

# **COST SAVING OR REDUNDANCY: Legal aspects of Personnel Management**

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# **Introduction: The Situation in the Labor Market: Past and Present**

# Introduction

- It may have taken a while, but the global financial crisis has arrived in Russia
- The initial effects on the labor market are now visible:
  - mass dismissals, primarily in Russian companies
  - pay cuts (in lieu of dismissing)
  - a growing number of unemployed and, consequently, applicants
- ***The crisis is also affecting the activities of foreign investors in Russia, but it can be treated as a chance to restructure the business, improve production efficiency and optimize personnel management***

## The Former Situation in the Labor Market:

- Previously, Russia was characterized by one of the lowest unemployment rates as compared to Europe (ca. 6%). In Moscow and St. Petersburg the unemployment rate was below 1%
- Employers had to “fight” for skilled personnel
- Employees did not stay for long in their positions; ***High staff turnover!***

## Present day Situation in the Labor Market:

- According to data for February 2009 from the Ministry for Social Development and the International Labor Organization, there are more than 6 million people in Russia who are unemployed; and more than 1 million employed people are now on a reduced working day or forced leave
- Employee's salaries reduction averages approximately 25%
- Additional payments (bonuses) have been reduced or cancelled, together with fringe benefits (meals, sport, transport, education, insurance), travel expenses and other expenses.
- ***Inflation + Ruble depreciation = reduction of the population's purchasing power and living standards!***

# General Grounds for Dismissing Employees

## General Grounds for Dismissing Employees (1):

- **A fixed-term employment contract** – the employee shall be notified of the expiry of the term in written form no later than three calendar days prior to dismissal
- **Termination by the employee's own initiative** – termination notice to be handed in at least 2 weeks prior. *Attention!* The Employee has the right to recall the resignation letter within the dismissal notice period
- **During the probationary period (which can last up to 3 (and sometimes even 6) months) – a written notice specifying the dismissal grounds is needed at least three days beforehand.**



## General Grounds for Dismissing Employees (2):

- **Termination by mutual agreement (regular case in practice)** – agreement terminating the employment contract and often deciding compensation (severance pay)
  
- **Termination due to reasons that no party is responsible for:**
  - Conscription into the army;
  - Court punishment after conviction;
  - Rehiring to a previous place of work (upon court's decision);
  - Acknowledging the employee as completely disabled, etc.

## General Grounds for Dismissing Employees (3):

### ■ Termination upon the employer's initiative

**Always requires legitimate grounds!**

#### ➤ Behavior-related grounds:

- Repeated violation of contractual obligations involving one disciplinary measure (in the form of a reprimand or a warning);
- A single gross violation of contractual obligations;
- Forged documents upon employment, etc.

#### ➤ Personality-related grounds:

- Qualification inconsistent with the position (only in the context of a formal evaluation)

#### ➤ Production-related grounds:

- Company liquidation;
- Personnel or workplace redundancy

## General Grounds for Dismissing Employees (4):

- **Exceptions due to the particular position**
- **The head of the legal entity, his deputy or chief accountant:**
  - Change of the owner of the legal entity's assets;
  - Making an unjustified decision which leads to losses;
  - Single gross violation of contractual obligations.
- **Additional grounds for dismissing the head of the legal entity:**
  - On the grounds of a decision terminating the employment contract by an authorized body of the legal entity, or the owner of the legal entity's assets (compensated by at least triple the average monthly salary (or a larger amount according to the agreement));
  - Additional reasons for dismissal in the contract (e.g. not fulfilling a decision adopted by participants (shareholders), breaching a contractual non-competition provision, etc.).

# Personnel or Workplace Redundancy

# Problems Related to Staff Redundancy



- Breach by the employer of the procedure established by the legislation
- Wrongful dismissal
- Putting pressure on employees to make them resign on their own initiative
- Negative work environment; feeling of instability
- Employees notified of dismissal work ineffectively
- “Getting rid” of unwanted employees under the pretext of redundancy



***How to Avoid Litigation with Employees and What you Need  
to Know when Carrying out the Procedure for Staff  
Redundancy?***

# THE 10 COMMANDMENTS OF STAFF REDUNDANCY

# FIRST Commandment

## Make a reasonable decision on staff redundancy!

- Staff redundancy must be carried out in accordance with the established procedure!
- It can take place **only** if there are objective grounds and a legitimate decision:
  - Company reorganization or business restructuring;
  - Reduction of workload and / or general financial insolvency of the company;
  - Optimization of costs, including reduction of the salary fund;
  - Production automation, etc.



## SECOND Commandment

**Documentarily confirm that staff redundancy has actually taken place!**

**Order** an approval of a new personnel structure, making amendments to the old staffing table and approve (after 2 months) a new one

# THIRD Commandment

## Form a special commission to carry out the redundancy procedure

**(not an obligatory condition!)**

- Representatives of the work collective, trade union organization (if any) and administration
- Appointed by an order of the general director
- Explain to employees their rights in case of redundancy
- Deliver notices to employees to be made redundant
- Select vacancies
- Resolve disputes between parties

# FOURTH Commandment

## Decide on making certain employees redundant!

Take into consideration the **pre-emptive rights** for keeping one's job (Article 179 of the Labor Code of the Russian Federation)

➤ High labor productivity and qualification

*Comparative assessment of labor productivity and qualification is subject to performing the same work or similar work functions*

➤ In case of equal labor productivity and qualification:

- Employees with families (2 or more dependants: unemployable family *members fully supported by the respective employee*);
- Employees with families where there are no other members with an independent income;
- Employees who have suffered, during their current employment, a work-related injury or professional disease etc.

# FIFTH Commandment

## Notify the employee of the forthcoming redundancy!

- Personally and in writing
- Against the employee's signature (usually of the employer's copy)
- At least **2 months** prior to making the employee redundant
- If the employee refuses to receive the notice, a respective **certificate** is executed in the presence of at least 2 witnesses

## SIXTH Commandment

**Propose that the employee to be made redundant be transferred to an existing vacancy of the employer!**

- In writing (*list of vacancies and employment duties*)
- Vacancies both corresponding to the employee's qualification and other vacant lower-level or lower-paid positions
- Vacancies that the employer has in the same location (*offering vacant positions in other places may be provided for in a collective employment agreement*)
- During the whole dismissal notice period

*The employee's refusal of vacant positions must be executed in writing ("I refuse the offered vacancies"), signed and dated*

# SEVENTH Commandment

**Notify the elected body of the primary trade union organization (if any) and the employment service body of staff redundancy!**

- In writing
- At least 2 months prior to taking the respective measures
- If it could lead to collective dismissal – at least 3 months in advance

## **Collective dismissal:**

**Main criterion** – staff redundancy in a certain calendar period, e.g. 50 people within 30 days

## SEVENTH Commandment

- If an employee is a trade union member, it is necessary to obtain a reasoned opinion of the trade union organization (Article 373 of the Labor Code of the Russian Federation)

*Refusal of the trade union to give its consent to making a trade union member redundant does not prevent the employer from completing the redundancy procedure*

- The head of the trade union organization can be made redundant only by consent of the respective higher trade union body (Article 374 of the Labor Code of the Russian Federation)

# EIGHTH Commandment

## Issue an order terminating the employment agreement!

- In writing (in accordance with form T-8 or T-8a)
- **Basis**: Clause 2 of Part 1 of Article 81 of the Labor Code of the Russian Federation in connection with staff redundancy
- Against the employee's signature for familiarization purposes
- If the employee refuses to familiarize himself/herself with the redundancy order, a respective **certificate** is executed in the presence of at least 2 witnesses

**EXAMPLE:**        *"Dismissal in connection with staff redundancy, Clause 2 of Part 1 of Article 81 of the Labor Code of the Russian Federation"*



# NINTH Commandment

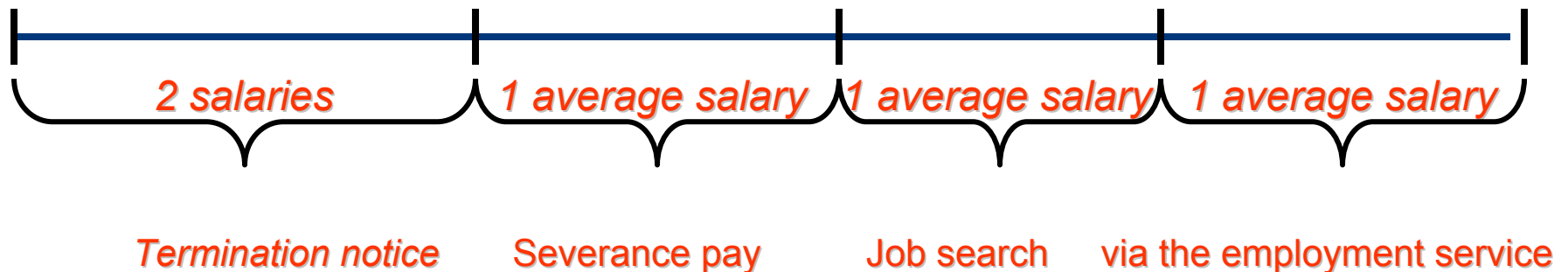
## Effect full and final payments to the employee in full!

- Salary for actual hours worked (*2 month notice*)
- Compensation for unused vacation
- Severance pay equaling one month's salary
- The average monthly salary is preserved during the period of job search by the employee, but not exceeding 2 months from the date of dismissal (*offset against severance pay*)
- In exceptional cases, in accordance with a decision by the employment service, the average monthly salary may be preserved for 3 months (if the employee applied to the employment service body within *2 weeks of the dismissal and was not given a job thereby*)

# NINTH Commandment

Subject to the employee's written consent (on the basis of an APPLICATION), the employer has the right to terminate the employment agreement therewith prior to the expiry of the dismissal notice period by paying the employee an additional compensation equaling his / her average salary pro rata to the period left until the expiry of the dismissal notice period

(Part 3 of Article 180 of the *Labor Code of the Russian Federation* )



# TENTH Commandment

- Make an entry and give the employee his / her work book on the day of dismissal (*if this is not possible – send a **notice** requiring the employee to visit the office to receive the working book or asking for permission to send the working book by post*)  
  
**EXAMPLE:**     *“Dismissed in connection with the company’s staff redundancy, Clause 2 Part 1 Article 81 of the Labor Code of the Russian Federation”*
- Familiarize the employee with the entry in his / her personal file and work book against his / her signature

**What does the Employer need to remember?**

# Banned from Dismissal

- During a period of temporary disability
- During vacation
- Pregnant women
- Women on child-care leave
- Women raising children under 3 years of age
- Single mothers raising children under 14 years of age
- Other persons raising children under 14 years of age without a mother

# What does the Employer need to remember?



- The period during which an employee can refer to court regarding a dispute related to dismissal is **one month** from the date of delivery thereto of a copy of the dismissal order of his / her work book
- If this period is missed due to a valid excuse (*e.g. a claimant's illness, business trip or a need to take care of seriously ill family members*), it can be revived by the court
- If an employee applies to court with a claim arising from labor relations, he / she is exempt from paying duties and legal expenses

# Consequences of Wrongful Dismissal

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## ■ Reemployment of an employee

- Decision is subject to immediate execution
- Average salary is to be paid for the entire period of forced absence
- Compensation for emotional distress
- Legal expenses





# Consequences of Wrongful Dismissal

- **Change of formulation for the basis for dismissal**
  - If the basis and / or grounds for dismissal are recognized as not compliant with current legislation
  - If the formulation of the basis and / or grounds for dismissal prevented an employee from getting another job, then the employee is also paid his / her average salary for the entire period of forced absence

# Optimizing Personnel Costs

# Optimizing Personnel Costs:

## ■ Optimization potential:

### ➤ Employee:

- Workload / work distribution / scope of work / overtime work / need for personnel / no new employees hired
- Vacation / work at home / professional training / delegating / outsourcing

### ➤ Remuneration

- flexible, variable and service-related remuneration models
- Pay cut in lieu of dismissal
- Education, business trips, meals, sport, transport, mobile communication, insurance, etc.

### ➤ Working time

- Flexible / reduced working time
- Total working time / avoiding overtime work
- Temporary hiatus in production

# Saving on Personnel Costs instead of Redundancy



**Remember!**

**STAFF REDUNDANCY = LOWER COMPETENCE!!!**

*High personnel costs may have a long and adverse effect on the company's economic indicators*

*Therefore reducing personnel costs, saving on personnel costs, effective personnel management, as well as the right choice of personnel development strategy may help to significantly raise the company's efficiency and minimize risks. In the long run, such measures will protect the interests of your employees and ensure a stable development of your enterprise!*

## Contact / Speaker

# Speaker



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### Practice group

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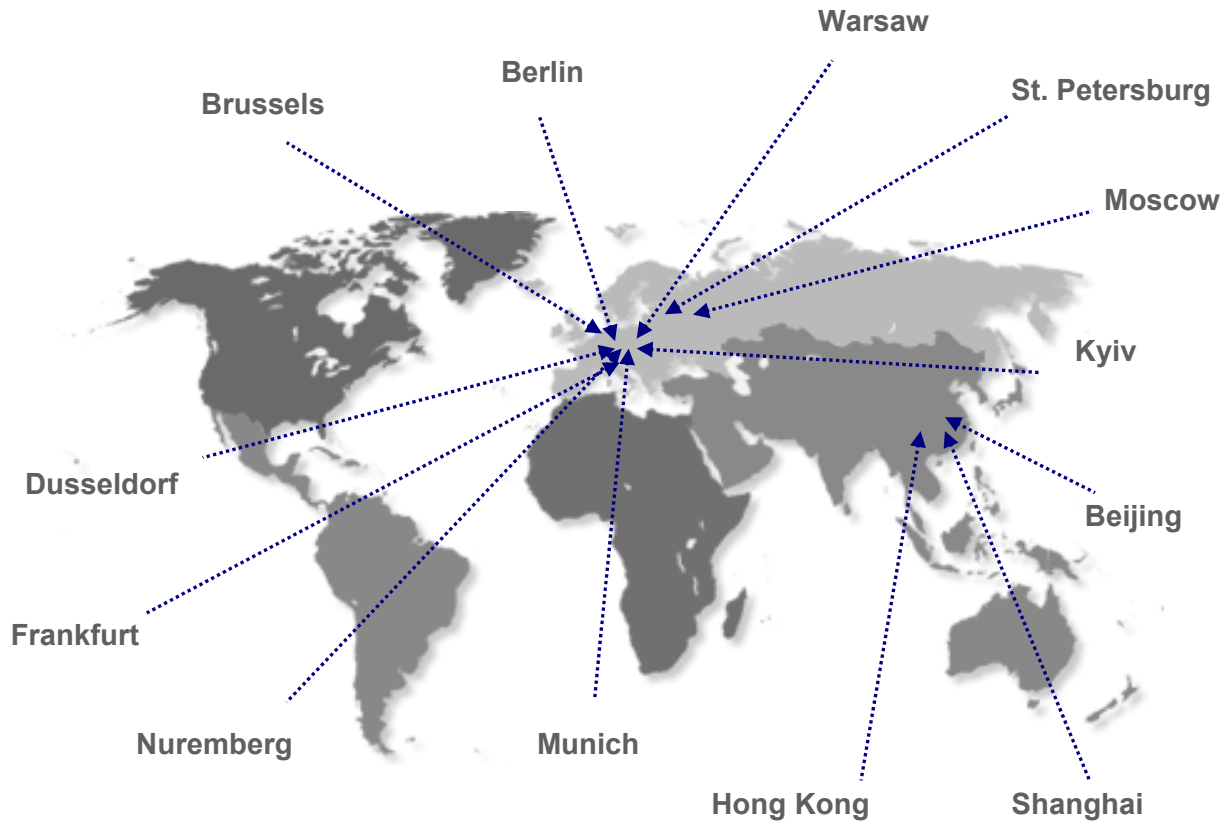
### Career

Moscow University; Dresden University  
(LL.M. 2003); Institute for Labor Relations  
in the EU, Trier; the Central Bank of  
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BEITEN BURKHARDT (since 2006  
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### Languages

Russian, German, English

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BEITEN BURKHARDT – 17 years of experience in German-Russian business



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Since 2004 in Kiev – International law firm 2007 (by “Legal Practice“ magazine)



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- **An experienced advisor team:**
  - German lawyers with international experience and an exhaustive knowledge of Russian law
  - Russian lawyers with international educations, an excellent command of languages and local knowledge
  - Experienced translating teams

# The Moscow Labor Law Practice Group

- Legal advise for international companies delegating employees to Russia
- Developing employment models for international companies, particularly as regards employing locals
- Drafting respective employment agreements as well as developing and introducing internal regulations
- Support in building up an efficient personnel management structure
- Migration law: obtaining permits to hire foreign employees, work visas, work permits, registering with the migration authorities
- Support regarding labor law court disputes
- Advice on Russian collective labor law, especially trade union law

# Contact

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**Thank you for your attention!**