoption of the decision, to an elected body of the relevant primary trade-union organization. Elected body of primary trade-union organization addresses this issue and sends the employer its justified opinion in writing within seven working days since the date of receiving draft order and copies of documents. An employer does not take into account opinion that is not presented within seven-day period.

If an elected body of a primary trade-union organization expressed his disagreement with the expected decision of the employer, further consultations with the employer or his representative are held; their results are to be recorded in the records within three working days. If no general agreement is reached through consultations, after 10 working days since the moment when an elected body of primary trade-union organization sent draft order and copies of the documents, the employer has the right to take a final decision, which may be appealed at a respective state labour inspection. The State labour inspection considers the layoff case within ten days since the date of receiving a complaint (application) and, if it deems it illegal, gives employer a binding order on the restoration of an employee in his rights and compensating him the forced absence.

Observing the aforementioned procedure does not deprive an employee or an elected body of a primary trade-union organization that represents the interests thereof of the right to appeal the layoff directly at the court, while the employer still has the right to appeal to the court against a requirement of a state labour inspection[266].

An employer may terminate an employment contract no later than one month after the date of receiving the reasoned justified opinion of the an elected body of primary trade-union organization. This period does not include periods of temporary incapacity of an employee, time of his leave and other periods of absence, when employee's position is retained[267].

Workers are notified about the upcoming dismissal according to items 1 and 2 of part 1. of art. 81 of the Labour Code of the Russian Federation are notified by the employer in person and acknowledge that with a signature at least two months

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[263] Ibid.
[264] Part 2, art. 82 of the Labour Code of the Russian Federation.
[265] Art. 373 of the Labour Code of the Russian Federation.
[266] Part 4, art. 373 of the Labour Code of the Russian Federation.
[267] Part 5, art. 373 of the Labour Code of the Russian Federation.

before the dismissal[268]. According to it, the dismissed employee also receives a severance pay in the amount of average monthly wage[269], and he also retains average monthly earnings for the period of finding employment, but not exceeding two[270] months from the date of dismissal (minus severance pay)[271].In exceptional cases, average monthly income of laid-off workers is retained during the third month from the date of the dismissal, upon the decision of an employment service bodies, provided that within two weeks after the dismissal the employee appealed to this body but was not employed by them[272].

Massive layoffs

In case of *massive layoffs* of workers, trade unions are to be notified not within two, but three months. Additional mechanisms for workers' protection in these situations can be established in industry-specific and/or territorial agreements.

Following are some of the massive layoffs concepts for socio-partnership agreements.

Table 10. **Criteria for mass layoffs on social partnership agreements**

Social partnership agreement	**Definition of massive layoffs**
Industry-specific agreement on agriculture sector of the Russian Federation for 2012-2014	*simultaneous* layoff of *10 percent or more* of the total number of employees in an organization[273]
Industry-specific agreement on medical organizations and institutions run by the Federal Medical-Biological Agency for 2013-2015	reduction of staff to the scale of: - *25 people or more* within *30* calendar *days*; - *100 people or more* within *60* calendar *days*; - *200* people *or more* within *90* calendar days. [274]

[268] Part 2, art. 180 of the Labour Code of the Russian Federation. On the notice due to the termination of the labour relations. See comment to the item 4, art. 4 of the Charter.

[269] Two-week-long severance pay is established for seasonal workers (part 3, article 296 of the Labour Code of the Russian Federation).

[270] For workers in the regions of the Far North and those similar to them, it is paid during three months (part 1, article 318 of the Labour Code of the Russian Federation).

[271] Part 1, art. 178 of the Labour Code of the Russian Federation.

[272] Part 2, art. 178 of the Labour Code of the Russian Federation.

[273] Industry-specific agreement on Agriculture of the Russian Federation for 2012–2014, item 5.4. //http://www.apsr.ru/documents/agreements/1058--2012-2014-.html.

[274] Industry-specific agreement on medical organizations and institutions run by the Federal Medicine and Biology Agency for 2013-2015, item 4.1.3 // legal reference system KonsultantPlus.

Industry-specific agreement for organizations, run by the Ministry of Education and Science of the Russian Federation for 2012–2014	Reduction of staff to the scale of: - *20 people or more* within *30 days*; - *60 people or more* within *60 days*; - *100 people or more* within *90 days*. - any dismissal of employees in the amount of *one per cent of* the total number of workers due to downsizing of staff within *30* calendar days *in the regions with a total employment of less than five thousand people;* - or dismissal of *10 percent or more* of employees within *90* calendar *days*.
Industry-specific agreement for fish farms for 2013–2015	Reduction of staff or a number of enterprise employees to the scale of: a) *50 people or more* within *30* calendar *days;* *b) 200 people or more* within *60* calendar *day;* *c) 500 people or more* within *90* calendar *days;*[275]
Industry-specific agreement on tariffs for housing and communal services for 2008–2010	dismissal of *more than 5%* of employees *a year*.[276]
Industry-specific agreement on atomic energy, industry and science for 2012–2014.	Reduction of staff or a number of enterprise employees to the scale of: — *50 people or more* within *30* calendar *days;* — *200 people or more* within *60* calendar *days;* — *500 people or more* within *90* calendar *days;* or a dismissal of employees in the amount of one per centof the total number of workers due to elimination or reduction of staff within *30* calendar days *in the regions with a total employment of less than five thousand people.*[277]
Industry-specific agreement between the Trade union of civil and public servants of the	reduction of staff of civil servants, customs bodies and institutions employees to the scale of: - *20 people or more* within *30 days;* - *60 people or more* within *60 days*;

[275] Industry-specific agreement on fish farm organizations for 2013-2015, item 8 // Solidarnost, No. 10, Mar 13 to Mar 20, 2013.

[276] Industry-specific agreement on tariffs for housing and communal services in the Russian Federation for 2008–2010, item 5.4. // "Legislative and normative documents in the housing and communal services area", No. 9, 2007.

[277] Industry-specific agreement on atomic energy, industry and science for 2012–2014, item 8.1 // "Labour protection and economics", No. 2, 2012.

Russian Federation and the Federal Customs Service for 2011–2013	- *100 people or more* within *90 days;* or a dismissal of employees and civil servants in the amount of one per centof the total number of workers due to elimination of customs bodies and institutions or reduction of staff within *30* calendar days *in the regions with a total employment of less than five thousand people.*[278]
Industry-specific agreement between the Ministry of Culture of the Russian Federation and the Russian Union of Culture Industry Workers for 2012–2014.	simultaneous layoff or reduction of staff within 30 calendar *days*: - *25 people or more, given the staff of 1,000 people and more*; - *20–24* people given the staff of *500 up to 1,000 people*; - *15–19* people, given the staff of *300 up to 500 people*; - *5% of a total number of* employees *in the organization.*[279]
Industry-specific agreement for space-rocket industry of the Russian Federation for 2011–2013	Reduction of staff or a number of enterprise employees to the scale of: - *50 people or more within 30* calendar *days, but no more than 10% of the total number of employees in the organization*; - *200 people or more within 60* calendar *days, but not more than 10% of the number of employees in the organization*; - *500 people or more within 90* calendar *days, but not more than 10% of the number of employees in the organization.*[280]
Federal industry-specific agreement on construction materials industry in the Russian Federation for 2011–2013	Reduction of staff or a number of enterprise employees to the scale of: - *50 people or more* within *30* calendar *days;* - *200 people or more* within *60* calendar *days;* - *500 people or more* within *90* calendar *days;*[281]
Industry-specific	dismissal from an organization initiated by an

[278] Industry-specific agreement between the Trade union of civil and public servants of the Russian Federation and the Federal Labour Service for 2011–2013, item 4.4.1 // "Vashe pravo", No. 16, August, 2011.
[279] Industry-specific agreement between the Ministry of Culture of the Russian Federation and the Russian Union of cultural workers for 2012–2014, item 3.3. // legal reference system Konsultant Plus.
[280] Industry-specific agreement for space-rocket industry of the Russian Federation for 2011–2013, item 3.5.15 // "Vashe pravo", No. 5, March, 2011.
[281] Federal industry-specific agreement on construction materials industry in the Russian Federation for 2011–2013, item 4.7 // "Vashe pravo", No. 12, June, 2011.

agreement for the oil and gas industries, and the construction of oil and gas facilities in the Russian Federation for 2011–2013	employer: - *50 people or more* within *30* calendar *days;* - *200 people or more* within *60* calendar *days;* - *500 people or more* within *90* calendar *days;*[282]

Consultations and other activities related to massive layoffs

If it does not contradict the Labour Code of the Russian Federation, the Decree of the Government of the Russian Federation dated Feb 5, 1993 No. 99 "On the organization of work in conditions of massive release of workforce" is to be applied[283]. "Massive release" criteria laid down in this Decree, cannot be applied due to the fact that Labour Code of the Russian Federation leaves defining these criteria at the discretion of the social partners, although the mechanisms for workers' protection in such situations, as laid down in this Decree, are to be applied. Thus, in accordance with this decree, executive bodies and employers upon the proposal of trade unions, other authorized workers' representative bodies *carry out mutual consultations* on employment of the released workers[284]. Following the consultations, a program of activities aimed at promotion of employment and provision of social guarantees for workers in case of a massive release, which, inter alia, identifies the funding sources.

Measures for reducing the number of employees subject to massive layoff, and for their employment, are provided in the section a collective agreement of an enterprise and are carried out by an employer. This section may include[285]:

activities aimed at reducing working hours without a reduction in the number of employees;

benefits and compensations to released employees (beyond those established by the law), provided by an employer;

procedure of organizing training, retraining and continuous professional development of released workers before the termination of the employment contract:

guarantees on employment facilitation of certain categories of released workers;

obligations to conclude group insurance contracts with public or private insurance companies, which cover employees in case they lose their job;

other measures contributing to the social protection of released workers during a massive layoff.

During short-term reduction of production volumes it is appropriate[286] to foresee the following activities to avoid cutting the number of employees:

temporarily suspend recruitment of new employees to vacant jobs;

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[282] Industry-specific agreement for the oil and gas industries, and the construction of oil and gas facilities in the Russian Federation for 2011–2013, item 5.1.5 // "Vashe pravo", No. 6, March, 2011.
[283] Rossiyskaya Gazeta, issue No. 33, Feb 18, 1993.
[284] Part 3, regulation No. 99.
[285] Part 6, regulation
[286] Ibid.

transfer the employees to part-time schedule;

provide furloughs to employees;

other activities.

If no measures aimed at promotion of employment of released workers, were foreseen during conclusion of collective agreements, enterprises may, through mutual agreement of the parties and in accordance with the established procedures, establish commissions representing administration and the trade unions, other authorized workers' representative bodies for negotiations on changes of and amendments to a collective agreement[287]. Commission membership and dates of negotiation are determined through decisions of the parties. During the negotiation process commissions develop options for the further activity of the enterprises or a plan of actions implemented by an employer prior to reduction of staff in order to downscale this process. Agreements reached by the parties on the implementation of the said activities are to be attached to the collective agreement[288].

Employment-promoting measures implemented along with massive layoffs and affecting the overall unemployment rate in the industry or in the region, can be included into the sectoral industry-specific agreements concluded between a respective trade union, other authorized representative bodies of workers and employers (associations of employers), the Ministry of Labour, or into territorial agreements between relevant trade unions, other authorized representative bodies of workers and employers (associations of employers), bodies of executive power[289].

These activities include:

professional retraining, improvement of professional skills of workers, whose further employment proves to be difficult due to peculiar nature of their professions (miners, nuclear power plants workers etc.);

providing welfare benefits to laid-off workers and their families, when they move to a new place of residence;

conversion of enterprises and creation of new jobs;

privatization of enterprises;

other employment-promoting measures for the released workers.

Funding of activities included into industry-specific and territorial agreements, is determined through decisions of parties to a negotiation process during conclusion of these agreements. The Federal Service of Labour and Employment (Rostrud) carries out the following regional programs aimed at reducing tensions at the labour market:

- advanced vocational training of employees in case of a massive layoff;
- organization of community works, temporary employment and internships for graduates;
- providing target support to citizens, including their transfer to another locality for job replacement;

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[287] Part 7, regulation.
[288] Part 8, regulation.
[289] Part 13, regulation.

- promoting the development of small businesses and self-employment of currently unemployed citizens;
- other activities.

In 2009, these activities engaged 2,803,808 people[290], in 2010 — 3,267,500 people[291], in 2011 — 1,109,486 people[292]. General unemployment rate in Russia is rather low. According to the Federal State Statistics Service[293] in recent years it made up following figures:

year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
%[294]	7.9	8.2	7.8	7.1	7.1	6.0	6.2	8.3	7.3	6.5	5.5

According to the latest data available to the International Labour Organization (for 2010)[295], unemployment rate made up 7.5% in Russia, which almost coincides with the Rosstat data.

The Decree also stipulates that during the period of massive workforce release in the region executive authorities should[296]:

analyze the impact of mass release on the labour market;

implement the decision to suspend release or implement it stepwise;

to organize scrutiny of financial environment of enterprises and the development of measures for reducing the number of released workers;

to coordinate the implementation of advanced training and retraining programs for the released workers;

play an intermediary role in resolving conflicts between trade unions and enterprises administration, conducting a mass release of workers;

to provide financial assistance to enterprises planning to conduct massive release, in the form of loan guarantees, subsidies, loans at a discounted interest rate, deferred tax payment;

to develop employment-promoting measures in conditions of mass release, including temporary employment, development of community works;

to prepare privatization or conversion proposals.

Legislative bodies of the Russian Federation, upon an invitation of employment service and trade union bodies may suspend employers' decision on mass release for a period of up to six months [297].

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[290] The Federal Service on Labour and Employment. Implementation monitoring of the regional programmes with additional activities aimed at reducing tensions at the labour market. January to December, 2009. Moscow, 2009. Page 5. http://www.rostrud.ru/activities/31/monitoring_tabl/19311.shtml.

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[292] The Federal Service on Labour and Employment. Implementation monitoring of the regional programmes with additional activities aimed at reducing tensions at the labour market. January to December, 2011. Moscow, 2011. Page 3-4. http://www.rostrud.ru/.cmsc/upload/docs/201202/06164228Pg.doc.

[293] The Federal State Statistics Service. Indices of decent work: http://www.gks.ru/free_doc/new_site/population/trud/ind-dtr.xls.

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[295] International Labour Organization. Key Indicators of the Labour Market (KILM) Database. http://kilm.ilo.org/kilmnet/view.asp?t=Table%209.%20Total%20unemployment%20%28by%20sex%29&I=K09&C=|RU|&Y=|2010|&S=|1|.

[296] Part 16, regulation No. 99.

Preference to keep the job during staff reduction

Seniority is irrelevant from the point of view *of a preference to keep the job during staff reduction*. It is taken into account as one of the qualification criteria. The key criteria though are productivity and skills of a particular employee[298]. Given equal skill and productivity, preference is given to: workers with families, if they have two or more dependents (disabled family members fully supported by or receiving aid from an employee, [if this aid is a permanent and the only source of livelihood for them]); people with no other employees with incomes in their family; employees who suffered industrial injury or occupational disease, while working for this employer; disabled veterans of the Great Patriotic War and disabled veterans, who took direct part in fighting for protection of the Fatherland; employees, who undergo continuous professional development at the workplace. A collective agreement may provide for other categories of workers with equal skill and productivity as others, yet enjoying the preference to keep the job[299]. The law does not clarify how exactly is employer to decide, which of the employees with equal productivity or skills, with equal existing/non-existing preferences of these employees.

[297] Part 17, regulation.
[298] Part 1, art. 179 of the Labour Code of the Russian Federation.
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