Legal problems of a special assessment of working conditions in offices

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Starting from 2014, nearly all employers in the private sector are obliged to conduct a special assessment of working conditions in the workplaces of their employees. One of the main aims of the special assessment is improving the working conditions of employees. Even before the entry of the new law into force, representatives of the Russian Labour Ministry announced that the requirements of the law will not be burdensome for employers that do not have production sites and whose main activities are concentrated in office facilities. However, unlike the predecessor of the special assessment – the attestation of working conditions at workplaces – office workplaces are not exempted in any way from assessment procedures. There is only a transition period until 2018 for the assessment of workplaces that were created before 2014, but this does not apply to newly created workplaces.

Nevertheless, in practice most companies that do not have production sites ignore the requirements of the Federal Law "On Special Assessment of Working Conditions". E.g. very few new workplaces commissioned since 1 January 2014 have been assessed.

One can argue that office workplaces are not subject to special assessment, as there are no hazardous or dangerous factors involved in the work. However, this position is not based on the law. First of all, only the workplaces of home and remote employees are exempted from the special assessment requirements. Secondly, the absence of potential hazardous or dangerous factors in a workplace should be officially declared at least once, which is also part of the special assessment. Thirdly, if a work-related accident occurs (including when an employee is driving a corporate car), an extraordinary assessment should be conducted irrespective of whether the absence of potential hazardous or dangerous factors was declared or not.

In some situations it is questionable whether a special assessment of office workplaces could result in no hazardous or dangerous working factors being discovered. E.g. the lighting of the work area is identified as a potentially hazardous and/or dangerous factor, but only in a limited number of instances (specifically, when there is a glaring source of light in the workplace or when high-precision work is performed with items smaller than 0.5 mm). However, in practice a number of issues arise regarding the proposed wording. For example, it is unclear whether the sun shining through a window behind an office worker's computer monitor would be considered a glaring source of light, or whether work with digital data using punctuation that may well be smaller than 0.5 mm would fall under the category of high-precision (exacting) work.

It is notable that administrative liability for the failure to conduct a special assessment or violations during the process of assessment (including the timeline, procedure, etc.) is now clearly distinguished from the liability for other violations of labour legisla-

tion and is not at all symbolic. The amount of the fine for a company ranges from 60,000–80,000 roubles (i.e. on average up to 1,000 euros[1]). The amount of the above fine is many times higher than the average cost of services of an agency conducting special assessment of one workplace. However, what is more important is that the amount of the fine may be multiplied by the number of workplaces where special assessment was not conducted without justifiable reasons. E.g. in January 2015 a company with 20 employees relocated to a new office. If a special assessment was not conducted until July 2015, it counts as a violation. In this situation the limitation period only expires in July 2016, and the amount of the cumulative fine may be up to 21,000 euros. A violation may be discovered as a result of an inspection of the labour inspectorate – a schedule of planned audits is published on the websites of the regional labour inspectorates at the end of each year. The general manager of the company may be also fined and, although the amount of the fine is not significant, each subsequent fine within three years may lead to him/her being banned from entering Russia if he/she is a foreign citizen. A repeated violation of the assessment rules by the general manager or another authorised company official may lead to his/her disqualification for a term of up to three years, irrespective of his/her citizenship.

Last, but not least – even if a company has conducted a special assessment of working conditions according to the law on special assessment and no hazardous or dangerous factors were discovered, this does not guarantee that no inconsistencies will be found as a result of audits by Rospotrebnadzor. The reason for this is the lack of harmonisation between the legislation on special assessment and hygiene requirements. The latter in most cases still stick to a concept of absolute safety. E.g. a prolonged work duration on a PC is not normally classified as a hazardous factor during special assessments. At the same time, work on a PC for more than four hours within a working day requires regular medical examinations for employees.

In conclusion, a comparison of the legal risks related to the failure to conduct a special assessment of office workplaces and the costs of the procedure shows that it is worthwhile to conduct a special assessment of workplaces once, to declare their compliance with statutory standards, and then to forget about this procedure in relation to most existing workplaces for a long period of time.

[1] According to the official exchange rate of the Central Bank on 30 September 2015.