

Procedure of Employers' audit carried out by immigration authorities

The number of audit carried out by immigration authorities of Employers engaging foreign nationals has increased lately. Therefore this article is dedicated to the procedure of such audit, documents that officials inquire, and grounds for these audit as well as penalties stipulated for violation of immigration legislation.

We would like to remind you that till recently audit of immigration authorities were not administered by any government regulations and standards. However in the beginning of the year 2007 the Order of the Federal Migration Service of the RF dated January 16, 2007 #10 "On approval of Regulations for procedure of audit carried out by territorial authorities of the Federal Migration Service to ensure fulfillment of immigration legislation of the Russian Federation" was adopted. The Order clearly stipulates rights and obligations of the Parties when investigation of employers engaging foreign nationals is carried out by immigration authorities. With this respect we should also remember the Regulations of interaction of the Federal Service on Labour and Employment and Federal Migration Service (including their territorial divisions) on the issues connected with control over foreign employee's labour activity on the territory of the Russian Federation. The main aim of the Regulations is information exchange, i.e. mutual provision of information on violations revealed within the audit where the decision cannot be made by the state authority detecting the violation.

There are two types of audit targeted at Employers hiring foreign nationals: it is a scheduled audit and unscheduled. The first audit type (scheduled one) is aimed at employers engaging foreign nationals within the ambit of catchment area of the territorial authority of the FMS Russia. All joint audit is carried out only within schedule. As a rule, such audit is carried out on the base of the "Schedule of audits" that should be approved in advance and represents the list of employers that are subject to inspection within the specified period of time. Usually the purpose of scheduled audits is of general nature.

The second audit type (unscheduled one) is aimed at employers that violated or violating immigration legislation of the Russian Federation or that engage foreign employees who do not follow the rules of legal stay of foreign nationals in the Russian Federation.

We would like to underline that the decision to carry out an audit is taken by the Head of the territorial division of the FMS Russia or his/her Deputy, or the Head of the structural subdivision (local division of the DFMS) or his/her Deputy. Only these officials are authorized to issue a decree to conduct investigations for each particular company. However in case of a joint audit of the FMS Russia and the Federal Service on Labour and Employment, it can be initiated by a decree only of the Head of the above mentioned state authorities (and their territorial divisions). Such a decree should contain the following information: name of the company under investigation, its legal and actual address, purpose of investigation, date of commence and finish, as well as full names of FMS officials who will carry out the audit.

When FMS officials arrive to the company, they should show their IDs, original of the decree for conduct of the audit stamped by the FMS authority (or Federal Service on Labour and Employment), as well as provide the copy of this decree to the company. Subject to the above said, FMS (or Federal Service on Labour and Employment) officials should be freely allowed to enter the premises of the company under investigation. FMS officials have the right to audit all foreign nationals of the company with respect to their legal stay on the territory of the Russian Federation, their legal conduct of labour activity, and fulfillment of immigration registration rules as well as other obligations incumbent by Russian legislation. State authority officials can request the following documents from foreign nationals: passport (as the identification document), migration card, visa confirming the legal stay in Russia, detachable part of the Notification form confirming immigration registration, employment or service agreement as well as work permit.

Apart the above mentioned documents, the following employer's documentation can be requested: foundation documents, lease (sublease) agreement for the premises, staff schedule, employment permit. If the company under investigation engages foreign nationals from CIS countries (not requiring visa), state officials have the right to request the documents confirming notification of certain state authorities on employment of these foreign nationals, instead of employment permit.

While officials of the Federal Service on Labour and Employment audit labour agreements signed with each foreign national, compliance of these agreements as well as compliance of working conditions with requirements of the labour legislation of the Russian Federation.

When violations of the immigration legislation are revealed, FMS (or Federal Service on Labour and Employment) official should prepare protocol on administrative violations which can lead to imposing of penalties both to a foreign national, a company's official and a company itself that hires foreign employees. When the audit is completed, FMS (or Federal Service on Labour and Employment) official shall prepare the report for the name of the Head (or its Deputy) who has taken the decision for audit. This report should contain the information on the results of the audit and difficulties that FMS official faced during the audit, as well as suggestions on improvement of migration situation within a company.

The Regulations also stipulate limitations for auditors, thus officials have no right to audit meeting of requirements that have no connection with the competence of their state authority, as well as to distribute the information obtained while auditing.

Fines and other liabilities for violation of Migration legislation

Fines and other liabilities are stipulated by the Code of the Russian Federation on Administrative violations.

Violation by a foreign national of rules of entrance to the territory of the Russian Federation or illegal stay on the territory of the Russian Federation (article 18.8):

For violation of migration registration rules, movement and order of residence place choose, transit through the territory of the Russian Federation, in case of lack of documents confirming the right to stay in the Russian Federation or in case of their loss and non notifying of the correspondent authorities on this fact as well as for refuse to leave Russia within established term:

- for a foreign national – administrative penalty in the amount of 2 000 – 5 000 RUR with administrative deportation or without it.

For discrepancy between the purpose of entrance and purpose of stay:

- for a foreign national – administrative penalty in the amount of 2 000 – 5 000 RUR with administrative deportation or without it.

Violation by a Company's official of rules of foreign national's stay on the territory of the Russian Federation (article 18.9):

For violation of rules connected with stay and transit through the territory of the Russian Federation of a foreign national, as well as with established order of documents processing for stay, movement and exit from the Russian federation:

- for a Company's official – administrative penalty in the amount of 40 000 – 50 000 RUR
- for a Company – administrative penalty in the amount of 400 000 – 500 000 RUR.

For violation of Immigration registration rules:

- for a foreign national – administrative penalty in the amount of 2 000 – 4 000 RUR
- for a Company's official – administrative penalty in the amount of 40 000 – 50 000 RUR
- for a Company – administrative penalty in the amount of 400 000 – 500 000 RUR.

Violation of employment of foreign nationals on the territory of the Russian Federation (article 18.15):

For work without Employment permit authorization:

- for a foreign employee – administrative penalty in the amount of 2 000 – 5 000 RUR
- for a Company's official – administrative penalty in the amount of 25 000 – 50 000 RUR
- for a Company – administrative penalty in the amount of 250 000 – 800 000 RUR or administrative suspense of Company's activities for the period of up to 90 days.

For work without Work permit authorization:

- for a foreign employee - – administrative penalty in the amount of 2 000 – 5 000 RUR
- for a Company's official – administrative penalty in the amount of 25 000 – 50 000 RUR
- for a Company – administrative penalty in the amount of 250 000 – 800 000 RUR or administrative suspense of Company's activities for the period of up to 90 days.

For not notifying the Tax service, Employment service, Migration service:

- for a foreign employee – administrative penalty in the amount of 2 000 – 5 000 RUR
- for a Company's official – administrative penalty in the amount of 35 000 – 50 000 RUR
- for a Company – administrative penalty in the amount of 400 000 – 800 000 RUR or administrative suspense of Company's activities for the period of up to 90 days