

LT in Focus

Applicability of recent changes to Article 136 of the Russian Labour Code to bonuses payable to employees. Clarifications of the Ministry of Labour

On 21 September 2016, the Russian Ministry of Labour and Social Protection (the "Ministry of Labour") published clarifications addressing the application of the recently amended Article 136 of the Russian Labour Code on their official website (please see LT in Focus of [11 August 2016](#) for more details on the recent amendments to this Article). These clarifications specify that after the amendments to Article 136 take force, employers may continue paying bonuses after the expiration of the 15 calendar-day period following the end of the bonus accrual period.

[Our experience with Ministry of Labour clarifications](#)

[Analysis of the Ministry of Labour's position](#)

[Legal status and practical importance of the Ministry of Labour's clarifications](#)

Our experience with Ministry of Labour clarifications

Our specialists previously had to obtain clarifications from the Ministry of Labour concerning the application of the recent version of Article 136 when paying bonuses. The clarifications provided to us by the Ministry of Labour are generally consistent with those published on the website, which may indicate that the Ministry of Labour has already adopted a consistent approach towards this issue.

Analysis of the Ministry of Labour's position

In clarifying its position on the issue, the Ministry of Labour invoked Article 135 of the Russian Labour Code. This Article provides that the approaches to salaries, accruals of additional benefits, incentives and bonuses are governed by collective agreements, contracts or internal regulations.

However, the clarifications provided by the Ministry of Labour avoided discussion of the relation between the invoked provisions of Article 135 and the provisions of Articles 129 and 136 of the Russian Labour Code, which contradict to the conclusions made by the Ministry of Labour.

Specifically, Part 1 of Article 129 of the Russian Labour Code provides that bonuses make up part of the salary, which makes it reasonable to conclude that bonus payments should be treated in the same manner as salary payments (i.e. as provided for by item 6 of Article 136 of the Russian Labour Code). The amended version of Article 136 sets forth the requirement that wages and salaries must be paid within 15 calendar days after the end of the salary accrual period. A literal interpretation of Article 129 and Article 136 as amended recently, as well the absence of any specific exceptions concerning bonuses suggests that the date for bonus payments should not exceed 15 calendar days from the end of the bonus accrual period.

Article 135, invoked by the Ministry of Labour in its clarifications, further provides that internal regulations may not set forth a salary payment procedure that would contradict the statutory regulations (e.g. as the legislation requires that payments be made no less frequently than once a fortnight, internal regulations may not establish salaries payments at a frequency of once a month).

Therefore, we believe a detailed analysis of the Ministry of Labour's clarifications shows that while the Ministry of Labour's position is beneficial for the business community, it may need further refining.

Legal status and practical importance of the Ministry of Labour's clarifications

The interviews, oral advice and written replies of Ministry of Labour officials do not have legal force and may not be used as grounds for an exemption from liability in case of violations of the labour legislation.

Therefore, as the above amendments to the Russian Labour Code take force, the risk of such liabilities arising for employers cannot be ruled out where a period for bonus payments exceeds 15 calendar days following the end of the bonus accrual period, nor can

the risk of disputes with employees, government bodies and the tax authorities arising as regards the date of recognition of such payments for tax purposes be ruled out.

However, we believe that the above clarifications from the Ministry of Labour suggest that it is less probable that labour inspectorate officers will make claims against employers as regards this issue.

We hope that you find the information in this edition interesting and useful. We will keep you updated on application of the amended version of Article 136 of the Russian Labour Code.

Should you have any questions on this subject, please do not hesitate to contact us.

Best regards,

Deloitte CIS partners

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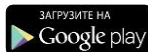
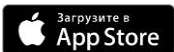


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