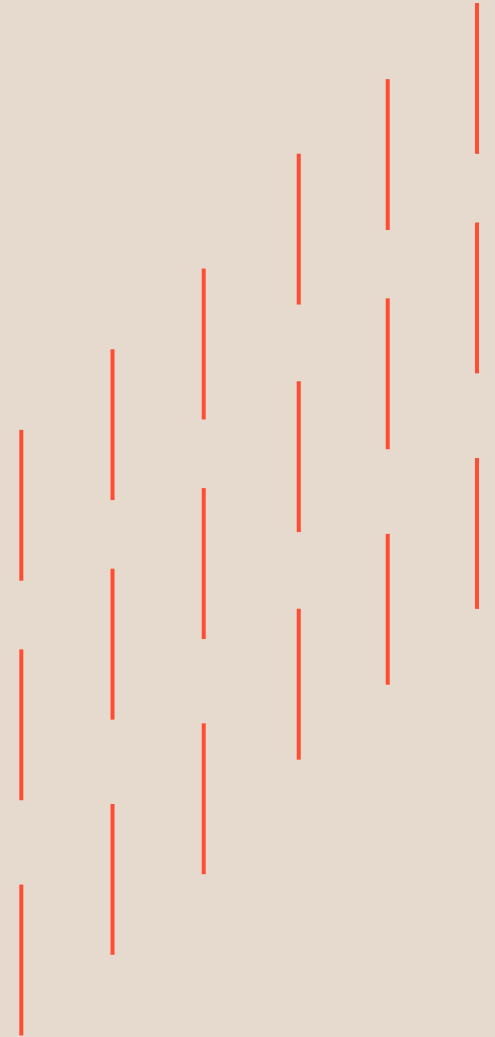


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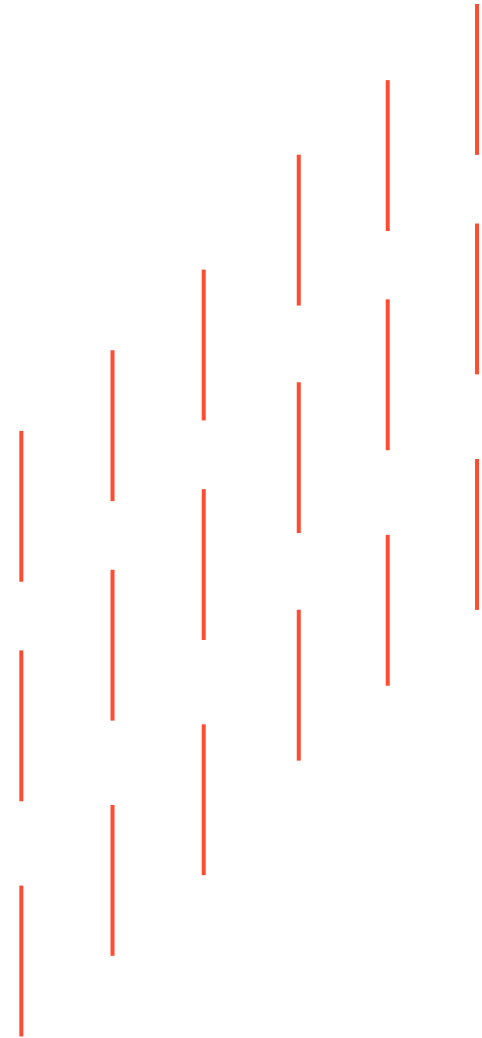


Dismissal by mutual consent: significant findings of the courts

Experience in recent years has shown that courts, especially at higher instances, are reducing their attention to a purely formal approach in employment disputes. This also applies to cases in which a dismissal by mutual agreement of the parties has been challenged.

Below, we have summarized the key practical findings based on the most recent and important court decisions.

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The courts advise against entering into a termination agreement on the day of dismissal



Both parties shall **agree on the termination** of the employment contract and understand the **form** and the **moment** of the **conclusion of such agreement**, as well as **when** the respective **legal consequences** will **come into force**

An employee is not able to **estimate the legal consequences** of signing the mutual termination agreement, as well as to **make a conscious choice of the dismissal ground** in case of their termination **on the same date** when concluding such an agreement



*Decision of the Second Court of Cassation of General Jurisdiction, dated July 27th, 2021
No. 88-16841/2021*

The courts recommend avoiding signing of a termination agreement “for the future”



Conclusion of the termination agreement **long before** the **termination date**, as well as the employee’s further **application on refusal** from the **termination agreement**, may confirm the **absence** of the **employee's will**

When determining the **compulsory nature** of the **termination agreement**, the courts also consider whether the employee has **another work** and **income source**



Decision of the Eighth Court of Cassation of General Jurisdiction, dated January 20th, 2022 No. 8-1459/2022 in case No. 2-736/2021

The courts point out: ensuring that the termination agreement is made voluntarily is essential



An employee's desire to avoid **dismissal on disciplinary grounds** by concluding the **termination agreement** does not confirm the **absence of their will** on employment termination, as well as does not indicate the **forced nature** of the agreement's signing

Sequence of the employee's **actions** may confirm their **intention** to terminate the employment under the **mutual agreement**: familiarization with the dismissal order, obtaining of the labour book and final payment, cancellation of the performance of job duties, absence of objections with respect to termination



Appeal ruling of the Moscow City Court, dated April 2nd, 2021 in case No. 33-13318/2021, 2-4307/2020

The courts warn: if a pregnant woman rejects the termination agreement, dismissal is unlawful



It is prohibited to dismiss the employee in case of her **refusal from the agreement** due to the **pregnancy** because of the **absence** of the employee's **will for termination**. Otherwise, such termination shall be considered as **dismissal on the employer's initiative**, which is **directly prohibited** by law

Guarantee of the prohibition of a pregnant woman's **dismissal at the employer's initiative** also **applies to mutual consent termination**



*Decision of the Third Court of Cassation of General Jurisdiction, dated June 22nd, 2022
No. 88-9320/2022*

The courts encourage clarification of the consequences of a termination agreement to the employee



An employee shall **objectively estimate** the possible **consequences** connected with the conclusion of the **termination agreement** in order to choose the **most acceptable dismissal option**

Misleading an employee **about** their **rights** certifies the **forced nature** of the termination agreement, therefore, the **employee's will** to mutual termination **cannot be** considered **properly formed**



Decision of the Seventh Court of Cassation of General Jurisdiction, dated July 27th, 2021 No. 88-11840/2021 in case No. 2-1472/2020

Key Contacts:



Irina Anyukhina
Partner,
Head of the Labour and
Employment Practice

E: ianyukhina@alrud.com



Margarita Egiazarova
Senior Associate of the
Labour and Employment
Practice,
Ph.D. in Law

E: megiazarova@alrud.com

Our Team:



Maria Nevezhina
Senior Associate of the
Labour and Employment
Practice,
Ph.D. in Law

E: mnevezhina@alrud.com



Ekaterina Bronitsyna
Associate of the Labour and
Employment Practice,

E: ebronitsyna@alrud.com

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