

Lost wages stemming from wrongful termination of employment shall be calculated this way

Act I of 2012 on the Labour Code (the new Labour Code) has significantly amended the rules of employment on many fields. Such an example is wrongful termination of employment. As from the entry into force of the new regulation, the employee may not claim punitive damages anymore and the claim for reinstatement can rarely be submitted either. The amended regulation considers wrongful termination of employment as damages. Thus, employees may currently choose between lump sum damages or full compensation with itemized proof of damages. However, regarding the latter, the amount of the loss of income may not exceed twelve-month absentee pay. Nonetheless, in connection with the enforcement of both claims, there were uncertainties in legal interpretation. In the followings, the possible claims for damages of the employee are presented in the light of the evolving jurisprudence.

Itemized proof of damages or lump sum damages

The Labour Code further sets forth as a fundamental rule that the employer shall provide compensation for the damages caused in connection with the wrongful termination of employment. Its general and primary form is to assess the total damage, to prove and pay the damages by taking the statutory limits into consideration. The most important damage is the loss of income.

For the purposes of determining loss of income from employment, the lost wages and the cash value of the regular benefits for which the employee is entitled on the basis of the employment relationship in addition to his wages shall be taken into consideration, provided that such were regularly received prior to the occurrence of the damages. Other regular earnings and legitimate income lost due to the grievance shall be compensated for as income lost from gainful activities other than employment. Damages prevented by the employee by extraordinary work performance in spite of his severe handicap originating from the grievance shall also be compensated. The value of benefits that, by nature, are only provided in connection with work, and for any expense reimbursements shall not be compensated. The value of in kind benefits and the amount of damage to property shall be determined by the retail prices in effect at the time the compensation is established. Employers shall be liable for reimbursing the relatives of employees for any damages incurred in connection with the incidence of damage. The compensation claimed for the loss of income from employment shall not exceed the amount of twelve-month absentee pay of the employee. It is essential to highlight that these items shall individually be proved by the employer.



Instead of the itemized proof of damage, the employee may claim the amount equal to the absentee pay payable for the notice period applicable when the employment was terminated.

In this case, the employee is not subject to burden of proof in respect of the damage. At the same time, such claim is submitted for the reason of the capped amount only in an insignificant part of cases.

In both cases, the employee is entitled to severance pay, if its conditions are met. (See 06/06/2016: in the opinion of the jurisprudence-analysing working group of the Supreme Court)

The limit on loss of income is applicable as follows

In contrast with the former regulation no more in force, the claim for the loss of income falls within limitations. It shall not exceed the amount of twelve-month absentee pay of the employee. At the same time, the interpretation of the law was not fully consistent. Many interpret the regulation in a way that the employee shall not calculate the loss of income rather his twelve-month absentee pay shall be taken into consideration (which is lower) and from this amount will be deducted the amount, which was or would have been earned within the scope of the obligation to mitigate the damages by the employee. However, the Supreme Court pointed out in its decision No. EBH2017.M19. that this is not the right procedure. Firstly, the limit of the loss of income defined in twelve-month absentee pay shall be defined, thus it is the benchmark. As a next step, however, certain items of the loss of income shall be added together, which continue to increase as time passes. Finally, the recoverable income shall be deducted from the actual damage. If the surplus exceeds the amount of twelve-month absentee pay then twelve-month absentee pay shall fully be paid without any deduction, in compliance with the position 3/2014. (III.31.) of the Administrative and Labour Department of the Supreme Court.