

Decree on determining the conditions and procedure for payment of compensation to employers in order to preserve the employment of employees in the state of emergency

SUMMARY

of the adopted Decree on determining the conditions and procedure for payment of compensation to employers in order to preserve the employment of employees in the state of emergency, announced by a decision of the National Assembly of 13 March 2020.

Due to the complicated epidemic situation, resulted by the rapidly spreading Coronavirus (COVID-19), a state of emergency was declared in the Republic of Bulgaria on 13.03.2020 and the Government took emergency anti-epidemic measures. Visits to entertainment and gaming halls, discos, bars, restaurants, fast food places, drinking places, coffee shops and large shopping malls were prohibited. All kinds of mass events, including sports, cultural and entertaining and scientific events (cinemas, theaters, concerts, museums, conferences, symposia, sports and SPA centers, gyms, etc.) were canceled.

The above mentioned, had a negative effect on some sectors and economic activities - the hotel and restaurant business; activities in the field of culture, sports and entertainment; retail; passenger transport, etc.

In order to help employers in the sectors and economic sectors affected and to keep the employment of their employees, a legislative measure was adopted for compensation of enterprises the activity of which is suspended due to the declared state of emergency. The Decree adopted regulated the conditions and procedure for payment of compensation.

CRITERIA WHICH EMPLOYERS SHOULD MEET:

1. As stated in para. 6 of the MADSE, the State, represented by the National Social Security Institute, will cover, through the Unemployment Fund, 60% of the salaries of employees who would otherwise lose their jobs. The employer pays the full amount of the employees' remuneration for the respective month and the due social security contributions, as for the part-time workers - in proportion to the off-hours, but up to 4 hours.

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The clarification made in the final version of the Decree is in the direction of compensation to employers NOT to be paid for:

- Employees who have not been employed by the employer before the date of the declaration of the state of emergency - so the employer will be able to apply for

compensation in respect of those employees with whom he has concluded employment contracts prior to the declaration of the state of emergency in the country / before 13.03.2020 /;

- employees on a leave for temporary disability, pregnancy and childbirth, adopting a child up to 5 years of age or raising a child up to 2 years of age;
- employees for whom the employer receives financing for salaries and social security contributions from the state budget, with funds from the European Structural and Investment Funds or other public funds;

The decree discusses these 60% in detail, namely that they will represent 60% of the amount of insurance income for January 2020 for each person to whom the special regime is applied and to whom employment will be maintained, for a period not shorter than the period for which the compensation will be paid. The order in which the insurance income for January 2020 will be determined is also given.

2. Employers under any of the following hypotheses will be entitled to compensation:

A. Sums may be paid under § 6 of the Transitional and Final Provisions of the Emergency Measures and Actions Act, announced by a resolution of the National Assembly of March 13, 2020, as compensation to preserve the employment of employees in the enterprise to an employer who, by reason of the state of emergency declared by a decision of the National Assembly of 13 March 2020, may, by his order issued on the basis of an order of a state body, has suspended the work of the enterprise or part of the enterprise.

The option under point A. applies to employers who claim compensation for employees insured for the economic activities specified in the Annex.

B. An employer who, by virtue of his order issued pursuant to Art. 120c, para. 1 of the Labor Code, has suspended the work of the enterprise, part of the enterprise or individual employees or established part-time work under Art. 138a, para. 2 of the Labor Code. In these cases, employers will be entitled to compensation if they they prove a decrease in sales revenue of at least 20% over the relevant period, in different cases:

1. for entities established before March 1, 2019 - by not less than 20% in the month preceding the month of submission of the application for payment of compensation, compared to the same month of the previous calendar year;

2. for entities established after March 1, 2019 - by not less than 20% in the month preceding the month of submission of the application for payment of compensation, compared to the average income for January and February 2020.

The option under point B. does not apply to employers who operate in the following sectors of the Classification of Economic Activities (NACE.BG-2008). Sector A 'Agriculture, forestry and fisheries', Sector K 'Financial and insurance activities', Sector O 'Government', Sector P 'Education', Sector Q 'Human health and social work', Sector T 'Household activities as employers, undifferentiated activities of households for the production of goods and services for own consumption', sector U 'Activities of extraterritorial organizations and services'.

3. Still is in force the requirement that companies have no budgetary obligations, for taxes and social security contributions and liabilities to the municipality, which have been proved by a valid act of a competent authority and in respect of which the employer has not taken any action for their rescheduling, postponement or collateral, that the employers have not declared bankruptcy or are not in liquidation proceedings, during the period of payment of the compensation they do not receive financing from the state budget, the ESF or other public funds for the employment of their employees, etc., they have not a penal decree of the NSSI entered into force for the last 6 months and should not have committed any violations of the labor legislation.

4. Special attention shall also be paid to the procedure for verifying the truth of the facts declared by employers, justifying the application under this decree. Despite the short deadlines for the State to react, in order to transfer faster the amounts of compensation to employers, the verification by the competent authorities in the above direction (the truth of the facts and circumstances declared) will continue, ex officio, throughout 2020. If discrepancies are found, the appropriate sanctions will apply.

APPLICATION PROCEDURE:

The Executive Director of the Employment Agency will issue an order to open a procedure for applying for employers to pay compensation. Information on the terms and conditions for applying will be published on the website of the Employment Agency and on the information

boards in the Directorates of the Labor Office not later than 30.03.2020, and applications can be submitted starting from 01.04.2020.

For transparency of the procedure, a special Public Register of the companies that have received the funds under the discussed Decree of the Council of Ministers, will be created on the NSSI website.

1. The employer shall submit, to the Directorate "Labor Office", servicing the territory of employment of his employees, an application for payment of compensations in accordance with a model approved by the Executive Director of the Employment Agency. The application shall be submitted in paper form, electronically or by registered letter with acknowledgment of receipt through a licensed postal operator.

The application shall be accompanied by:

- Order for suspending the work upon art. 120B from the LC or order for introducing partial working time under art. 138a, par. 2 from the LC;
- a model declaration stating that the employer will retain the employment of the employees for whom he has received compensation for a period not shorter than the period for which the compensations have been paid, and that he will not terminate the employment contracts of employees pursuant to Art. 328, para. 1, items 2, 3 and 4 of the Labor Code during the period for which they are compensated;
- DECLARATION by the employer and documents certifying the decrease of the sales revenue in the current month by not less than 20% compared to the reference month - for the employers under point 2, letter B from the previous section of this article ;
- a list of employees for whom an application for compensation is submitted in accordance with the Decree of the Council of Ministers. The list contains data on persons (three names and personal identification number) and the number of working days for the termination of employment.
- a statement containing details of the employer's payment account with explicit details for the account itself and the payment service provider.

2. A committee appointed by an order of the Director of the "Labor Office" shall examine and verify the documents submitted within 7 working days of the submission of the application and should further check compliance with the criteria for payment of compensation. The Commission shall decide on the compliance or non-compliance of the employer with the compensation requirements.

It is the duty of the Director of the Labor Office Directorate to send to the Employment Agency a list of employers who meet the requirements for compensation, the decisions of the commission and the lists of employees provided by the employers.

The Employment Agency should send electronically to the National Social Security Institute, a summary information on the approved candidates, and the Labor Office Directorate to inform the employers about the Commission decision.

The revised version of the Council of Ministers Decree also provides a deadline for the that notification - within 2 / two / working days from the date of the decision.

3. The National Social Security Institute shall pay employers compensation on the basis of the summary information provided by the Employment Agency.

In connection with the final stage of the procedure and payment of compensation, the Minister of Labor and Social Policy said that a request would be sent to the European Commission today and we expect in few days a decision approving the payment or decision stating that the aid is not state aid within the meaning of Art. 107, para. 1 of the Treaty on the Functioning of the European Union.

CONSEQUENCES:

It is the obligation of the employers, in the case of continuing of work activity or cancelation of the order for introducing partial work day, during the period of payment of the compensation, to notify in writing the Employment Agency within 3 days from the date of issuance of the order for reinstatement of work.

Also, an employer who has received compensations under the Decree of the Council of Ministers and has not fulfilled his obligation to keep the employment of the persons for whom he has received compensation for a period not less than 3 months after the expiry of the period for which he is paid compensations and fails to fulfill its obligation not to terminate employment contracts of employees on the grounds of Art. 328, para. 1, items 2, 3 and 4 of the Labor Code, for the period for which compensation is paid, or declare incorrect data on decreased sales revenue, shall reimburse the compensations provided, together with the statutory interest rate from the moment of receipt until their final payment.

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