

Newsletter

Things to remember when dismissing employees in Russia. New judicial review of the Supreme Court.

Dear Ladies and Gentlemen,

The Supreme Court of the Russian Federation has issued its review of judicial practice (2018-2020), regarding dismissal at the initiative of the employer. In this regard, we would like to share the key findings and recommendations.

Staff redundancy: vacant positions

1. Employees-to-be-redundant from branches, or separate subdivisions, of the company, should be offered all vacant positions in the specific region – in the head office, as well as in the company's branches and subdivisions;
2. The vacant positions should be offered to all affected employees. The employer is not entitled to decide which employees should be offered available vacant positions;
3. If several redundant employees are eligible for the same vacant position, the employer should make a decision, taking into account which, of the employees, has/have a preemptive right to keep the job(s).

Dismissal under disciplinary grounds: try to prove

1. In case of dismissal due to repeated non-fulfilment of job duties, the employer should provide the following pieces of evidence and information:
 - The presence of grounds for dismissal;
 - Correspondence between the disciplinary sanction and the gravity of the offence and circumstances in which it took place, as well as the employee's previous behaviour;
 - Compliance with the terms and procedure of disciplinary action;
 - The fact of requesting a written explanation from the employee;
 - Repeated non-fulfilment of job duties (the second non-fulfilment should occur only after imposing a disciplinary sanction, for the first non-fulfilment).

2. Dismissal of an employee-member of election commission, with a casting vote, cannot be associated with his/her respective responsibilities.
3. The dismissal may be considered by the court as unlawful, if the employer does not follow the procedure of dismissal due to labour misconduct. This includes, inter alia, if the employer requests a written explanation from the employee, during the period of his/her temporary disability, and dismisses him/her on the first day after his/her return to work.
4. The following information should be indicated in an order on dismissal, due to repeated non-fulfilment of job duties: the description of the specific disciplinary misconduct, period of time of the repeated violation, references to documents – grounds for disciplinary action.

Truancy: when is it not possible to dismiss?

It is not possible to dismiss when:

1. When there is a justifiable reason for absence (e.g. medical assistance being provided to close relatives, medical checkup owing to aggravated disease, inability to travel to work because of weather conditions, etc.);
2. When the employer did not formalize the employee's absence, which had been agreed between the employer and the employee, for example:
 - Remote work was not formalized by the employer;
 - The employee took childbirth leave, having submitted a written application, but the employer had refused, or had not formalized, this leave;
 - The order of agreed leave was not issued.

Other grounds for dismissal:

- Dismissal, on the ground of loss of confidence, should be confirmed by the evidence of culpable actions by the employee and his/her involvement;
- The fact of the employer's non-compliance with the requirement of three days' notice, involving dismissal due to unsatisfactory results of probationary period, is not a reason for invalidation of the conducted dismissal, if the employer only found a failure to fulfil employee's duties in the final days of the probationary period;
- Dismissal, on the ground of violation of the requirements of concluding the employment agreement, may be a ground for dismissal, only if the concluded employment contract was initially unlawful.
- It is critical that an order of dismissal must include a particular violation, which excludes the possibility of continuing to work.

Labour litigation

The employee may file a claim, to the court, for a remedy:

- At the place of the employee's residence;
- At the location of the company;
- At the location of the branch, or the representative office (if a claim is related to the branch's, or the subdivision's, activity);
- At the place of execution of agreement, including at the working place, (if this term has been included in the employment contract).

Justifiable reasons for missing the limitation period for applying to the court are:

1. Employee's maternity and parental leaves;
2. Employee's claim to the State Labour Inspectorate;
3. Employee's claim to the Office of the Public Prosecutor.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our [Labour and Employment Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

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If you have any questions, please, do not hesitate to contact ALRUD Labour experts:



**Irina
Anyukhina**

Partner

Labour and Employment

E: ianyukhina@alrud.com



**Margarita
Egiazarova**

Senior Associate,
PhD in Law

Labour and Employment

E: megiazarova@alrud.com



**Elena
Chershintseva**

Associate,
PhD in Law

Labour and Employment

E: echershintseva@alrud.com

Sincerely,
ALRUD Law Firm