
COVID-19 and Labour Law: Russian Federation

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Abstract

The most important new measure is paid non-working days. Neither nationwide state of emergency nor quarantine was declared in Russia. The period is considered working for certain employee categories and non-working for others all at once. Working and non-working employees must receive their standard rate for the non-working days.

Keywords: Covid-19; Labour Law; Paid non-working days.

The spread of COVID-19 in Russia has resulted in significant changes being introduced to the country's legislation. However, neither nationwide state of emergency nor quarantine was declared in Russia.

On March 25, 2020, the President issued a Decree “On Declaring a Nationwide Non-Working Week” that rendered the days between March 30 and April 3 non-working. A presidential Decree issued on April 2, 2020 called “On Measures Insuring Sanitary and Epidemiological Well-Being of the People of the Russian Federation Following the Spread of the New Coronavirus Infection (COVID-19)”¹ extended the paid non-working days from April 4 to April 30, 2020.

These decrees spawned many questions, since the term “paid non-working days” has never been mentioned in Russian labor law before.

Russian Labor Code defines such presidential decrees as sources of the country's labor law as well as renders them able to regulate labor relations. However, Part 7 of Article 5 of Russian Labor Code states that presidential decrees shall not be in conflict with the provisions described there. While the Labor Code does contain an extensive list describing types of breaks in work, days off and leaves, it has no mention of the term “paid non-working days” used in the decrees mentioned above. The terms used in the Labor Code are “days off” and “non-working holidays”, which are very different from the term “paid non-working day”.

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¹ <http://www.kremlin.ru/events/president/news/63134>

The period from March 30 to April 30 has been declared non-working, thus suspending (restricting) the activity of all entities regardless of their legal form and form of property, sole proprietors included.

There are several exceptions to that rule, however, as this restriction does not apply to the following organizations:

- a) non-stop operation organizations;
- b) medical and pharmaceutical organizations;
- c) organizations responsible for providing the populations with food and necessity goods;
- d) organizations responsible for providing services in emergency situations and (or) if there is a risk of disease spread that poses a danger for the community or that threatens the lives, health and living conditions of the population;
- e) organizations performing urgent maintenance and loading/unloading operations,
- f) organizations providing emergency financial services (payments and settlements in particular).

The employees of said organizations are to continue their work as usual. Russian government reserves the right to establish a list of systemic, scientific and educational organizations for whom the period from April 4 to April 30, 2020 is considered non-working.

In a similar vein, regional leaders were granted authority to establish lists of organizations continuing to operate as usual.

Federal government agencies, regional and local authorities and organizations responsible for releasing news media may independently determine the number of employees required to ensure the functioning of said organizations.

In this manner, the period from March 30 to April 30 is considered working for certain employee categories and non-working for others all at once. On top of that, a single organization may define these days as working for one part of the staff and non-working for the other.

Declaring non-working days does not justify reductions in wages for employees, which is why the wage during this period must stay at the same level as if under regular circumstances, i.e. if the employees were working. In that regard, employees on productivity wage are eligible to receive an appropriate remuneration for the number of non-working days (said remuneration is determined by the employers' local provisions). That said, a non-working day is not the same as a day off or a holiday, which is why employees performing their duties on a "non-working day" must receive their standard rate. As a result, both working and non-working employees must receive their standard rate for the non-working days.

Remote workers are eligible to continue performing their duties during the "non-working days" upon agreement with their employer. The transition may be formalized by exchanging electronic documents.

Educational institutions suspending their activities or switching to remote learning has led to an increase in childcare responsibilities. Both local and industry-level employers

differentiate² the statuses of working parents in an unsubstantiated manner, providing the right (or the primary right) for remote working only to women with children below 14 not attending an educational institution, while denying the same right to men.

Terminating an employment contract in an organization falling under the non-working days regulation is only possible at the initiative of the employee themselves (resignation), by mutual consent of the parties and if a fixed term contract expires during the non-working period.

There was no nationwide social dialogue of any form to establish a consensus around the “paid non-working days” dilemma. On March 27, Russian Trilateral Commission has come up with a declaration and recommendations suggesting that employers and employees work together to stop the spread of COVID-19, to preserve competitiveness of organizations, to protect labor rights, to stabilize the labor market and support incomes for the population.

The documents recommend that employers in particular come up with local provisions ordering to arrange remote working (Chapter 49.1 of the Labor Code), flexible time-scheme (Article 102 of the Labor Code) and divide the working day into parts (Article 105 of the Labor Code). Part-time work may only be introduced upon bilateral agreement between the employer and employee, except in cases with risks of mass layoff (Part 5 of Article 74 of the Labor Code).

The Federal Service for Surveillance of Consumer Rights Protection and Human Wellbeing (Rus. “Rospotrebnadzor”) has come up with a list of preventive recommendations³ to avoid spread of COVID-19 among employees. These recommendations include specific safety measures regarding distancing, disinfecting offices and premises, antiseptics, measuring body temperature, etc.).

Suspending (restricting) activities of many organizations has led to numerous employee rights violations. Among the most common illegal practices are forced resignation, decreasing wages and forcing employees to take unpaid leave for the duration of “non-working” days.

So far, the following measures has been adopted to support especially vulnerable groups:

A Government Decree has increased the amount of unemployment benefits to that of minimum monthly wage⁴.

For the period from April 1 to December 31, the legislation established a special assessment scheme for temporary disability benefits. These benefits also have to be equal or above the minimum monthly wage⁵, as before their amount depended on length of employment.

²https://www.minobrnauki.gov.ru/ru/documents/card/?id_4=1148&fbclid=IwAR015_fk0RsJD8MUBrC2yXsRbfyJrGGMpvz1Ct8s6pDLLcV73UQJBbYdscU

³https://www.rospotrebnadzor.ru/upload/iblock/cd1/10.03.2020_02_3853_2020_27_popova_a.yu._apparat_pravitelstva_respubliki_bashkortostan.pdf

⁴ <http://publication.pravo.gov.ru/Document/View/0001202003300022>

⁵ <http://kremlin.ru/acts/news/63130>

Additional social support measures for families with children under 3 years old⁶. In April-June 2020, the families eligible to receive monthly payments of 5000 RUR (appr. 60 USD) will only be those who already had the right to government support under the Federal Law No. 256-FZ "On Additional Government Support Measures For Families With Children" adopted on December 29, 2006. For example, one-child families may be eligible for such payments only if their child was born between April 1 and July 7 in 2020.

At the time of writing, other support measures for families with minors were announced, such as benefits for children whose parents are temporarily out of work. These measures, however, have not been officially documented yet.

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⁶ <http://kremlin.ru/acts/news/63174>