



PETERKA PARTNERS

THE CEE LAW FIRM

Remote work before and during COVID-19: can you cook and work at the same time?

PETERKA & PARTNERS Webinar

24.11.2020

PETERKA & PARTNERS CEE Law Firm



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Svetlana Seregina, Corporate Law

Vlad Rudnitskiy, Corporate Law

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Banking and Finance

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Recommended lawyers

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Speakers



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During the webinar we will discuss the following issues:

1

Legal regulation of remote work in Russia: current requirements and key features

2

Remote work regime in COVID-19 reality and its effect on employment relations: employers' obligations, open issues and difficulties, liability

3

New developments of Russian labour law on remote work: expected changes

1. LEGAL REGULATION OF REMOTE WORK IN RUSSIA: CURRENT REQUIREMENTS AND KEY FEATURES

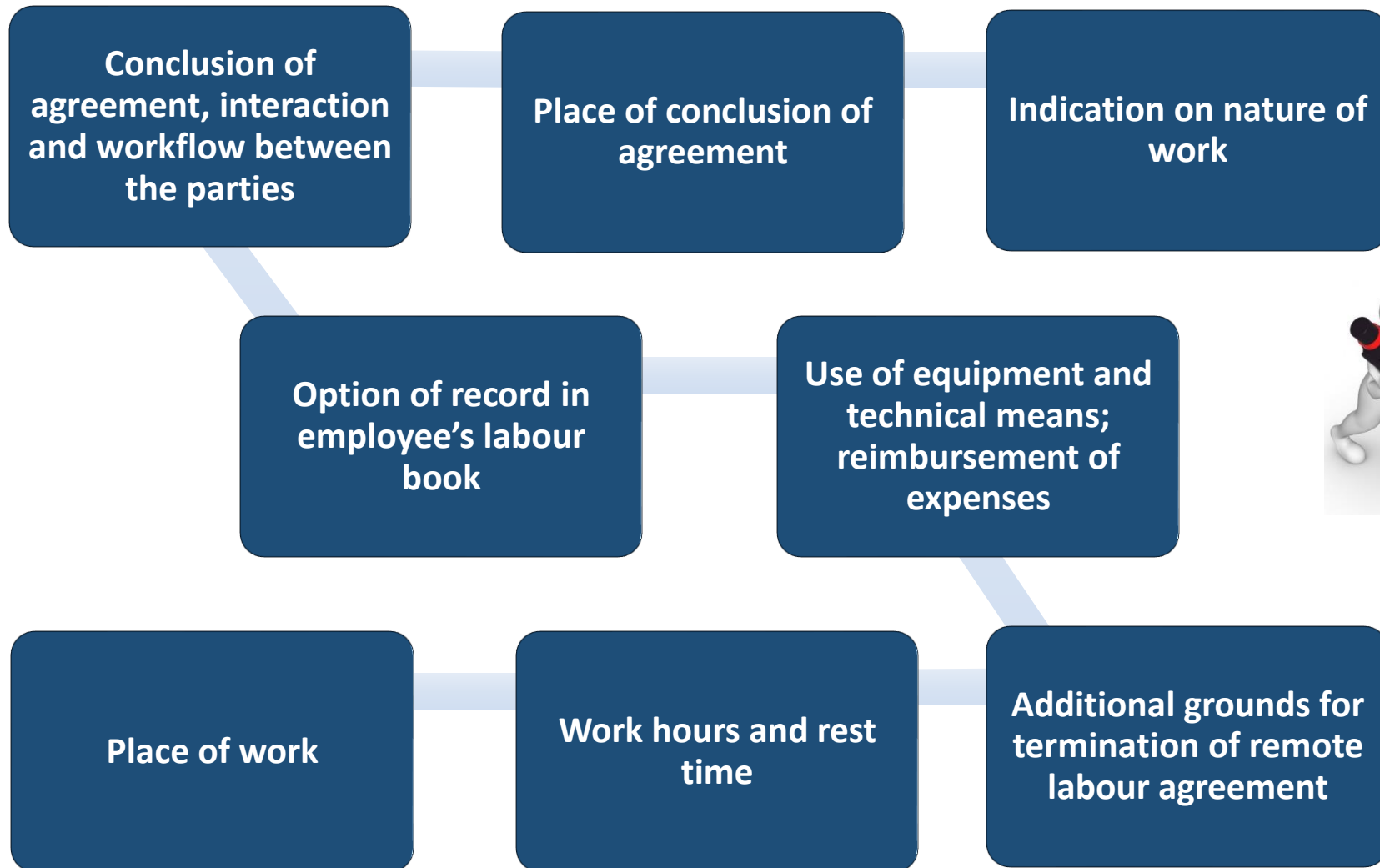
Legal framework of remote work

Article 312.1 of Russian Labour Code:

- employees work outside the employer's location (the company's office or office of the company's branch of RO or other subsidiary)
-
- employees work outside stationary workplaces under the control of the employer
-
- employees use the Internet to perform their job functions and interact with the employer
-

➤ **NB:** Differs from **home work**

Special conditions of labour agreement with remote worker





Technical means and equipment

If employer provides equipment

- cannot demand from employee to use his/her own equipment
- employee cannot be dismissed in case of non performance of work if the equipment gets out of order: ***Appeal Ruling of the St. Petersburg City Court dated 25.07.2017 N 33-14989 / 2017.***

If employee uses his/her own

- can be dismissed: ***Appeal Ruling of the St. Petersburg City Court dated 09.16.2019 N 33-19910 / 2019.***
- contract shall include the order of compensation for employee (lack of such condition - administrative fine up to 550EUR)
- Compensation may be included in the salary: ***Decision of the Leninsky District Court of the city of Perm dated 24.03.2011 in case No. 2-99 / 11.***

Place of work

Article 57 of Russian Labour Code +
Letter of Federal Services for Labour and Employment 07.10.2013 № ПГ/8960-6-1
“On Determining Remote Worker’s Place of Work”:

NB: Place of work is a mandatory term of agreement

(lack of condition - administrative responsibility – fine of up 550 EUR)

- Certain address is not required, a city, a town etc. is sufficient
- Change of place of work - upon mutual agreement only:



Murmansk District Court ruling 23.05.2019 No 331584/2019

The city of Murmansk was stated in the contract as the place of work, the employee moved to Moscow without notification. He was brought to discipline responsibility for the contract’s term breach. The court found it reasonable since employee cannot change the place of work unilaterally

NB: Change of place of work may affect salary payment!

Visiting employer's office - a business trip ?

“A trip to employer's location **is a business trip** and the employee is entitled for **compensation of travel expenses** (but only in cases if the location of the office does not allow the employee to return to the place of residence within the same day)”

Letter of the Ministry of Labour 09.06.2017 № 14-2/OOГ-4733.

Working hours and rest time

Article 312.4 of Labour Code: unless otherwise provided by remote work agreement, the regime of working time and rest time for employee is established at the discretion of employee

Recommendations – to include in the agreement:

- *working hours (e.g. 8 hours per day or 40 hours per week);*
- *clear definition how often and in which form the employee shall submit the reports on result of work*

- **Absence at work**

NB: It is almost impossible to dismiss an employee due to absence at work

Appeal ruling of the Volgograd Regional Court dated 03.23.2018 N 33-3223 / 2018



Extra grounds for termination of remote work agreement

Article 312.5 of Russian Labour Code

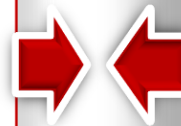
allows stipulation of **additional grounds** in the employment agreement for termination of a remote work agreement at the initiative of employer

- additional grounds shall not worsen the position of the employee in comparison with the one provided for by legislation (**part 4 of article 57 of the Labor Code**)
- shall not be discriminatory (according to **Article 3 of the Labor Code**, restriction of labor rights and freedom is not allowed depending on circumstances not related to the business qualities of the employee)
- should be provided directly in the employment agreement

Extra grounds for termination of remote work agreement

Grounds supported by case law:

- Recognizing the work of a remote worker as ineffective
- Violation by the employee of the order or terms of submission to the employer of periodic reports on the work done
- Refusal of employee to use information protection devices provided by employer
- **Non-reasonability of further cooperation (?)**
- **Dismissal of an employee by the decision of the Company without specifying the reason with prior notification (?)**



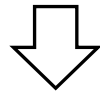
Clause 10 of the Resolution
of the Plenum of the
Supreme Court of the
Russian Federation of March
17, 2004 No. 2

***Fairness and
non-discrimination***

Foreign workers and Russians working from foreign countries

Position of the Ministry of Labour forbids conclusion of remote employment agreement with an employee residing abroad

- ✓ Impossibility to conclude remote employment agreement with a person who works abroad
- ✓ Employer cannot ensure safe work conditions abroad
- ✓ Employers should conclude civil law agreements with such persons



NB: Article 19.1 of Labour Code. Court can declare relations arising on the basis of a civil law agreement as labour relations (administrative fine up to 1000EUR)

A number of the Ministry of Labour Letters:

dated 17.08.2015 No. 17-3 / B-410

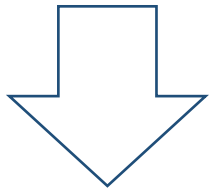
dated 27.07.2016 No. 17-3 / B-292

dated 16.01.2017 No. 14-2 / OOG-245

Ambivalent case law

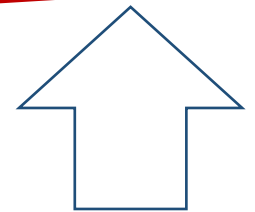
Resolution of the Sixteenth Arbitration Court of Appeal dated
02.07.2020 N 16AP-557/2020 N A20-4914 / 2019

The company intended to hire a foreigner as a manager based on a remote work agreement. Federal Tax Authority refused to register changes to the Unified State Register of Legal Entities. The court upheld: ***“A remote work agreement cannot be concluded with a foreign citizen who works outside the territory of the Russian Federation...The information submitted for registration of the sole executive body that does not have a place of residence in the Russian Federation, does not have a proper employment contract, does not meet the principle of reliability of information contained in the Unified State Register of Legal Entities.”***



Appeal ruling of the St. Petersburg City Court dated 02.06.2020 N 33-8432 / 2020 N 2-5677 / 2019

“The employer’s arguments that the employee permanently resides in the United States, where a work record is not required for employment, cannot be taken into account. <...> Thus, ***while living in the USA, employee is not deprived of the right to work remotely for an employer located in the Russian Federation***, where, in order to confirm the length of service and apply for a job, he will need a work record of the established form, which is the main document about the work activity and work experience of the employee.”



Remote work agreement with CEO ?

With CEO living abroad

- **Resolution of the Sixteenth Arbitration Court of Appeal dated 02.07.2020 N 16AP-557/2020 in case N A20-4914 / 2019**
- “State registration of a legal entity is carried out at the location of its permanently acting sole executive body ... Consequently, the application for state registration submitted by the applicant contains inaccurate information about the location of the executive body ..., does not meet the principle of reliability of information contained in the Unified State Register of Legal Entities”.

With CEO living in Russia

- **Letter of the Federal Tax Service dated November 1, 2013 N CA-4-7 / 19613**
- “the conclusion with the general director of a remote work agreement does not in itself entail a violation of the provisions of Art. 54 of the Civil Code and Art. 8 ... but the authority has the right to refuse state registration of a legal entity if there is confirmed information about the inaccuracy of the information provided about the address of the legal entity”



2. REMOTE WORK REGIME IN COVID-19 REALITY AND ITS EFFECT ON EMPLOYMENT RELATIONS: EMPLOYERS' OBLIGATIONS, OPEN ISSUES AND DIFFICULTIES, LIABILITY

REMOTE REGIME AND ANTICOID-19 MEASURES



WHO shall be transferred to remote working regime:

- NB: Each Russian region may impose obligations on employers and local obligations should be checked in each case
- MOSCOW: <https://www.mos.ru/city/projects/stayhome/>
 - ✓ all employees over 65 years old, chronic illnesses unless critical for the company's operations;
 - ✓ at least 30% of employees which includes:

Employees on business trips, vacation	Workers under civil law/services agreements	Employees over the age of 65, chronic illness etc.	Employees in other regions (in RO, branches, etc.)
YES	YES	YES	NO

- St. Petersburg: <https://www.gov.spb.ru/covid-19/mery-kontrolya/trebovaniya-k-rabotodatelnyam/>
 - ✓ all employees over 65 years old, chronic illnesses unless critical for the company's operations;
 - ✓ Recommendation: maximum number of employees

HQS and Remote Job



- **HQS:** highly qualified specialist is:
 - ✓ a foreign specialist
 - ✓ with up to three year Russian work permit
 - ✓ under only condition of annual salary not less than 2 million Rubles (approx. 22 K EUR)
- **IS it permitted:**
 - ✓ remote regime from different Russian regions?
 - ✓ remote regime from abroad in the absence of possibility to return back due COVID?
 - ✓ compensation less than minimal even in case of remote regime/short down/illness/vacation?

HOW to transfer employees to remote mode work



Is it **NOT** possible to conclude:

- ✓ temporary remote work agreement
- ✓ combined-mode work agreement
- ✓ both remote work contract and 'ordinary' employment contract simultaneously

(Appeal ruling of the Moscow City Court of 20.04.2017 N 33-14962 / 2017)

GENERAL RULES

Distance work

Conclusion of mutually
agreed contract

(addendum?)

article 312.1 of the Labour code



COVID-19 REALITY

Remote work (?)

Issuance of a local act/order

Recommendations of
Ministry of Labour on April 23, 2020

No. 14-2 / 10 / P-3710

WHY to follow obligation and implement due order of transfer employees to remote work



✓ Elimination risks of disputes with the employee

Ruling of the Supreme Court of September 16, 2019 N 5-KG19-106: *“When additional agreement on remote work has not been concluded, if an employee works under new conditions with the knowledge or on behalf of the employer or his representative, the parties actually agree to amend the employment contract. The fact, that the employee works remotely, can be proved by e-mails, witnesses and other evidences”.*

✓ Administrative Liability (Articles 6.3, 20.6.1 of Administrative Code)

fine up to.:

- Approx. 3300/5500 EUR;
- approx. 11000 EUR/suspension of activities for up to 90 days in the event of harm to human health, or property, or repeated non-compliance with the rules of conduct.

3. NEW DEVELOPMENTS OF RUSSIAN LABOUR LAW ON REMOTE WORK: EXPECTED CHANGES

WHAT'S NEW: the Bill N 973264-7 "On Amendments to the Labor Code of the Russian Federation on remote work"

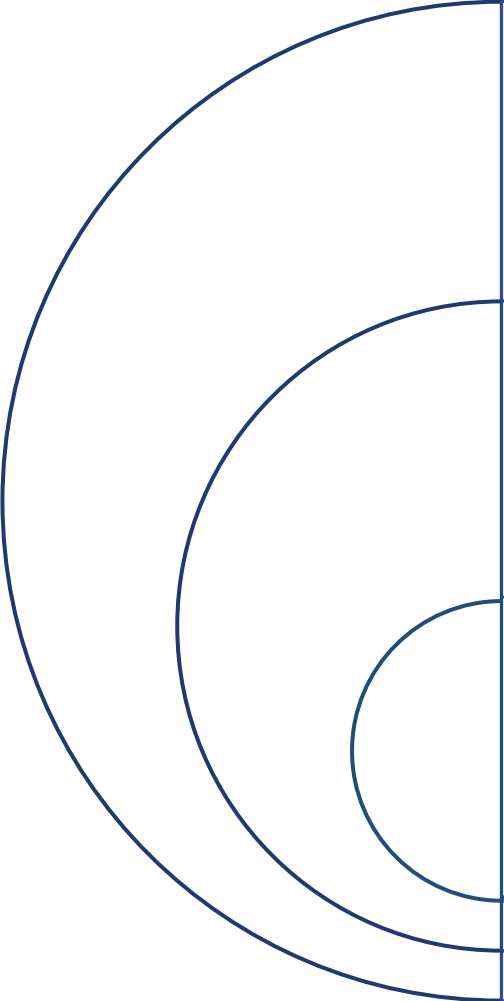
The main novels:

- Definitions of temporary remote work and combined-mode work;
- Abolishment of requirement for electronic signature to conclude the contract;
- Abolishment of requirement to determine the place of work in the contract;
- New order of termination of the contract with the remote worker;
- The right of a remote worker to be "offline";
- etc.



PETERKA&PARTNERS

COVID-19 Help desk



The COVID-19 Help desk includes experts from all our offices and assistance may be provided under the law of the various jurisdictions in the CEE region where PETERKA & PARTNERS operates and we will further cover matters with cross-border implications or origin.

Useful information:

<http://www.peterkapartners.com/en/covid-19/>

Please do not hesitate to contact COVID-19 Help desk at
covidhelpdesk@peterkapartners.com

Questions ?

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Thank you for
attention!

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