# Workplace Discrimination and Labor Relations

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## Abstract

Among compatriots, there is a stereotype that the cases of discrimination mostly concern, first and foremost, African Americans or people from Latin America. At the very this phenomenon is much wider and does not have clearly defined national or ethnic boundaries.

US discrimination laws are designed to protect everyone equally, regardless of skin colour, eye or religion. For example, laws on discrimination in the state and the city of New York state that it is illegal to discriminate on the basis of age, gender, legal capacity, race and nationality, religion, sexual preferences and marital status. This paper additionally discusses how these laws work in practice in the case of discrimination at work.

## Workplace Discrimination

As sociologists have found out, discrimination is only a consequence of the system of labour relations that has developed in Russia. Law enforcement agencies and courts do not consider discrimination of workers a serious crime. And the state, instead of being an arbiter in labour disputes, consistently defends the interests of the employer. The study was conducted by the Center for Social and Labor Rights in the framework of the project “Discrimination in the World of Work: Developing Protection Mechanisms and Providing Practical Assistance to the Victims”. It included focus groups with employees, expert interviews, the study of publications and vacancy announcements, as well as a survey of the working population of two major cities.

## Petr Bizyukov, A Leading Specialist At The Center, Spoke About The Results Of The Study.

As shown by the study of printed publications, the problem of discrimination of workers is not in the focus of attention of Russian society. Most of the publications are processed messages from the Western media as if selected for the rubric “their customs”. We can meet descriptions of anecdotal or scandalous from the point of view of journalists’ cases: otsuzhennoe compensation for the chair,

published “indecent sounds”, and the like. In business journals, a wide range of opinions is published – both quite literate and completely cynical arguments that discrimination is a normal way to protect a company from outsiders. The third type is when the authors try to “rise above the problem.” As a rule, they believe that there are valid and unavoidable reasons for discrimination. In scientific journals, the opinion is unanimous: there is no discrimination, and there can be no justification.

Workers-participants of focus groups easily cited examples of discrimination in the sphere of labour rights. As a rule, this is an infringement on the salary in various ways, forcing to work overtime, firing “truth workers”, and simply daring to contradict the authorities. Many are convinced that fighting for their rights is useless. Only those who have already decided to quit and want to sue, for example, compensation, to withdraw their dismissal, “according to the article,” are going to fight.

Not all employers agreed to an interview. According to Peter Bizyukov, those who often use discriminatory practices refuse first of all. Therefore, the picture of the perception of discrimination by the employer turned out to be somewhat better than the real one. Many employers recognize the negative consequences of discrimination but try to justify it with economic reasons: for example, specifying characteristics in vacancy announcements saves staff time. Employees of the Center for Social and Labor Rights believe that this is a common misconception because, in reality, women work perfectly in many male specialities, and people after 45 successfully master computer technology. “Those who are prone to discrimination at admission, themselves, are narrowing their options for themselves,” – said Peter Bizyukov.

Employees of employment services said that they are negative about the imposition of restrictions on hiring, but they can not influence the situation. First, to respond, they need a signal “from below”, from the employee. Secondly, it is very difficult to prove the fact of discrimination in court. To qualify the refusal of employment as discrimination, one must have intent. In addition, as a rule, several people are involved in the process of finding employees (head, HR or HR, secretary, etc.) – the question arises of who is to blame and who to attract.

The results of the survey showed that 14% of the urban population faces the problem of discrimination and is aware of this, and 20-25% with discrimination face but do not know that this is discrimination. The most common type of discrimination is by age, followed by membership in the category of rights advocates; in third place is sex. Important reasons were also the marital status, the presence of children or dependents, political views, appearance, and residence.

Labor relations in Russia are regulated arbitrarily, in an informal way. If a person has worked in one place for many years, it means that he joined and recognized the existing system of labour relations in this collective. If after a job is ready to do it, he will not be discriminated against, and he has many chances to stay at work for a long time. If he does not fit, then sooner or later, he will be fired, or he will leave himself. The problem is that this mechanism ensures the loyalty of employees since, often, the employee in a new place reduces the level of his claims and does not try to make any more adjustments to the existing order of things. Discriminatory practices form protest moods, but workers

have virtually no fighting tools, sociologists say.

What if a person faces discrimination in the world of work? First, you can write an application to the prosecutor's office or file a lawsuit with the court. You can apply to the Labor Inspectorate, but you do not need to say "discrimination" – not so long ago, the analysis of cases of discrimination was excluded from the scope of the inspection. There are also non-legal mechanisms: for example, applying to public organizations that can act as intermediaries in negotiations with the employer.

As the lawyer Anna Gvozditskikh said, cases of discrimination against pregnant women are very frequent. They are trying to immediately dismiss, despite the fact that the employer does not bear direct material costs – the benefits are paid from the health insurance fund. But, firstly, not all employers know this; secondly, the theory of "human capital" prevails in the sphere of labor organization. The employee is perceived as an object of investment of funds, from which in the future you can make a profit. Therefore, a pregnant woman, the future mother of a young child, is perceived by employers as a bad "investment project" – it is expected that her attention in the coming years will focus on her health and caring for her child, even after she leaves the decree. Pregnant women go to court quite often because, for them, it is important to minimize the problem – to finish the maternity leave and get all the benefits. In addition, unambiguousness in legislation is important here: the pregnancy can not be dismissed.

Petr Bizyukov believes that such a situation is a consequence of primitive ideas about personnel management. Our managers can only manage passive, obedient people who are illiterate in legal matters. All the rest are trying to survive. Many enterprises have old technologies that involve a large share of manual labour. The share of wages in the structure of the cost of production in Russia is very low – about 20%. Therefore, you can continue to use manual labour and not worry about optimizing management schemes. The current situation creates latent and passive resistance for workers: they do not have the desire to show initiative, improve their skills, or take responsibility. They conscientiously shirk, ignore the demands of the employer and arrange acts of sabotage. Lately, the number of strikes has been increasing.

According to Anna Gvozditskih, in order to reverse the situation, we need a "source of law" – a request of the society to eliminate discrimination. Instead, while discriminatory practices are only becoming more common, they are established in the mind as a norm. "The state should realize the role of arbitrator, go to cooperation with workers and trade unions,"said Gvozditskikh. – Now, both workers and trade unions are very limited in their rights, including in collective bargaining agreements, through work commissions on labour disputes. And the birth rate will never increase if further birth of the child is fine for a woman – she loses both in money, status and work experience. "

The inadmissibility of discrimination is enshrined in many international legal instruments (the Universal Declaration of Human Rights of December 10, 1948, the ILO Declaration on Fundamental Principles and Rights at Work of June 19, 1998, etc.). In Russia, the principle of equality of labour rights and freedoms is regulated by Art. 37 of the Constitution of the Russian Federation and labour

legislation (Articles 2-4, Article 64, Article 132 of the Labor Code).

At the same time, despite the fact that the issue of discrimination is one of the most important when it comes to ensuring the equality of citizens' rights to work, this problem of recognition does not yet come from the state. There is no official statistics on the facts of discrimination. "No government agency keeps records that would make it possible to understand what kind of picture is developing in the country with discrimination." It is believed that Russia does not have it because the main indicator of its presence or absence is judicial decisions. Cases in which the issue of discrimination is being considered, "said Elena Gerasimova, deputy chairman of the Public Council of the Russian Ministry of Labor and director of the Center for Social and Labor Rights, which was held last week in the Russian Federation's round table.

Nevertheless, according to the expert, in practice, discrimination occurs quite often, while it manifests itself in various forms and concerns various aspects of work from hiring and dismissal to pay. Thus, during the probation period, workers are often set to lower their salaries compared to colleagues, and employees who have equal qualifications and occupy the same position are paid different wages.

If it is a question of discrimination in employment, then, as the head of the Legal Department of Rostrud. Roman Strakhov noted, the modern employer never indicates the true reason for the refusal – he usually motivates his decision either by the absence of a corresponding vacancy or by the applicant's lack of the required professional qualities. At the same time, the representative of Rostrud added it is quite difficult to prove the fact of discrimination in practice, and cases of discrimination are rarely considered in favour of the employee.

The most common types of discrimination are:

- gender (by sex);
- age-related;
- on disability.

Quite often, the basis for discrimination is also religious affiliation, trade union activity and even the appearance of a person (for example, the presence of excess weight, piercings, tattoos, etc.).

# Discrimination Based On Sex

On whether the employer is obliged to compensate the candidate for the earnings he did not receive during the period from the moment of refusal to hire to work before the court makes a decision to declare such refusal unsubstantiated, find out from the material "The Consequences of Unlawful Refusal in Employment" in the "Encyclopedia of Solutions. relations, frames "of the Internet version of the GARANT system.

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According to Roman Strakhov, gender discrimination in employment in the labour market is a problem, connected not so much with the shortcomings of legal regulation as with the low level of legal awareness of Russians. Most often, such discrimination is expressed in the unwillingness to take women to work. “In the conditions of temporary economic difficulties, the employer seeks to avoid additional costs, which is what explains the refusals of hiring women who have or may have young children, which will require additional benefits,” Strakhov said.

In addition, discrimination is noticeable when determining wages. “The average salary for women is 30% less than for men holding the same position,” said Natalia Pochinok, Chairperson of the Commission for Social Policy, Labor Relations, Interaction with Trade Unions and Veterans Support. The most surprising thing is that many women consider this practice to be normal.

And in the event that a woman already has adult children, she, according to Pochinok, is even more likely to get a job than a male applicant.

Some experts say that even the list of professions forbidden to women is discriminatory (Decree of the Government of the Russian Federation of February 25, 2000, No. 162 “On approving the list of hard work and work with harmful or dangerous working conditions, in which the application of women’s labour is prohibited”). Among them are carpenters, stones, steam locomotive engineers, etc. The lawyer of the Consortium, lawyer of the Moscow Bar Association “Moscow Legal Center”. Mari Davtyan considers this one of the brightest manifestations of stereotypical attitudes towards women. “This list should be cancelled; women can decide for themselves where and how to work for them,”she said. Moreover, even if you do not take into account the list set out in the legislation, there is a number of generally available professions that are generally perceived by society only as feminine or masculine. For example, pilots and bartenders are usually men, and secretaries and nannies are women.” This division occurs when the natural social roles of men and women are mechanically transferred to the production sphere,” Roman Strakhov said.

# Discrimination By Age

Age discrimination deals primarily with two groups of workers: young and old.

Discrimination against young workers is largely due to the legally mandated obligation of employers to provide a series of benefits to such employees: shorter working days, longer regular leave, etc. Similar benefits, we recall, are provided to persons combining work with training and employees under the age of 18 (Article 173-177, Article 265-272 of the LC RF).

The member of the RF OP, the head of the Central Staff of the Russian Students’ Squads, Mikhail Kiselev, also drew attention to the fact that many employers, due to the lack of seniority at a recent

graduate of the university, reduce his salary.

Pensioners, according to Roman Strakhov, are also in no hurry to accept work, but they are dismissed first. “Our legislation in itself leads to discrimination of the elderly.” Take, for example, the very concepts of “old age pension” or “survival time.” What is this? That is, a person retires and “lives out” – from the age of 55, starts “to live out. “Or a woman age 55, it turns out the old age is coming in. Moreover, since we have for some time cancelled the indexation of pensions to working pensioners, we economically put their right to work in a discriminatory situation,” Natalya Pochinok, outraged. In her opinion, this is the reason why about 5 million pensioners are employed unofficially: “It is unprofitable for them to visualize and exit from the grey plane.”

# Discrimination Against Persons With Disabilities

As a general rule, it is forbidden to refuse to conclude an employment contract for a disabled person aimed at employment in the order of quota jobs (Article 13 of the Federal Law No. 1032-1 of April 19, 1991, “On employment in the Russian Federation”, Article 20 of the Federal Law from November 24, 1995 No. 181-FZ”On the social protection of disabled people in the Russian Federation”). Nevertheless, Roman Strakhov said because of the erroneous belief in society about the opportunities and productivity of persons with disabilities in the labour market, there is still discrimination against them.

Arthur Ushakov, lawyer of Perspektiva, a regional public organization of disabled people, also stressed the negative role of stereotypes that employers had about disabled people. “Employers do not know what kind of work a person with a disability can perform. Sometimes, the employer’s company simply does not have the necessary conditions, even just for a person to get to their workplace.” Therefore, companies are easier to pay the penalty than creating a workplace for a disabled person ” he declared. Note that the penalty for failure to comply with the employer’s obligation to create or allocate jobs for the employment of disabled people in accordance with the established quota is from 5 thousand to 10 thousand rubles. (Article 5.42 of the Administrative Code of the Russian Federation).

At the same time, Natalia Pochinok called the principle of job quotas ineffective and discriminatory: “It turns out that a person with a disability will be protected only when he is sent to work in the exercise of his right to a quota place.”

# Improving The Mechanism For Combating Discrimination

To move the situation from the deadlock and make a mechanism to combat discrimination in the world of work more effective, according to experts, it is possible. But this will be a complex and multi-stage process that will require both changes to the current legislation and changes in the public

consciousness of Russians. Among the most important steps in this direction, experts noted the following.

Change the procedure for proving a discrimination event. “We do not have a special distribution of the burden of proving for this category of cases, in contradiction with all international recommendations and conventions, but the general principle is that each party must prove the circumstances to which it refers (Article 56 of the Code of Civil Procedure of the Russian Federation). shows that it is impossible to prove discrimination in this situation, “Elena Gerasimova said. Therefore, experts, including Marie Davtyan, suggest shifting the burden of proof to the lack of discrimination against the employer as a stronger link.

Establishment of a specialized body to address issues of discrimination. To date, consideration of issues of discrimination in the world of work refers exclusively to the prerogative of courts (Part 3 of Article 391 of the Labor Code of the Russian Federation). “No other state bodies are dealing with the problems of protection against discrimination at all.” If you feel that you have been discriminated against, the only thing you can do is go to court, “Elena Gerasimova stressed. Appeal to the prosecutor’s office, according to Gerasimova, will not yield results: “The prosecutor’s office looks only in terms of whether there are grounds for instituting criminal proceedings under Article 136 of the Criminal Code (“Violation of the equality of rights and freedoms of man and citizen”). And if we look at the statistics, we have almost no criminal cases under this article.” At the same time, the expert believes that GIT could have engaged in such disputes, but for this, it is necessary to make appropriate changes in the legislation.

To consider complaints about discrimination, in her opinion, could also be public organizations and/or ombudsmen. And apart from the consideration of specific situations, Marie Davtyan added, they should transfer the right to protect the interests of citizens in the courts.

In turn, Natalia Pochinok suggested thinking of the creation of a working group in the RF OP, which would undertake the consideration of such disputes. This would have laid the foundation for the creation of the first extrajudicial site on discrimination. The president of the Union of Social Educators and Social Workers, Antonina Dashkina, expressed the idea of opening a specialized hotline in the RF OP.

A more detailed approach of the legislator to discrimination. Thus, according to experts, it will be possible to defend citizens’ interests in court much more effectively. “Judges do not always understand how to deal with. discrimination cases because they rely solely on the very narrow definition of discrimination that is in the law (Article 3 of the RF Labor Code), they do not understand what the composition of discrimination is, what signs can be revealed when discrimination if there is no judge, if the judges themselves can not understand what this is, how they can objectively resolve such a dispute?! “, Elena Gerasimova noted.

Development of mechanisms for protection against discrimination. Even if the court decides in favour of the plaintiff, in addition to moral satisfaction, he will not get anything, said Gerasimova. “For

example, if a job applicant is refused employment, the court is unlikely to oblige the employer to accept him, the only thing he can count on is compensation for moral harm, but everyone is well aware of the amount of compensation for moral damage that is collected by Russian courts. 3-5 thousand rubles., And in regions, there can be even more ridiculous sums “, – she explained.

However, back in 2009, the European Court of Human Rights drew attention to the fact that in Russia, there are no mechanisms to protect workers against discrimination and recommended that they be developed (Danilenkov and Others v. Russia, July 30, 2009, complaint No. 67336/01). However, since then, only one significant change has been introduced in the legislation: the ban on the publication of ads containing discriminatory requirements (Article 13.11.1 of the Code of Administrative Offenses of the Russian Federation, clause 6 of Article 25 of the Federal Law of 19 April 1991 No. 1032- 1 ” On employment in the Russian Federation “).

Strengthen the participation of educational institutions in the organization of students to work. This would help to combat the discrimination of both young professionals and disabled people who have been trained in a particular educational institution. “Universities should have effectively working centres for the employment of graduates,” said Mikhail Kiselev. In addition, he proposed to make student practice payable, albeit in a small amount – this, on the one hand, would encourage employers to more clearly select a probationer for the task, not charging him with functions that are not relevant to his future profession, and, on the other hand, would ensure future graduate required experience in the field.

Formation of intolerance towards discrimination in society. Any discrimination is based on a stereotyped attitude towards one or another person. For example, the more a society promotes the main role of women as mothers, the more discrimination in the labour market, Marie Davtyan is sure. “It’s impossible to cope with the problem of discrimination only through the efforts of state bodies: there must be a very strong participation of society, civic organizations and activists.” Not only do judges not understand what discrimination is, but the society is not ready for this in principle because it broadcasts a lot of discriminatory relations and a practitioner, “- agrees Elena Gerasimova. In this regard, experts advise thinking over measures that would allow them to combat stereotyped attitudes towards a particular category of citizens, be it women, disabled people, retirees or university graduates. Since, as already noted, everyone has equal opportunities to realize their labour rights.

The right to work – one of the fundamental human rights – is of great practical importance since most people provide their vital needs solely through work, that is, “earn their living”. That is why ensuring equal access to work (workplaces) and equal payment for it is at the centre of social and economic policy throughout the world. The inadmissibility of discrimination, including in the sphere of labour, is the basic legal principle enshrined in the Universal Declaration of Human Rights (1948), the UN Charter, the ILO Declaration on Fundamental Principles and Rights at Work (1998) and ILO Convention No. 111 on Discrimination in the field of labour and occupation ” (1958), as well as many other international legal acts. The international provisions for the protection of human rights are based on the principle of prohibition of discrimination, following which the national legal norms of democratic

states guarantee their citizens equal labour rights regardless of gender, age, race, nationality, religion, political beliefs, etc.

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# Reference

Discrimination (from Latin discriminatio – discrimination) is most often treated as a restriction of human rights and freedoms on a certain basis, although there may be a manifestation of "positive discrimination", which, on the contrary, is expressed in preference. Restriction or preference in rights can be enshrined in legislation (discrimination de jure or legal discrimination) or based solely on established traditions, customs, stereotypes and moral norms (de facto discrimination or unofficial discrimination), but in any case, appear on the grounds of significant differences of a person – race, nationality, kinship, sex, age, marital status, religious beliefs, political views, disability, sexual orientation, etc.

Discrimination de jure can be quickly overcome by changing laws. In Russia, this problem is being successfully resolved, including through the ratification of international legal instruments. Thus, Russia ratified the following ILO Conventions: No. 111 "On Discrimination in Employment and Occupation" (1958), No. 12 "On Employment Policy" (1964), No. 142 "On Vocational Guidance and Training in Human Resource Development" (1975), No. 156″ On Equal Treatment and Equal Opportunities for Working Men and Women: Workers with Family Responsibilities " (1981), No. 100″ On Equal Remuneration for Men and Women for Work of Equal Value " (1951). The generally recognized principles and norms of international law and international treaties in accordance with Part 4 of Art. 15 of the Constitution of the Russian Federation are part of the Russian legal system. With discrimination de facto, it is very difficult to cope because its roots are deep in the minds of people, not only individuals but also society as a whole. A change in stereotypes in the public mind is a multilateral and long process, the success of which depends on economic, political, social and other conditions and circumstances.

In Russia, the guarantees of equality of rights and freedoms are enshrined in the main law of the country – the Constitution of the Russian Federation (Article 19), and equality in the sphere of labor and its payment is especially emphasized (Article 37), which emphasizes its social significance. One of the fundamental principles of modern labour law, closely related to the inadmissibility of discrimination, is freedom of labour and the prohibition of forced labour. These principles mean that only the person (and no one else!) Determines in which sphere he should show his knowledge and abilities, whether he should enter into an employment relationship with the employer, whether to engage in business or other not prohibited by law economic activities or not at all to engage in labor. If the citizen intends to work, i.e. enter into an employment relationship with the employer, the law guarantees him certain rights (listed in Article 21 of the Labor Code of the Russian Federation),

provides appropriate working conditions and protects against unreasonable restrictions – discrimination.

In Russia, as in most other states, any manifestation of discrimination in the world of work is illegal – the Russian Labor Code contains a special article on its direct prohibition. The principle of equality is also emphasized by the terminology used in the Russian labour legislation: the subject of an employment relationship is an employee – without any age, gender, official or other distinction.

This means that only professional and business qualities (education, qualifications, knowledge, experience, skills, skills, etc.) should be taken into account when concluding an employment contract and establishing its conditions. An approximate list of the employee's business qualities is given in paragraph 10 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of March 17, 2004, No. 2 "On the application by the courts of the Russian Federation of the Labor Code of the Russian Federation" (as amended on 28.12.2006 No. 63 and 28.09.2010 No. 22). No other reasons and circumstances can be used by the employer as a motive for restrictions or, alternatively, preferences, including when setting wages, promotion, obtaining opportunities for vocational training and advanced training, etc. In accordance with Part 2 of Art. 132 of the Labor Code of the Russian Federation, no discrimination whatsoever in establishing and changing the terms of remuneration of labour is prohibited.

At the same time, some restrictions and advantages with respect to certain categories of workers are still legalized, and discrimination is not considered because have the purpose not to infringe but, on the contrary – to support and protect the interests of the employee or are established in connection with the increased demands of public security and state interests.

Such exceptions to the general rules are qualified as features and are considered in separate chapters of the Labor Code of the Russian Federation, for example, in Chapter 41, "Characteristics of the regulation of women's labour, persons with family responsibilities," and in other legal norms on labour. Since the physiological differences between men and women predetermine their greater or lesser suitability for certain jobs, the legislation establishes certain restrictions on occupations [1], carrying and lifting of weights in the performance of labour function [2], etc. Similar restrictions are also provided for young workers under the age of 18 [3].

# You Should Know It

The Constitution of the Russian Federation

# Article 19 (Extraction)

The state guarantees the equality of human and civil rights and freedoms regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion,

belief, membership in public associations, and other circumstances. Any form of restriction of the rights of citizens is prohibited…

A man and a woman have equal rights and freedoms and equal opportunities for their realization.

## Article 37 (Extraction)

Labour is free. Everyone has the right to freely dispose of his abilities to work and to choose the kind of activity and profession.

<…>

Everyone has the right to work in conditions meeting the requirements of safety and hygiene, to remuneration for work without any discrimination and not below the minimum wage established by federal law, and the right to protection against unemployment.

Labor Code of the Russian Federation

## Article 3. Prohibition Of Discrimination In The World Of Work (Extraction)

Everyone has equal opportunities to exercise their labour rights.

No one may be restricted in labour rights and freedoms or receive any benefits depending on sex, race, colour, nationality, language, origin, property, family, social and official status, age, place of residence, attitude to religion, political beliefs, belonging or non-belonging to public associations, as well as from other circumstances not related to the employee's business qualities.

It is not discrimination to establish the differences, exceptions, preferences, or restrictions that are determined by the requirements of the given type of labour, established by law, or are due to the special concern of the state about persons in need of increased social and legal protection.

Certain restrictions on admission to civil service are regulated by Federal Law No. 79-FZ of 27.07.2004, "On the Civil Service of the Russian Federation" (hereinafter – Law No. 79-FZ). In particular, such restrictions include the presence of certain diseases listed in a special list and confirmed by the conclusion of a medical institution (clause 4, part 1 of article 16 of Law No. 79-FZ), a close kinship or property (parents, spouses, children, brothers, sisters, as well as brothers, sisters, parents and children of spouses) with a civil servant if the replacement of a civil service post is related to direct subordination or control of one of them to another (clause 5, part 1, clause 16 of Law No. 79-FZ) and other

Legally established age “ceiling” for certain positions of state and municipal employees and managers, replaced by competition in science and education institutions, etc. There are restrictions and even bans on certain classes and professions in connection with previously committed crimes. A number of professional restrictions are established by law in accordance with the state of workers’ health, for which preliminary and periodic medical examinations are conducted in the appropriate order. According to Art. 69 of the LC RF, medical examinations (examinations) at the conclusion of an employment contract are mandatory only in cases provided for by law in accordance with a special list (list) of posts and works with harmful factors (see para.

The list of harmful and dangerous production factors and works in which preliminary and periodic medical examinations are mandatory, Order of the Ministry of Health and Social Development of Russia of 16.08.2004 №83). The law also provides for other cases of compulsory preliminary and periodic medical examinations for certain categories of workers, for example, for personnel of children’s institutions, food industry enterprises, etc. (Article 213 of the Labor Code of the Russian Federation), for minors (Article 266 of the Labor Code of the Russian Federation), “shift workers” (Article 298 of the LC RF), transport workers (Article 328 of the LC RF)

The restrictions established by the legislation are not considered discrimination, and the employer is obliged to observe them. However, in practice, employers very often base themselves on their own ideas about “male” and “female” occupations and positions, age, marital status, the state of health of their future employee, external data, etc. If the incompatibility of the applicant with such an understanding of the employer will become the basis for refusal to hire, this will already be a contradiction to the law and infringement of the labour rights of applicants for the workplace, i., discrimination. Refusal on similar grounds can be appealed in court. The employer, of course, has the right to make his choice and recruit someone who, in his opinion, is more suitable for this position, but the basis for refusing other applicants should be professional and business motives, not “eye color” or “gray hair on the temples “.

An approximate list of the employee’s business qualities is contained in clause 10 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of March 17, 2004, No. 2 “On the application by the courts of the Russian Federation of the Labor Code of the Russian Federation” (as amended by Decrees of the Plenum of the Supreme Court of the Russian Federation of December 28, 2006 No. 63 and 28.09. 2010 №22, further – the Resolution of the Plenum of the Supreme Court of the Russian Federation of March 17, 2004 No. 2). In particular, they include the ability of an individual to perform a certain work function, taking into account his professional qualifications (for example, having a certain profession, speciality, qualification) and personal qualities (for example, health status, the presence of a certain level of education, work experience of this speciality, in this industry). In addition, the employer has the right to present other claims to the person applying for the vacant post as mandatory, i.e. directly prescribed by federal law, and specific, related to the characteristics of professional activities (for example, the possession of one or more foreign languages, the ability to work on a computer, etc.).

# Discrimination In Employment

Discriminatory manifestations are particularly evident in job advertisements. According to the portal Lenta.ru, almost 50% of the vacancy announcements in Russia in general and more than 60% – in Moscow are discriminatory. Most often, they contain unlawful requirements for age (44%), sex (29%), and work experience (19%). Often, the ads indicate the requirements for appearance, there are even indications of a certain sign of the zodiac, under which the applicant was to be born!

According to international norms, equal opportunities for employment should be guaranteed to all citizens both before and during the hiring process. Recruitment agencies should reject discriminatory employers' advertisements and inform them of legislation and national policies that proclaim equal opportunities for employment. However, these requirements are not met either by our recruitment agencies or the media publishing such announcements – they are limited only to the remark that liability for the content of published ads is not borne out. But the employer may well be liable, it is these ads that become a weighty proof of discrimination when considering claims in courts.

# By The Way…

In early April 2010, deputies of the Samara Regional Duma submitted to the State Duma a bill that prohibits the dissemination of information in the media from employers of discriminatory nature in relation to applicants. This would eliminate the use of discriminatory criteria in the selection of personnel and hiring. Deputies offer to remove from the texts of announcements about vacancies information concerning age, sex, marital status, registration at the place of residence, etc., and for the dissemination of such information to apply fines: in respect of employers, physical persons – in the amount of 2000 to 2500 rubles, officials – from 4,000 to 4,500 rubles, legal entities – from 40,000 to 50,000 rubles. It is also proposed to apply sanctions to the media that published discriminatory announcements. The bill was submitted for consideration to the State Duma's information policy committee.

*Source – www.infox.ru/business/career/2010/04/02/Gosduma_mozhyet_zapr.phtml.*

Announcements about vacancies of discriminatory content are not the only mistake of the employer, for which he can pay. Other violations are also common, which can also be used by a candidate for office when applying to the court. This is the requirement of the employer to provide documents not provided for by law, and forcing applicants to undergo preliminary medical examinations that are not established by law (often at their own expense!), And conducting interviews, tests, etc. with the use of questions not related to the professional competence of the applicant (for example, about personal life and relationships in the family, the intention to acquire children, etc.), and much more. So, when hiring an employer, the employer has the right to demand only the documents listed in art. 65 of the LC RF. To force the employee to provide any other documents, such as references, characteristics, letters of recommendation, receipts, obligations, etc., the law prohibits (part 3 of Article 65 of the LC

RF). The list of documents necessary for employment can be expanded, but not by the employer, but only by the Labor Code of the Russian Federation, other federal laws, decrees of the President of the Russian Federation and resolutions of the Government of the Russian Federation (see Part 2, Article 65 of the LC RF).

Another reason why applicants for a job is often denied is the lack of a “propiska” – this is especially common in Moscow, St. Petersburg and other large cities. Particular attention is paid to this fact in paragraph 11 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 2 of March 17, 2004, which emphasizes that the employer’s refusal to enter into an employment contract with a person who is a citizen of the Russian Federation on the grounds of his lack of registration at his place of residence, stay or at the location of the employer is illegal because it violates the right of citizens of the Russian Federation to freedom of movement, the choice of a place of residence and residence guaranteed by Part 1 of Art. 27 of the Constitution of the Russian Federation, the Law of the Russian Federation of 25.06.1993 No. 5242-1 “On the right of citizens of the Russian Federation to freedom of movement, choice of place of residence and residence within the Russian Federation”, and also contradicts Part 2 of Art. 64 of the RF Labor Code, which prohibits restricting rights or establishing any advantages when concluding an employment contract on the basis specified.

The restrictions established by the legislation are not considered discrimination, and the employer is obliged to observe them

# Gender Discrimination

Particularly often, women are biased against the employer’s prejudiced attitude, which is understandable. According to Russian legislation, employees with children and pregnant women are guaranteed quite substantial benefits, and many employers try to avoid the additional hassle and financial costs of providing them. Apparently, therefore, in our country, it is still suggested to fill out a “questionnaire” or “personal leaflet” that has long been recognized outside the law, where all personal and family information appears, and then they decide to admit the applicant for a vacancy for the interview (interview) or other qualifying events. Often during the interview, HR staff are interested in the relationship of the applicant with the spouse or the reasons for the divorce, motivating it with a production need because “Revealing the character traits” and other personal qualities of this kind is necessary to fulfil the labour function (working with people, customer service, etc.). At the same time, not all employees of the HR department have the professional knowledge and skills of a diagnostic psychologist and can make an objective psychological portrait of the applicant. The employer has no right to refuse to apply for employment if the candidate has not filled out the “personal leaf” with family details, did not want to respond to tactless questions or provide a document on the marital status, the presence of children or a certificate of absence of pregnancy, as well as undergo a preliminary medical examination on the object of its detection.

Absolutely impermissible, not only from a legal but also from a moral and ethical point of view, is the

practice that has spread over the past 10-15 years to require women who work for women to “subscribe” to refuse to marry and become pregnant, and if this happens – a guarantee immediately resign at will! Similar actions of the employer (or personnel services) are illegal. violate the guarantees established by Article 261 of the LC RF. Even if the woman gave such a receipt and then became pregnant and dismissed, as she promised, she did not write, she has no legal consequences for her, and you can not dismiss this employee against her will (except for the case of liquidation of the organization and termination of the activity of the individual entrepreneur).

# Age Discrimination

In order to avoid accusations of discrimination, the refusal to hire “unsuitable” applicants should be based on objective professional and qualification motives

One of the most common causes of discrimination in the workplace is the age of the employee (both for women and men), and the employee may be “too young” or “too old” for the employer. As a rule, they prefer “young professionals with work experience”, but where is the experience if they do not take to work without him? And time does not wait, and age is inexorably approaching the “ceiling”! Of course, this problem often occurs in industries where the employer has a choice, i.e., the number of candidates that are proposed is significantly higher than the number of vacancies. Studies show that the most “young” economic sectors are the sales sector (one of the most popular on the labour market), where practically no employees are over 45 years old, and the IT industry, where the number of such employees does not exceed 5%. This is explained by the fact that in these sectors, originality and the ability to take risks in decision-making are especially valued, which is more characteristic of young employees. According to the research centre of the portal Superjob.ru, the “adult” of all analyzed industries turned out to be construction (20%), where preference is given to experienced workers with a high level of executive discipline and professional skills, which, as a rule, is achieved already in adulthood. In any case, when making their choice, a visionary and rational employer will take into account and weigh the pros and cons and choose the most worthy and suitable candidate for this position. And this is his lawful right, based on the principle of voluntariness in entering into contractual relations. However, as in the cases mentioned above, in order to avoid an accusation of discrimination, the refusal to hire “unsuitable” applicants should be based on objective professional and qualification motives.

# What Is Discrimination

Discrimination means unequal treatment, unjustified by objective reasons and unreasonable. Each such action is a violation of the principle of the same attitude and is a violation of fundamental human rights and freedoms.

# Direct Discrimination

Direct discrimination occurs when the relationship to a person was, is or might be less favourable than to other persons in a similar situation due to their racial or ethnic origin, religion or religion, and gender, disability, age or sexual orientation. For example, a job announcement clearly indicates that persons other than Polish nationality will not be accepted.

In practice, this form of discrimination is rather rare, with a more frequent form of indirect discrimination. Other forms of unequal treatment are harassment and discrimination through association.

# Indirect Discrimination

Indirect discrimination occurs when a neutral, at first-glance, rule of law or action in practice leads to an unfavourable situation for a person or a certain group of persons compared to other persons, legally and objectively unreasonable, and the means serving this purpose are not proportional and inevitable. For example, during a conversation about employment, questions are asked that are unrelated to the nature of this work on the history and traditions of Poland, which for people of nationality other than Polish can be particularly difficult due to ignorance of Polish culture.

# Discrimination Through Association

The use of discriminatory practices against a person who does not possess features and features that are legally protected but can also be recognized or associated with a discriminated group. Also, “communication” with a person different from this feature may be grounds for discrimination. For example, the wife of a black man may be discriminated against at work because of the colour of his partner’s skin.

# Harassment

This behaviour, the purpose or result of which is the humiliation of the dignity or insult of a person and the creation of a threatening, hostile and degrading atmosphere towards him. For example, an employee from an Eastern country is the object of humiliating jokes about his appearance, accent, and origin.

# Multiple Discrimination

When someone is a victim of discrimination on several grounds – for example, it is not only bad about

race but also about gender. An example might be a woman from Asia who is offered a lower-paid job despite the fact that she has sufficient qualifications for working in a higher position, but this work is received by a male with a lower skill than a Pole.

## Positive Discrimination

Positive discrimination means that the state applies some temporary solutions, takes actions or introduces certain legal measures aimed at equalizing the capabilities of persons belonging to certain minority groups, for example, people of a different nationality, to reduce the actual inequality to which these persons are exposed. Such discrimination is allowed, but it can be used only in a certain period of time, because it can degenerate into discrimination of persons belonging to majority groups, previously privileged.

## Examples Of Discrimination

- Refusal to employ a person of another ethnic origin who has the required qualifications at the job at the same level or higher in comparison with other candidates.
- Refusal to hire an apartment just because it is a person of a different nationality.
- Degrading, offensive treatment of a person with a different skin colour by means of his scourging, mockery, molestation or physical integrity violation.
- Refusal to enter the club, restaurant, shop, etc., a person of a different ethnic origin.

## Exceptions To The Principle Of Equal Treatment

It is possible to abandon the principle of equal treatment – in the field of employment. In the case when the specificity of this profession requires that the candidate meet certain requirements, that is, he was not of a different race, he spoke the language, had a certain religion, the difference in attitude is not discrimination. For example, this role in the film requires a man – Asian, fluent in Vietnamese, or, for example, in a restaurant offering a typical cuisine for a given culture, it requires a waiter of a certain appearance that emphasizes the authenticity of this place.

## T Reception To Work

Turning to any media publishing employer’s vacancies, whether it is a printed publication or an Internet site, we will see a large number of claims made to the applicants. Few people think about the nature of some ubiquitous requirements. And many of them are discriminatory and can not be produced by law. Thus, any direct or indirect restriction of rights or the establishment of advantages in concluding an employment contract are prohibited, depending on circumstances not related to the employee’s business qualities-sex, race, colour, nationality, language, origin, property, social and

official position, age, place of residence (including the presence or absence of registration at the place of residence or residence), etc. (Part 2, Article 64 of the LC RF).

## And What In Practice?

A lot of job advertisements contain age requirements for candidates, setting either an upper age limit, a lower one, or both at once. Candidates that go beyond the age requirements are denied employment, thereby discriminating. However, the business qualities of employees do not depend on their age; even a young man can have the necessary skills and qualifications. At the same time, in all more or less developed countries, the ageing of the skilled labour force is observed, and employers, together with the authorities and workers' representatives, are adjusting approaches to regulating labour relations, restructuring them taking into account the peculiarities of the organization of work of older workers. The age requirements of candidates for employment are discriminatory and unacceptable.

Many employers make demands on the gender of the candidate, and for this reason, they refuse to apply for a job. This is also a manifestation of discrimination, except for cases where gender-related restrictions are related to work characteristics (for example, men are required to perform difficult or dangerous jobs where the employment of women is restricted by law).

In many cases, when applying for employment, restrictions apply depending on the place of residence. For example, in the Moscow region, there is often a requirement for permanent residence registration in Moscow or the Moscow Region. This is also a discrimination of candidates.

Quite often, employers refuse to hire women on motives related to pregnancy and the presence of children. Typically, such requirements for candidates are not published in job advertisements but are communicated verbally – despite the provisions of Part 3 of Art. 64 of the RF Labor Code prohibiting the refusal to hire women for these reasons.

In addition, there are cases of refusals in hiring young women who do not have children. The logic of employers: once there are no children, they will soon appear, and the employee will interrupt the work activity and go on a "maternity leave".

There are other restrictions when hiring, not related to the employee's business qualities. Thus, even before the conclusion of the employment contract, a citizen can already face discrimination in the world of work.

## In The Field Of Payment Of Labor

Any discrimination in establishing and changing the terms of payment for an employee is prohibited, and the salary may depend only on his qualifications, the complexity of the work performed, and the

quantity and quality of the labour expended (Article 132 of the LC RF). The employer is obliged to provide employees with equal pay for work of equal value (Part 2, Article 22 of the LC RF). In practice, very often, these legal norms are violated.

Wage systems, including various personal allowances, which constitute an essential part of the salary, were widely spread. Often, employers seek to establish vague criteria for such payments – so that it is possible to limit the payment at their discretion. In other cases, payments are based on criteria for which the employer can artificially create an inability to comply with them. As a result, this part of the salary is used as a "whip" for workers who are unsuitable for any subjective reasons. For example, many trade unionists who face harassment by their employers for their trade union activities feel themselves discriminated against in their pay, although they conscientiously work on par with other workers.

There are cases of setting a lower official salary for the employee during the probationary period, which is not stipulated by labour legislation and is a discriminatory restriction.

There are cases of employers trying to "stimulate" the conclusion of fixed-term employment contracts by setting higher wages for those working under fixed-term contracts compared to the same employees who do the same work but have concluded employment contracts for an indefinite period.

There have also been cases of an increase in the salary of all employees of the organization, except for those who were to be dismissed due to the reduction in the number of staff. All this is equal to discrimination in the field of labour remuneration.

# Other Types Of Discrimination In Labor Relations

Discrimination of employees is widespread when they are brought to disciplinary and financial responsibility. This is expressed in the fact that employers – regardless of the business qualities of employees, the degree of their guilt in committing a disciplinary offence or in causing material damage and other objective circumstances – apply different measures to employees based on certain characteristics. Again, we will give an example related to the pro-activists and members of the trade union. In the conditions of an anti-union campaign unleashed by the employer at the enterprise, the same violation committed under the same circumstances by a member of the trade union and an employee who is not a member of the trade union may entail the maximum severe punishment for the former and does not entail any consequences for the second. At the same time, from the point of view of the law, recruiting an employee to disciplinary responsibility is a right and not an obligation of the employer, and he has the right, at his discretion, to punish or release from disciplinary responsibility employees who committed violations of labour discipline.

Discrimination of employees in promotion is often encountered when the provision of benefits or the restriction of career development of employees is not due to their business qualities or contribution to work but to any other properties (good personal relations with the manager, execution of instructions

outside the employment relationship, participation in discrimination of unwanted workers, etc.).

There are also cases of discrimination when employees are laid off. For example, it happened that when the employer decided to reduce the number or staff, the list of posts excluded from the staff list was mainly occupied by positions occupied by trade union members and pro-active workers, while the positions of other employees were at the same time intact.

There are other examples of discriminatory actions against workers.

# Combating Discrimination

The labour legislation of the Russian Federation contains many norms designed to protect workers from discrimination and the arbitrariness of the employer. In addition, to the norms directly prohibiting discrimination, this is both an exhaustive list of grounds for dismissal at the initiative of the employer and procedures for such dismissal and a list of grounds for dismissal and the participation of the trade union in considering various issues, etc. But the difficulty of combating discrimination lies in the fact that employers, in most cases, hide their discriminatory actions under the guise of legal procedures, creating the illusion of legality, which makes it extremely difficult to prove the facts of discrimination.

Consider ways to combat discrimination, which provides workers with current legislation.

In accordance with Part 4 of Art. 3 of the LC RF, persons who consider that they have been subjected to discrimination in the sphere of work have the right to apply to the court for the restoration of violated rights, compensation of material and compensation for moral harm.

When applying to the court on the facts of discrimination concealed or masked by the employer for legitimate actions, workers and their representatives have to rely on a comparison of the employer's actions against the discriminated employee and against other workers who are in the same conditions but who are not discriminated against in order to prove discrimination.

When applying to a court, it is necessary to meet the deadline set by law. An employee has the right to apply to the court for the resolution of an individual labour dispute (including on the grounds of discrimination) within three months from the day when he learned or should have learned about the violation of his right; if the discrimination is expressed in illegal dismissal – within one month from the date of delivery of a copy of the dismissal order or from the date of issue of the work record book (part 1 of article 392 of the Labor Code of the Russian Federation).

Another way to combat discrimination is to contact prosecutors. The prosecutor's office, which is a system of bodies responsible for supervising the observance of the Constitution of the Russian Federation and the implementation of all existing laws, is obliged to respond to reports of violations of the rights of citizens, including reports of discrimination in the world of work. Having checked the

information on the facts of discrimination, the prosecutor's office can issue to the employer a compulsory instruction to eliminate violations. In addition, the prosecutor may initiate a case of an administrative offence under art. 5.62 of the Administrative Code of the Russian Federation, which establishes liability for discrimination. The Prosecutor's Office may also initiate a criminal case against the offender under art. 136 of the Criminal Code of the Russian Federation "Violation of the equality of rights and freedoms of man and citizen."

Trade unions, having considerable powers to participate in the regulation of social and labor relations, in making decisions by employers, in approving various local regulations, also have certain opportunities to combat discrimination in the world of work. When examining collective agreements, local regulations, trade unions should identify mechanisms and schemes that the employer can use to discriminate against or conceal workers, require that such acts be brought into line with the fundamental principles of equality of opportunity for the exercise of labor rights, the prohibition of discrimination; to demand the establishment of clear, inseparably connected with the business qualities of the employee criteria for applying any restrictions or preferences.

# Everyone Has Equal Opportunities To Exercise Their Labor Rights.

No one may be restricted in labour rights and freedoms or receive any benefits depending on sex, race, colour, nationality, language, origin, property, family, social and official status, age, place of residence, attitude to religion, beliefs, affiliation or non-belonging to public associations or any social groups, as well as from other circumstances not related to the employee's business qualities.

The establishment of differences, exceptions, and preferences, as well as the restriction of the rights of employees determined by the requirements of the type of labour established by federal law, is not discrimination or is due to the special care of the state about persons requiring increased social and legal protection, or are established in accordance with the law on the legal status of foreign citizens in the Russian Federation with a view to ensuring national security, maintaining an optimal balance of labour Russia, assistance in the priority order of employment of citizens of the Russian Federation and with a view to solving other tasks of the internal and foreign policy of the state.

Persons who believe that they have been discriminated against in the sphere of work have the right to apply to the court for the restoration of violated rights, compensation for material damage and compensation for moral harm.

# A Comment:

In Russian legislation, there are a number of clearly defined guarantees that are given to the entire working population of the country. In particular, according to Article 3 of the Labor Code of the

Russian Federation, everyone has equal opportunities to exercise their labour rights, regardless of gender, nationality, age and other qualities that are not professional. Nevertheless, Russian employers often arrange detailed interviews with applicants or questionnaires, which clarify the issues of propiska, religious beliefs, nationality of family members, etc. Is this right? What threatens the leaders of Russian companies if they are suspected of discrimination in labour?

## Discrimination And Reasonable Selection: What Is The Difference

No one may be restricted in labour rights and freedoms or receive any benefits regardless of sex, race, colour, nationality, language, origin, property, family, social and official status, age, place of residence, attitude to religion, political beliefs, affiliation or non-belonging to public associations, as well as from other circumstances not related to the employee's business qualities. Persons who consider that they have been subjected to discrimination in the sphere of labour have the right to apply to the court for the restoration of violated rights, compensation for pecuniary damage and compensation for moral harm (Article 3 of the Labor Code of the Russian Federation).

Directly, the Labor Code does not fix the notion of "discrimination"; however, this gap is filled with Article 5.62 of the Code of Administrative Offenses. Discrimination is a violation of the rights, freedoms and legitimate interests of a person and citizen, depending on his gender, race, nationality, language, origin, property and official position, place of residence, attitude to religion, beliefs, membership in public associations or any social groups. This administrative offense entails the imposition of an administrative fine on citizens in the amount of one thousand to three thousand rubles; on legal entities – from 50 to 100 thousand rubles. In the event that the specified act is committed by a person using his official position, a misdemeanour is qualified as a crime and punished according to article 136 of the Criminal Code of the Russian Federation with a fine in the amount of 100 to 300 thousand rubles or in the amount of the salary or other income of the convicted person for a period from one year to two years, or deprivation of the right to hold certain positions or engage in certain activities for up to five years, or compulsory work for up to four hundred and eighty hours, or correctional bots for up to two years, or forced labour for up to five years, or imprisonment for the same period. When establishing the fact of discrimination, the norms of Article 3 can not be considered separately from Articles 2, 21 and 64 of the Labor Code.

## Article 64 Of The Labor Code Of The Russian Federation:

"Unreasonable refusal to conclude an employment contract is prohibited." The modern labour market dictates strict rules, which can be fully described as consumer ones. At every step, we have ads with obvious signs of discrimination. For example, it is very difficult to get a job for people of pre-

retirement age, as well as for pregnant women.

In fact, employers in this situation can also understand that they need people who are able to properly and competently organize work and carry out assigned tasks without disruptions and transfers, and young age (up to 30-40 years) is the ability to do work quickly.

According to Russian legislation, the refusal to apply for a job due to lack of residence permit or age is illegal, as it contradicts Article 3 of the Labor Code of the Russian Federation, and the perpetrators can be held accountable. Thus, persons who consider that they have been discriminated against in the workplace can apply to the labour inspectorate or directly go to court with a request for restoration of violated rights, compensation for material damage and compensation for moral damage.

Starting with the most important law of our state – paragraph 2 of Article 6 and paragraph 2 of Article 19 of the Constitution of the RF – for citizens of the Russian Federation, equality of all rights and obligations is enshrined, including the right to work and equal remuneration for it (Article 37 of the Constitution of the Russian Federation); and discrimination is prohibited. The same provisions are contained both in Article 3 and Article 64 of the Labor Code of the Russian Federation, which will be discussed below. According to these articles, no one can be restricted in labour rights and freedoms or receive any benefits regardless of sex, race, colour, nationality, language, origin, property, family, social and official status, age, place of residence, attitude to religion, political opinion, membership or non-belonging to public associations, as well as from other circumstances not related to the employee's business qualities. This is also stated in Article 5 of the RF Law of April 19, 1991, "On Employment of the Population in the Russian Federation".

In paragraph 10 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of March 17, 2004 No. 2 "On the application by the courts of the Russian Federation of the Labor Code of the Russian Federation," it is indicated that when considering disputes related to refusal of employment, it must be borne in mind that labor is free and everyone has the right to freely dispose of their abilities to work, to choose the kind of activity and profession, and to have equal opportunities to enter into an employment contract without any discrimination, i.e. any direct or indirect restriction of rights or the establishment of direct or indirect advantages in concluding an employment contract depending on sex, race, color, nationality, language, origin, property, family, social and official status, age, place of residence including the presence or absence of registration at the place of residence or residence), as well as other circumstances not related to the business qualities of employees, except for cases provided for by federal law (one hundred 19, 37 of the Constitution of the Russian Federation, articles 2, 3, 64 of the Code, article 1 of ILO Convention No. 111 of 1958 on discrimination in employment and occupation, ratified by the Decree of the Presidium of the Supreme Soviet of the USSR of January 31, 1961).

Also, the Supreme Court of the Russian Federation pointed out that when considering cases of this category in order to optimally coordinate the interests of the employer and the person wishing to

conclude an employment contract and bearing in mind that, on the basis of the contents of Article 8, Part 1 of Article 34, Parts 1 and 2 of Article 35 of the Constitution of the Russian Federation and the paragraph of the second part of the first part of Article 22 of the Code, the employer, for the purposes of effective economic activity and rational management of property independently, assumes the necessary personnel decisions (selection, placement, dismissal and the conclusion of an employment contract with a specific person looking for work is a right, and not an obligation of the employer, and also that the Code does not contain rules requiring the employer to fill vacant posts or jobs immediately as they arise, it is necessary to check whether the employer proposes vacancies available to him (for example, the message about vacancies is transferred to the employment service bodies, placed in the newspaper, announced by radio, announced during speeches to graduates of educational institutions, zmescheno on a bulletin board), there were talks about a job with the person and on what grounds it was denied an employment contract.

At the same time, it is necessary to take into account that it is forbidden to refuse to conclude an employment contract on circumstances that are discriminatory, including those based on age.

If the court finds that the employer has refused to apply for employment due to circumstances related to the business qualities of the employee, such a refusal is justified.

Under the business qualities of the employee, in particular, it is necessary to understand the ability of an individual to perform a certain work function, taking into account his professional qualifications (for example, the presence of a certain profession, speciality, or qualification), personal qualities of the employee (for example, health status, the presence of a certain level education, work experience in this speciality, in this industry).

In addition, the employer has the right to present to the person claiming the vacant post or work other requirements that are mandatory for entering into an employment contract by virtue of a direct federal law order or which are necessary in addition to typical or typical vocational qualifications due to the specifics of that or Other work (for example, owning one or several foreign languages, the ability to work on a computer).

# Where Can The “Offended” Applicants Go?

As they say, warned – it means armed. Therefore, it is important for managers to know where specialists will go if they suspect that they were denied due to discrimination and not because they do not meet the qualifications and professional requirements.

Victims of discrimination can go to two places at once: to the labour inspectorate with a complaint against a particular employer and to a court with a statement of violation of rights by the company. Compose these papers “offended” in free form, outlining the essence of the problem. As evidence, a specialist can produce voice recordings of interviews, official written refusals from the employer, and testimony. Witnesses can serve other job seekers, security guards, watchmen, office managers, and

secretaries of the company that refused them. The applicant can also intentionally take with him to the interview a particular person who will then tell all the judges. It can be a close friend of the competitor.

If workers are discriminated against in the workplace, for example, by sex in determining their wages or while moving up the career ladder, they can use, apart from applying to the GIT and the courts, the trade union system to protect their rights, or to exercise the right to self-defence. In some cases (for example, in violation of the principle of fairness of payment of wages) an effective method of protection will be to contact the Prosecutor's Office at the location of the employer.

Despite the fact that the current labour law treats the "employee-employer" attitude as the main thing, considering all arising disputes primarily as individual (chapter 60 of the TC), public authorities, in particular the Prosecutor's Office of the Russian Federation, the courts, can point to mass violation of the principle of non-discrimination. Thus, the measures of the prosecutor's reaction can be applied in the event that by their actions, the employer or the state body violates the rights of an indefinite circle of persons, even if no complaints have been received regarding these violations. Both the Prosecutor's Office and the courts can point out the existence of norms in the current labour and related legislation that violate general legal, constitutional, sectoral and intersectoral principles and create conditions for discrimination on certain grounds.

# What To Fear For Employers

Sooner or later, one of such applicants who consider that they were not employed because of discrimination can have the strength, the will and the means to defend their rights in court. This can threaten the "caught" company with heavy fines and loss of reputation (most likely, even more important is the second). Therefore, employers should be careful about discrimination.

1. In the search for employees, one should not place categorical language such as "only a man is required", "we search exclusively for Muscovites", "strictly up to 40 years", etc.
2. If one or another specialist does not suit you at the interview because he is too young (old) or registered in another city, you do not need to talk about it directly. An experienced personnel officer can always come up with a really reasonable reason for refusal. The same can be said about written refusals.
3. It is best to write off general polite phrases that will make it clear that the employee has not been accepted, but not by gender, age or nationality. In written refusals, you can also thank the applicant for the fact that he addressed specifically to you in order to create a positive attitude towards your company in the future.
4. The system of payment, rationing of labor, bonuses and motivation of employees, the criteria by which employees receive promotions should be as specific and transparent as possible. The conditionalities, ambiguities and delinquencies that are usually present in labour relations, even those allowed for good, can lead to sad consequences for the employee and for the employer,

with a change in the situation.

5. Employees of human resources and legal services should be prevented from manifestations of discrimination, as well as any other violations of the law in the enterprise since they are ultimately responsible for the company's legally flawless work.

As examples of judicial decisions made by a number of courts in cases of discrimination, the following cases should be brought:

1. The court decided that the failure of the plaintiff to ensure the same system of remuneration (official salary), as well as to other masters who have the same duties, fixed in the same job description, only because he did not perform within the established duration of the shift along with the work defined by the employment contract, additional work for another profession without additional payment, is one of the forms of discrimination in paying for equal work and violates the constitutional rights of the plaintiff. (Decision of the Kineshma City Court of the Ivanovo Region dated July 7, 2010, in the case No. 2-1097 / 2010, SE Novikov v. KAEiSi.)

Discrimination against himself, the plaintiff saw in that, for some time on his own initiative, besides his work, he performed the duties of another post. However, he was not officially registered in another position, although for the given work, he, as well as two other workers with whom additional agreements were concluded, carried out a time-piece payment. Then, the surcharge was stopped, although the plaintiff continued to carry out this work and asked for it to be documented. The employer naturally did not react to his requests but soon sent it off to a simple one.

The defendant's representative did not provide any evidence that the plaintiff has lower qualifications, business qualities than the other masters of this site, the plaintiff was also not brought to disciplinary responsibility. The plaintiff's description of the case, compiled by the chief of the plot, does not confirm this, the court considers this characteristic biased, since no other evidence is confirmed. Therefore, the court found the difference in the salary of the plaintiff in comparison with the rest of the masters discriminatory.

According to the order of the general director of KAYAiCi LLC, the plaintiff was sent to the whole downtime with the payment of the idle time at the rate of 2/3 of the average earnings, as indicated in the order in connection with the decrease in production volumes. The representative of the defendant did not provide evidence to the court that there was a suspension of work at the site where the plaintiff worked, and the order could not be considered as evidence. Under such conditions, the order of the general director of LLC "KeyAiCi" to send a simple plaintiff only is not legal and further confirms that there is discrimination against the plaintiff. The court pointed out that as evidence of discrimination, both written evidence (motivated refusal to hire a job, announcement of recruitment in the mass media) and testimony can be submitted. (Decision of Novozybkovsky Municipal Court of Bryansk Region in case No. 2-1137 / 2012 ~ M-1096/2012, Ushakova EA against NSP Novozybkovsky Post Office)

Ushakova E.A. appealed to the court with a lawsuit against OSP Novozybkovsky post office AFPS

Bryansk region on the recognition of illegal denial of employment, the conclusion of an employment contract and compensation for moral harm.

Representative of the OSP defendant Novozybkovsky post office of the Federal Border Service of the Bryansk region Tsybulsky SN considers the claims to be unfounded since the employment of the employment service does not entail the employer's obligation to conclude an employment contract with the employee.

In the court session, it was established that the plaintiff, Ushakov, since June 5, 2012, has been registered in the State Employment Center "Novozybkov employment centre of the city" as unemployed, which is confirmed by the personal record card of the citizen looking for work. On July 10, 2012, when registering, Ushakova EA, having familiarized herself with the vacancy bank, asked the inspector EM Burdyko. give her a referral to work in the Novozybkovsky post office of the AFPS of the Bryansk region as a postal operator, which was done. However, such work was not for the plaintiff, who graduated from medical college and worked as a paramedic for 5 months, suitable, since it does not correspond to her qualifications.

As of July 1, 2012, there were three vacancies for the postal service operator, one of which was temporary. On July 13, 2012, a labour contract was concluded with Nesterova, which was accepted permanently for the post of the postal service operator of the 3rd class.

The plaintiff turned to the personnel department, and leading engineer Novikov O.S. said that she needed to pass an internship and sent her to the post office Novozybkov. She was offered an internship at any time convenient for her, and she was trained for three days – 11, 13 and 16 July 2012.

In accordance with Part 1 of Art. 26 of the RF Law No. 1032-1 of April 19, 1991, the employer has the right to employ citizens who directly apply to him on an equal footing with citizens who have the direction of employment service bodies. Thus, the direction of the employment service does not oblige the employer to conclude an employment contract and does not create any advantages for the applicant.

The court does not provide evidence of a probationary internship in the organization of the defendant since the internship (training) involves the conclusion of the student's contract and the availability of labour relations. This is confirmed by the testimony: all applicants who applied to the post office in view of the high staff turnover, are invited to familiarize themselves with the nature of the work and with the workplace at a convenient time for the applicant. At the same time, such familiarization with an internship or actual admission to work is not because the contract of financial responsibility is not concluded, and the applicant does not receive personal access to the computer system of the post office.

In the court session, it was established that with Ushakova EA., in fact, negotiations were held to recruit her, but she was refused on circumstances that were not discriminatory.

At the request of the plaintiff, on August 15, 2012, she was given a written refusal in employment, from which it follows that the conclusion of the employment contract is denied since the main employee, Burdyko M.V., expressed a desire to interrupt the leave to care for the child and in September 2012 to go to work. In accordance with the order of 17.09.2012 Burdyko OS. really began work on 17.09.2012. As follows from the explanations of the representative of the defendant, not wanting to show disrespect to the plaintiff, the letter does not specify the second reason for refusal to conclude an employment contract – the discrepancy of the applicant's business qualities with the conditions and nature of the work. The court agrees with the arguments of the defendant and believes that the refusal to hire is correct and does not detract from the dignity of the plaintiff. The court found that the refusal to apply for a job due to the child's employer is discriminatory.

In the Barguzinsky District Court, the Republic of Bashkortostan filed a lawsuit with Solominskaya AA. to the SDSU "Rosinka" about the recognition of the refusal to hire an unreasonable worker, the restoration of the violated labour rights by imposing the obligation to conclude an employment contract from the day of applying to the Municipal Administration "Education" AMO "Kurumkansky district", compensation for the moral damage caused to her in the amount of "…… .. "rubles.

As follows from the materials of the case from 22.08.2012. A vacancy appeared at the MBDUU SDS "Rosinka" on the indicated tutor.

The head explained that the MBDU needs a teacher with a diploma of education and the skills to work with a computer and other equipment. However, Ochirova O.S. recruited "……" and ".……", employees without appropriate education.

At the time of filing on 02.10.2012, a written application of Solominskaya AA. on employment in the MU "Education Department" for the position of educator from the employer – MBDU Sakhalin kindergarten "Rosinka" had no vacancy for this position, since by order No. 55 dated 17.09.2012, S. was accepted to the post.

Despite this fact, applicants M. and K. filed written applications for employment for the position of educator on September 27, 12 and September 28, 12, in the MBDU SDS Rosinka. The court found that the plaintiff appealed to the head of the MBDU Ochirova OS. on employment in the oral order in September 2012.

02.10.2012 years Solominskaya A.A. appealed to MU "Education Department" administration of the Ministry of Defense "Kurumkansky District" on her admission to work at the MBDUU Sakhalin kindergarten "Rosinka" as a tutor due to the fact that the head of the MBDU Ochirova OS. refuses her request because of the conflict. Head of the MU "Education Department" Zhanaev Zh-Zh. was instructed on 02.10.2012 to deal with the conflict situation.

The Commission of Service investigation of MU "Management of Education" found that Solominskaya AA. I did not write a written application for employment. 3 persons applied for the post of educator; these candidates were considered at the meeting of the work collective and at the parents' meeting.

According to the decision of the meeting, 0.5 M and K rates were accepted for the post of educator. Ochirova O.S. in explanatory to the name of the head of the MU “Education Administration” pointed out that Solominskaya AA. Not accepted for work due to the fact that a written statement from Solominskaya AA. there was no recruitment, she does not have a pedagogical preschool education, she has a minor child under 1 year old. The collective of the MBDU, as well as the parents of the pupils against its candidacy. In accordance with Art. 65 of the Labor Code of the Russian Federation, the employer has the right to refuse since Solominskaya AA does not correspond to the qualification category and the requirements of the preceptor.

After the dismissal of S. on 15.10.2012, M. and K. were accepted to the post of tutor by 0.5 rates. (Order No. 59 of 15.10.12, Order No. 60 of 15.10.12). Employees of the MBDUU SDS “Rosinka” were appointed to the position of these individuals because M. is studying in the speciality “Preschool education” for correspondence education, and K has higher education. As established by the court during the trial, the head of the MBDUU Sakhalin kindergarten “Rosinka” Ochirova OS. was satisfied with Solominskaya AA’s statement. refused, motivating the refusal by the fact that the applicant does not have a corresponding pedagogical education, and a minor child is dependent on them.

According to Art. 64 of the Labor Code of the Russian Federation is prohibited from refusing to conclude an employment contract for women on motives related to pregnancy or the presence of children. Therefore, the court decided to recognize the refusal of the MBDU Sakhalin kindergarten “Rosinka” in the employment of unreasonable and collected compensation for non-pecuniary damage in favour of Solominskaya Anna Alexandrovna in the amount of thousand rubles.

Since the court does not have the right, in this case, to decide whether it is advisable to fill vacancies in certain terms by one or another of the applicants, the claim for forcing the SDSU of the SDS “Rosinka” to enter into the employment contract is denied.

# Global Problem Solving

The reasons, however, as well as the consequence of all sorts of discriminatory restrictions on hiring, arise because there are dishonest employers and dishonourable workers. Each medal has two sides. Take, for example, the issue of employment of a pregnant woman.

On the one hand, the employer is obliged, if she has the necessary qualifications, to take her to work, even though she will then have to provide and, therefore, pay for maternity leave. If it is a small company, it can affect its payroll, hanging another type of company’s expenses. Again, if it were a long-time employee of a company that has worked well in its work, I think that the employer would have fewer questions about what all these restrictions are to him. So, he actually has to hire a “cat in a sack” because how well it will be for the employee to perform his duties for a short time before delivery and then after the birth is still unknown, and it is forbidden to establish a probation period by the Labor Code.

On the other hand, there are cases when women knowingly conceal their pregnancy when they are employed in order to provide themselves with “income” in a few months in the form of payment for maternity leave. At the same time, there is no real goal to work.

Currently, employers under Article 419 of the Labor Code of the Russian Federation for violations of labour laws are involved in civil, administrative and even criminal proceedings. In particular, for an unreasonable refusal to hire a woman or unjustified dismissal of a woman on grounds of her pregnancy, as well as an unreasonable refusal to hire or unjustified dismissal from work of a woman with children under the age of three, the employer (head of the organization, individual entrepreneur) shall be punished with a fine of up to 200 thousand rubles or in the amount of the wage or other income of the convicted person for a period up to 18 months or by compulsory labour for up to 360 hours (Article 145 of the Criminal Code of the Russian Federation). For other violations under Article 5.27 of the Code of Administrative Offenses of the Russian Federation, an administrative fine is imposed on officials in the amount of 1 to 5 thousand rubles; on persons engaged in entrepreneurial activities without the formation of a legal entity – from 1 to 5 thousand rubles or administrative suspension of activities for up to 90 days; on legal entities – from 35 to 50 thousand rubles or administrative suspension of activities for up to 90 days.

Despite this, the facts of discrimination in hiring exist, exist, and, most likely, will exist until our society goes to more civilized labour relations, and applicants will not learn to competently defend their rights. After all, few even know that at the request of the applicant, the employer is obliged to give a written explanation of the refusal to apply for a job. In the meantime, the staff of employers have to attend seminars dedicated to, among other things, how to “correctly” refuse to apply for employment and potential employees – to hope for the decency of employers.

Affected by discrimination, the applicant, as you can see, can prove a violation of rights and get a refund in court. The plaintiff must provide evidence and the employer-relevant explanations. The court may demand documents requiring an assessment of the legitimacy of the claims being filed.

Both the job seekers and employers lack the legal culture, legal education, and even some basic base. If both of them knew their rights and duties, the problems of discrimination simply would not exist. Both candidates and employers need to study the Labor Code of the Russian Federation.

And this already threatens not only the deteriorated attitude of consumers to the firm but also the deterioration of relations with partners, especially foreign ones.

Employers, in turn, need to clearly understand the difference between reasonable professional requirements and discrimination. Having studied the laws, they will also understand that not only loss of reputation but also criminal responsibility can threaten them with discrimination.