

16.12.2015

Anton Kabakov

# TEMPORARY STAFF AND STAFFING FROM 2016 ONWARDS



*150 professionals at your service*

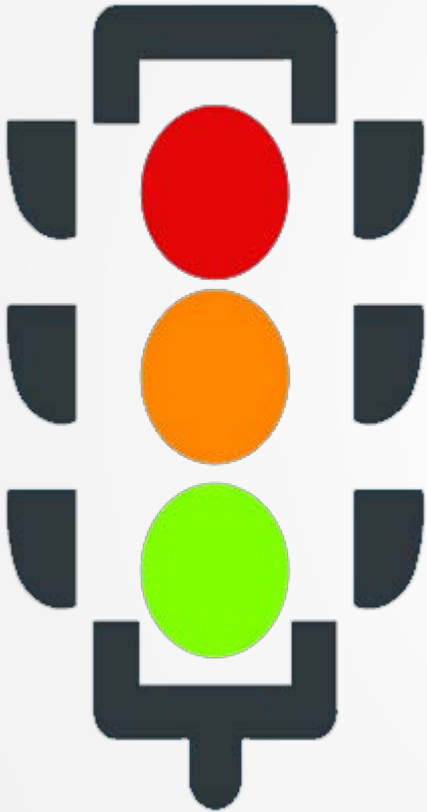
*Offices in Moscow, Saint Petersburg, Tver, and Helsinki*



# Did agency work exist before 2014?

- ✓ Widely used in practice
- ✓ No regulation
- ✓ Risk of recognition of agency work as employment
- ✓ Risk of claims from immigration authorities against the host company

# Main points of the new law



Prohibition of agency work



Secondment under question



Permitted:

- ✓ Private employment agencies (agency staff)
- ✓ Outsourcing

# Differences between agency staff, secondment and outsourcing

	<b>Agency staff</b>	<b>Secondment</b>	<b>Outsourcing</b>
<b>Contractor is responsible for</b>	Staff quality	Staff quality	Result
<b>Employees supervised and managed by</b>	Client	Client	Contractor
<b>Employees provided by</b>	Private employment agency	Affiliate	Private employment agency / any entity

# Who is entitled to provide agency staff?

- ❑ Russian companies – private employment agencies
- ❑ Do not apply special tax regimes
- ❑ Accreditation:
  - *Share capital of at least RUB 1 million*
  - *No tax arrears, etc.*
  - *Head with higher education and special work experience*
  - *Head with no records for crimes against people or in the economic sphere*

# When can agency work be used?

- ✓ To replace employees absent temporarily
- ✓ In case of known temporary expansion of production (up to 9 months)
- ✓ For temporary employment of certain socially unsecured persons

# When is it not possible to use agency work?

- ❖ To replace employees on strike
- ❖ In case of downtime, bankruptcy, introduction of part-time work
- ❖ To replace employees who lawfully refuse to work (fore example, in case of delay in salary payment)



# When is it not possible to use agency work (for employment agencies)?

- ✓ When work is performed in Class I and II hazardous production facilities
- ✓ When work is performed in hazard class 3.3, 3.4 or 4 workplaces
- ✓ To replace positions necessary for the host company to receive a license or other special permit, etc.
- ✓ To work as crew members on sea or mixed (river-sea) vessels

# Additional obligations to be fulfilled by host companies

- 1) Ensure safe working conditions and health and safety
- 2) Provide necessary information about Russian Classification of Economic Activities (OKVED) and the results of special assessment of working conditions
- 3) Permit supervision of the functions fulfilled by provided employees and the host party's compliance with labor regulations
- 4) Investigation of accidents in which provided staff is involved

# Risks of using agency work from 2016 onwards

- ! Fine of up to RUB 200,000 for violation of labor law and health and safety requirements
- ! Risk that the relationship between the host company and agency staff is recognized as employment
- ! Host company's subsidiary (additional) liability for the obligations assumed by the providing company to employees (for example, payment of salaries, severance pay, etc.)

# How to minimize risks when using agency work?

- Outsourcing instead of agency work
- Selecting a reliable agency, checking its reliability
- Reviewing agreement with private employment agency
  - ✓ *Right to regularly check payments made by private employment agency to provided staff*
  - ✓ *Additional grounds for termination of agreement (for example, upon revocation of accreditation)*
  - ✓ *Rules concerning provided staff*
  - ✓ *Guarantees of indemnification to host company (bank guarantee, surety)*
- Special assessment of working conditions

**Anton Kabakov**

*Partner*

Awara Group

[Anton.Kabakov@awaragroup.com](mailto:Anton.Kabakov@awaragroup.com)

+7 (921) 397 1193

