

# Special Update on Recent Clarifications on Various Labor Law Issues

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This Special Update discusses clarifications on various labor law issues published by the Ministry of Health and Social Development ("Ministry") on 17 November 2009. In particular, the Ministry clarified the application of certain labor law provisions with respect to salaries, business trips, vacations, and average wage. Below is a brief overview of the clarifications.

## Salary

### Minimum Monthly Wage

According to article 133 of the Labor Code the minimum salary of an employee must be no less than the minimum monthly wage set out by the law. As of 1 January 2009 the minimum monthly wage in Russia is 4,330 rubles (approximately USD 145).<sup>1</sup> In particular, the Ministry clarified that if an employee works part-time or full time, but had a vacation or was ill for a certain part of the respective month, his/her compensation must not be less than the minimum monthly wage calculated in proportion to the respective amount of working hours.

### Work on Days Off

According to article 112 of the Labor Code employees, apart from those who receive a position salary ("oklad"),<sup>2</sup> must receive compensation for holidays (even if they did not work). The Ministry clarified that this provision does not contain any references to a particular time period, i.e. if the holidays take place during the employee's vacation they must be compensated in accordance with the procedure established by a collective bargaining agreement, local normative acts, and/or employment agreement.

Article 153 of the Labor Code states that work on a weekend or a holiday must be compensated at a rate no less than double the regular rate. At request of the employee he/she may be provided with another day off instead of one regular rate. The employee may use the additional day off at any time convenient for him/her as agreed with the employer. The Ministry clarified that if the additional day off is provided to the employee, the employer must also pay the employee the regular rate for this day.

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This update is a general summary of recent legislative developments and should not be treated as legal advice. Readers should seek the advice of legal counsel on any specific question. All translations of terminology in this update are unofficial.

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<sup>1</sup> Please note that the minimum monthly wage rate applies only to salary payments and temporary disability allowances. Taxes, fines and other mandatory payments are calculated in multiples of 100 rubles (approximately USD 3.5).

<sup>2</sup> Employees who receive position salary include employees having tariff rates per hour, daily tariff rates and rate workers ("sdel'shiki").

## Cumulative Working Time Recording and Overtime Work

The Ministry clarifies certain issues on compensation of overtime work in case of a cumulative working time recording regime. In this case, the overtime work hours must be calculated after the end of the respective accounting period. Overtime work for the respective period must be compensated for the first two hours of work at a rate not less than one and a half times the regular rate and for the subsequent hours – at a rate no less than double the regular rate. For instance, if the total overtime hours is 40 hours, 2 hours should be paid at a one and a half times the regular rate, and 38 hours – at a double rate.

The employee is not required to make up for his/her period of absence at work due to a valid reason set out by the law (e.g., vacation, illness, professional development). Such periods in fact decrease the standard working hours rate. If the employee works in excess of the decreased standard working hours rate such work is considered overtime work and must be respectively compensated.

## Business Trips

The Ministry clarified that in case the employee goes on a business trip at request of the employer on his/her day off, such day must be paid at a rate no less than double the daily regular rate.

According to article 167 of the Labor Code when the employee is sent on a business trip he/she is guaranteed, in particular, his/her average wage for all working days under the schedule established at his/her permanent place of employment. The employer may adopt a local normative act on remuneration of employees providing that, in addition to the average wage, the employees should be paid compensation up to his/her salary amount for actual working hours in case the employee's average wage is less than the salary for the period of a business trip.

It is a standard practice that the work performed by the employee during a business trip is paid in accordance with the rates of the place of a business trip (i.e., without preserving the employee's salary at the permanent place of work). In this case, the average salary at the permanent place of work is paid to such employees only for the traveling time period. However, if the actual salary of the employee is less than his/her average wage, the average wage must be preserved for the business trip duration.

## Vacations

### Calculation of the vacation duration

According to article 120 of the Labor Code, the duration of all annual paid vacations provided to employees (apart from temporary and seasonal workers) must be calculated in calendar days. When calculating the total duration of the annual paid vacation of an employee, additional paid vacation should be summed up with the annual basic paid vacation. In particular, if the additional vacation of the employee is established in working days, the total duration of his/her annual paid vacation must be determined as follows:

- from the beginning of the vacation, the number of calendar days of the basic vacation and the working days of the additional vacation, should be counted off to determine the last day of vacation; and

- the total number of calendar days for the above vacation period should be calculated and paid up in amount of the employee's average wage.

### Unused vacation in case of dismissal

In case of employee's dismissal or departure from the company, he/she must be paid for the unused calendar days of vacation. As the statutory annual vacation lasts for 28 calendar days, 2.33 vacation days are provided for each month of the working year. If the working year has not been worked in full, the compensation for the vacation days must be calculated in proportion to the worked months. The number of days constituting more than half a month will be considered as a full month for the purposes of the calculation.

## Average Wage

### Average Wage Calculation

According to article 5 of the Regulation on Specifics of Calculation of an Average Wage set out by Government Resolution No. 922 of 24 December 2007 ("**Regulation**"), the time periods and amounts of compensation received by the employee, in particular, in case of maternity leave, should not be included in calculation of the average wage for the respective time period. If before the vacation the employee was absent from work for a long period of time for a valid reason, the period for calculating his/her average wage for vacation pay should be 12 calendar months preceding the period of absence from work.

According to article 5(e) of the Regulation, the time when the employee was released from work without payment in accordance with the law (e.g., release from work for mandatory medical examination) should be included in calculation of the average wage. The Ministry clarified, in particular, that the holidays should not be considered days of release from work and included in calculation of the average wage of the employee.

### Bonuses

According to article 139 of the Labor Code, all payments and compensations (including salary percentage increase for work in abnormal climatic conditions, bonuses provided by the employer's remuneration system) established by the employer must be considered when calculating the average wage. The salary percentage increase must be charged to the whole salary for the respective month, including bonuses. However, if the employee worked only a part of the respective period, the bonuses and rewards should be included in the calculation of the average wage in proportion to the time worked during this period.