

Digest of key judgments of the Higher Courts of the Russian Federation 2018/2019

1. Maternity leave and childcare leave, as well as pregnancy, may be recognized as justified reasons for failure to file a claim with the court on time

In 2019, the Supreme Court of the Russian Federation repeatedly pointed out that the pregnancy of a worker, as well as the fact of being on maternity leave and childcare leave, are justifiable reasons for failure to file a claim with the court on time. The key argument of the Court, in such cases, is that the priority duties for the employee, during these periods, are to protect her health during pregnancy, protect the interests of her young children and take care of them.

In one case, an employee filed a claim to the court with the requirement to provide bonus payment for past periods of work. The company pointed out that the employee failed to file a claim with the court to resolve an individual labour dispute, as provided for in article 392 of the Labour Code of the Russian Federation. In turn, the employee asked the court to recognize the reason, for failure to file a claim, as justifiable and restore it, indicating that she has three children and, during the disputed period, she was on maternity leave as well as on childcare leave.

In another case, the employee did not agree with the dismissal, but she could only go to court a few months after the termination of the contract. One of the reasons for failure to file a claim, with the court on time, was that she was on maternity leave and went to court only after the birth of the child.

The Supreme Court of the Russian Federation decided that, in both cases, lower courts that refused to recognize the reasons for failure to file a claim, with the court on time, as justified reasons did not take into account the set of circumstances, due to which the employee could not file a claim with the court. In particular, such circumstances, which are provided by the Constitution of the Russian Federation benefits of women's rights on maternity, rights to care and upbringing of children, as well as legislative provisions, allow women, combining labour activity with family responsibilities, to have equal rights to realize themselves in labour activity.

In both cases, the Supreme Court of the Russian Federation recognized the reasons of employee's failure to file a claim, with the court on time, as justified reasons and sent the cases for new consideration.

Source: *Decision of the Judicial Chamber on Civil Cases of the Supreme Court of the Russian Federation dated January 28, 2019 No. 78-KG18-74; Decision of the Judicial Chamber on Civil Cases of the Supreme Court of the Russian Federation dated August 5, 2019 No. 16-KG19-21*

2. The Supreme Court of the Russian Federation recognizes the fact of the employee's appeal to State Labour Inspectorate as a justified reason for failure to file a claim with the court on time

The time limit for going to court to resolve an individual labour dispute can be prolonged by the court, on the basis of all the circumstances that did not allow a person to file a claim with the court on time, for the protection of the violated labour law. The Supreme Court of the Russian Federation accepts the fact of the employee's appeal, for the protection of labour rights, to the State Labour Inspectorate, as one of such circumstances.

Upon dismissal, an employee filed a claim to the State Labour Inspectorate, where he was informed about the necessity to file a claim to the court. The employee failed to file a claim with the court on time. The first and second instances supported the employer and the former employee's rights were not restored.

The Supreme Court of the Russian Federation sent the case for the new consideration. According to the Court, the former employee conscientiously expected that he would be able to restore his rights through the State Labour Inspectorate. The reason for failure to file a claim, with the court on time, was recognized as a justified reason.

Source: *Clause 10 of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 2 (2019) (approved by the Presidium of the Supreme Court of the Russian Federation dated July 17, 2019)*

3. The State Labour Inspectorate is not authorized to charge an employer with administrative liability, in the form of fine, for violation of the procedure of imposition of disciplinary sanction

The Supreme Court of the Russian Federation declared out that The State Labour Inspectorate is not authorized to charge an employer with administrative liability, in the form of fine, for violation of the procedure of imposition of disciplinary sanction. This conclusion is based on the fact that the State Labour Inspectorate is not entitled to consider labour disputes.

In this case, The State Labour Inspectorate charged an employer with administrative liability, in a form of fine for the fact that, according to the official of the labour inspectorate, the employee was unlawfully prosecuted, due to non-compliance by the employer with the requirements of the disciplinary procedure. The company appealed the decision of the State Labour Inspectorate, the Court allowed the appeal.

Source: *Resolution of the Supreme Court of the Russian Federation dated January 18, 2019 No. 19-AD18-32*

4. The Supreme Court of the Russian Federation clarified the procedure of reimbursement of damages from an employee

The Supreme Court of the Russian Federation confirmed that the obligation of an employee, including a former employee, to compensate for the damage caused to the company, including cases of the conclusion of an agreement between the parties on voluntary compensation for material damage. Hence, the requirements of the Labour Code, regulating the material liability of the parties, are implied for such relations.

In this case, a former employee, found to have stolen funds from the cash desk and the company, concluded an agreement on the reimbursement of these funds. Upon the employee's refusal to refund part of the amount, the company filed a claim with the court. The employer demanded recovery of the rest of the debt and a penalty for delay in payment, according to the rules of the Civil Code of the Russian Federation.

The Supreme Court did not support this approach. It was necessary to charge the former employee with material liability and conclude an agreement with him on damages, according to the rules of the Labour Code of the Russian Federation. The case was sent for the new consideration.

Source: *Decision of the Judicial Chamber on Civil Cases of the Supreme Court of the Russian Federation of 06.06.2019 No. 9-KG19-5*

5. The Russian Constitutional Court specified legal options for providing employees, dismissed due to liquidation, with payments

The Constitutional Court of the Russian Federation recognized the legislative provision, which deprives an employee of the opportunity to receive severance payment when the company is already liquidated, as unconstitutional. In this regard, before the Russian legislator amends the provisions of the Russian legislation, it is recommended that employers comply with one of the following options:

- increase the amounts of the severance payment for employees dismissed due to liquidation (e.g., by stipulating the respective amount in the employment contract, or collective bargaining agreement); or
- use civil law mechanisms, which are in compliance with the Russian legislation.

In this case, an employee was dismissed due to a company's liquidation. The employee was not able to find a new job within two months following the date of dismissal. In addition, the employee could not file an application, to his former employer, to provide the severance payment for the period of employment, since the liquidation procedure of the company had been completed.

The employee claimed that the record of the company's liquidation was illegal, as specified in the Unified State Register of Legal Entities, due to the company's outstanding debts to creditors. However, the employee's claim was denied, since the liquidation procedure of the company was in full compliance.

Source: *Resolution of the Constitutional Court of the Russian Federation dated December 19, 2018 No. 45-P*

6. The Supreme Court of the Russian Federation defined the difference between a service contract and an employment contract

The Supreme Court of the Russian Federation identified the differences between a service contract and an employment contract.

Under a service contract, the contractor shall:

- maintain the position of an independent economic entity;
- work at his, or her, own risk.

Under an employment contract, the employee shall:

- be obliged to perform work required to perform a certain labour function;
- be included in the company's staff;
- comply with the established working regime;
- work under the control and guidance of the employer;
- not bear the risks connected with performance of the employee's work.

A plaintiff filed a claim to the court on recognition of a service contract as an employment contract. The Supreme Court of the Russian Federation determined that the contract between the plaintiff and the company contained the provisions which are typical for employment contracts (e.g. workplace, obligation to comply with the internal labour regulations).

The Supreme Court of the Russian Federation pointed out in its Resolution that the crucial issue is to clarify whether there were any features of employment relations between the parties, rather than how relations between the parties were formalized.

Source: *Resolution of the Supreme Court of the Russian Federation dated January 14, 2019 No. 5-KG18-259*

7. The company must adhere to the selected salary-indexation mechanism

The Supreme Court of the Russian Federation confirmed its clarification that indexation is not the only way to increase the level of salary. Commercial organizations, without state participation, have the right to independently choose a way to increase the real level of salaries of their employees. However, after selecting a specific mechanism, it should be followed.

In that case, according to the policy on indexation, the salary indexation was recognised as a method of increasing an employee's salary. In a dispute with an employee, the company

pointed out that the employee was provided with bonus payment, so the company complied with requirements of Russian law related to salary indexation.

The Supreme Court of the Russian Federation did not agree with this position and sent the case for a new consideration, as the employer violated the selected salary-indexation mechanism.

Source: *Decision of the Judicial Chamber on Civil Cases of the Supreme Court of the Russian Federation of 08.04.2019 No. 89-KG18-14*

8. The company may be fined for non-compliance with the procedure of dismissal of a foreign employee

The Supreme Court of the Russian Federation determined that violation of the notification procedures indicates a company's failure to fulfill its obligations, which may lead to administrative liability.

The company timely submitted, to the Ministry of Internal Affairs, information, about the termination of the employment contract, with a foreign employee. However, the notification contained several errors, for which the company was subject to administrative liability, in the form of a fine. The reason for holding the employer liable was that the notice submitted did not comply with the form, established by law.

The company referred to the insignificance of the offense. However, the Supreme Court of the Russian Federation agreed to charge the organization with administrative responsibility and declared that there were no grounds for declaring the offense insignificant and, as a result, relieving the organization from administrative responsibility.

Source: *Resolution of the Supreme Court of the Russian Federation of December 27, 2018 in case No. 127-AD18-6*

9. It is not possible to recover court fees from an employee, even if the court did not satisfy the employee's claim

The Supreme Court of the Russian Federation recognised that the Labour Code stipulates that employees are exempted from duties and court fees. This rule is established for providing individuals with additional benefits, while filing a claim.

In one case, the services of a forensic handwriting expert were contracted as part of the labour dispute between an employee and a company. The company paid compensation for provision of this expertise. When the company won a court case, it tried to recover compensation for the expertise from the employee.

In another case, a company tried to reimburse the costs of legal services from an individual, who had lost a dispute on recognition of relations as employment relations.

In both cases, the Supreme Court of the Russian Federation recognised that the Russian legislation does not allow recovery of any court fees, from a plaintiff who has filed a claim in relation to an issue, which has arisen from employment relations, even if a company managed to win its court case.

Source: *Decision of the Supreme Court of the Russian Federation dated December 17, 2018 No. 3-KG18-15; Decision of the Judicial Chamber on Civil Cases of the Supreme Court of the Russian Federation dated July 15, 2019 No. 75-KG19-3*

10. Courts shall determine the existence of grounds of repeated non-performance by an employee of his/her job duties, without justified reasons

The Supreme Court of the Russian Federation Court had identified the necessity to identify grounds of repeated non-performance by an employee of his/her job duties, without justified reasons.

In one case, the company dismissed an employee for repeated non-performance of its internal rules, in part of the work schedule. The reason for dismissal was the fact that the employee was absent from the workplace for a short time (less than 2 hours during each day) for 3 different business days.

The employee pointed out that the employer failed to familiarize her with local practice, establishing the working hours. At the same time, the employer stated that the working regime was published in an electronic journal and employee was obliged to become familiarized with such journal at least twice a day, and in addition, the working regime was discussed at meetings with employees.

The Supreme Court of the Russian Federation did not accept, as evidence, the electronic familiarization with the working hours.

In addition, the Supreme Court of the Russian Federation decided that the employer's actions on preparation and issuance of several disciplinary acts, regarding to the absence of an employee from the workplace, several orders for conducting an internal investigation, several orders for imposing disciplinary sanctions and an order to terminate an employment contract could be considered to be the employer's intentional actions, aimed to dismiss an employee.

In another case, an employee violated labour discipline. He was reprimanded, and then he was dismissed for a disciplinary offense committed by him earlier.

The courts of first and second instance supported the employer, but the Supreme Court of the Russian Federation did not agree with them. According to the Supreme Court of the Russian Federation, in the period between reprimand and dismissal, the employee did not violate labour discipline - that means that the repeatability criterion was not met.

Source: *Decision of the Supreme Court of the Russian Federation dated March 25, 2019 No. 5-KG18-305; Decision of the Supreme Court of the Russian Federation dated April 08, 2019 No. 18-KG18-270*

11. Charging an employer with liability for violation of traffic rules committed by an employee

The Constitutional Court of the Russian Federation determined that there is a presumption that the owner of the vehicle is at in the vehicle while an administrative offence is committed. The fact that the driver used the vehicle, without the permission of his employer, does not relieve the owner of this vehicle (i.e., the employer) from administrative responsibility. According to the Constitutional Court of the Russian Federation, the employer must bear the risks and consequences of not providing proper control over his employee.

Source: *Resolution of the Constitutional Court of the Russian Federation dated January 18, 2019 No. 5-P*

12. The size of "Golden parachute" may not be arbitrary, nor violate the legal interests of the company

The Supreme Court confirmed that the size of "Golden parachute" (severance benefit) of the head of the organization should correspond to the remuneration system of the company and may not be arbitrarily large.

In this case, the parties provided that, in case of early dismissal by decision of the shareholders, the General Director shall receive a salary for the period remaining until the expiration of the term. Despite the fact that the employment relationship, with the Director, was terminated nine months before the expiration of his term, the company paid him only the standard severance benefit, equal to three times average monthly earnings. The General Director filed a claim to the court.

The company argued that the shareholders did not consent to the increased compensation, and the Chairman of the General meeting, when signing the employment contract, abused his/her authority.

The Supreme Court upheld the company's claim, indicating that the increased compensation was not set out either in the Charter, or in local regulations, or in the resolution of the General meeting on appointment of the General Director.

Source: *Definition of Judicial Chamber on Civil Cases of the Supreme Court of the Russian Federation of 08.04.2019 No. 81-KG18-27*

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Irina Anyukhina

Partner, Labour Law

E: ianyukhina@alrud.com

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