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Legal Overview

Experiment in Electronic HR Document Management – Conditions and Procedures for Participation

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As is known, labor laws which are currently in force do not directly provide for the possibility of using of electronic documents in labor relationships. The only exception is relationships with outworkers. However, gradual evolution in that direction is underway, which is evidenced by the transfer to electronic keeping of work record books, which has been implemented, the experiment in the transfer to electronic format of documents and information on employees, concerning employment relationships, conducted by the Labor Ministry in 2018, and quite recently adopted Federal Law dd. April 24, 2020 N 122-ФЗ “On conducting of the experiment in using of electronic work related documents”, whereunder employers may join the experiment in using of electronic documents in labor relationships. What does the new Law provide for and how to join the experiment? We will tell about this in our latest overview.

Participation in the experiment is voluntary both for employers and employees. To take part in the experiment an employer is to file a relevant application with the RF Labor Ministry. Employees participating in their employer’s experiment, if they wish to join it, should express their consent thereto in writing. For this purpose the employer shall inform each employee in writing about conducting of the experiment, at least 1 month prior to the beginning thereof, and ask them to give their voluntary written consent thereto or express refusal from participation therein. It is worthwhile noting that the experiment may not be conducted with respect to outworkers or workers seconded temporarily by employers to other individuals or companies under an outstaffing contract for provision of labor of workers (personnel).

The total period for conducting of the experiment is from May 05, 2020 through March 31, 2021. According to the Draft Order of the RF Labor Ministry “On approval of the Regulations for conducting of the experiment in using of electronic work related documents”, which is currently going through the stage of public hearings (project ID - 01/02/05-20/00101920 at the Web portal <https://regulation.gov.ru>), the date of beginning of the experiment and the timelines for conducting thereof at a particular company is to be determined by the employer at its own discretion.

The experiment is to be conducted with respect to documents which are required by labor laws to be issued on paper media (i.e. in writing) and/or with which employees are required to be familiarized in writing, including against signature. These may be employment contracts and supplement agreements thereto, various kind of orders, including hiring and termination orders, notices, including on redundancy, on expiry of a fixed-term employment contract, shift schedules, internal policies and procedures, financial liability contracts, apprenticeship contracts, etc. The comprehensive list of the types of documents which may be included in the scope of the experiment will be set by the order of the Labor Ministry, while the specific list of documents which will be covered by the experiment at each given enterprise will be determined by the employer at its own discretion.

Prior to the beginning of the experiment the employer will have to carry out certain preparatory actions provided for by Part 2 of Art. 5 of the said Federal Law, specifically, without limitation: approval of the list of documents covered by the experiment, giving notices to employees about the experiment, making of lists of employees who have expressed their wish to take part in the experiment, preparing internal policies and procedures on conducting of the experiment and familiarization of employees therewith, setting up of a new information system or ensuring the possibility of using of the existing internal system, as well as ensuring the possibility of interfacing of the employer's information system with the "Work in Russia" system. Furthermore, pursuant to Part 1 of Art. 8 of the said Law, prior to the beginning of the experiment the employer will have to provide for in the collective bargaining agreement (if any), in the employment contract, supplement agreement thereto, or in a separate agreement between the employee and the employer rights and obligations of the parties, established by the Law, once again set forth the list of documents, mention using of its internal system and/or the "Work in Russia" system, as well as establish procedures for and conditions of creation, using and storage by the employer of the work-related electronic documents.

Since electronic document management requires using of electronic signature, the federal law also determines what kind of electronic signatures may be used in the context of the experiment at hand.

The employer will have to use enhanced encrypted and certified e-signature in any event. The type of electronic signature of the employee will depend on the information system which the employer is going to use – its own, or the “Work in Russia” system. In the event the employer uses its own internal system, an enhanced encrypted certified or enhanced encrypted non-certified e-signature will have to be procured for employees. While where electronic interaction and issuing of electronic documents is conducted between an employee and employer via the “Work in Russia” system, the employee will need to use a simple electronic signature the key to which the employee has received when applying for state and municipal services.

As is obvious, the set of measures and actions, which an employer needs to take to be able to participate in the experiment, is rather extensive, however, according to the developers, the soonest conducting of the experiment would facilitate shortening of the timelines for preparation of amendments to the legislation, which would make it possible for all employers to use work-related electronic documents.



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