

New provisions applicable for calculating absentee pay

Do new provisions on calculating absentee pay taking effect from 1 January adversely affect employees? According to the expert of Kovács Réti Szegheő Attorneys at Law, as the new provisions come into force, the scope of amounts to consider have diminished, while the reference period has shortened which means, for some employees, in case of absentee pay disbursement, a lower amount shall be paid than the previous average salary.

According to dr. Mónika Kapetz, one of the most important questions is, in what way the calculation of absentee pay is different to that of the average salary previously and whether the changes have an adverse effect on employees.

As she points out, it is widely known that from 1 January, 2013, new provisions on calculating the absentee pay of the Act I of 2012 (Labour Code.) have taken effect and simultaneously, all previous provisions on average salary of the previous Labour Code have lost their effect.

Previous regulation

According to the previous regulation, when an average salary was payable to employees, the time-proportionate average of the salary paid after the reference period serving the basis of commesuration was payable. The base for average calculation was the salary paid for the last four calendar quarters, that is, the reference period, reminded the expert of Kovács Réti Szegheő Attorneys at Law.

Provided that the employee was paid wage supplement in the reference period for performing work, the paid wage supplement had to be taken into account even if, at the time of calculating the average salary, the employer no longer received it. In case the employee was paid absentee pay in the reference period, the amount of that too needed to be taken into account.

In case of disbursements to the employee as bonuses, it had to be assessed whether such disbursements actually qualified as payments after work performed during the reference period and if they did, their proportionate part falling into the reference period had to be considered as part of the salary and such disbursements had to be taken into account at the calculation of the average salary too.

Regulations currently taking effect

The regulatory intent of the Labour Code currently taking effect was to place the employee in nearly such a position even if no work was performed, as if he/she had performed work, emphasised dr. Mónika Kapetz. The reference period has shortened, only the last six calendar months shall be so considered. Thus employees paid on a time-basis, as a general rule shall be entitled to the time-proportionate part of their base salaries. In addition to the base salary, the consideration of performance-related and wage supplements shall be more restricted.



As regards employees paid on a performance basis, the base salary shall be disregarded at the calculation of the absentee pay. Furthermore, salary payable to the employee to at the time of absence without actually performing work need not be calculated in the absentee pay. If the employee received no salary in the reference period, the amount of absentee pay shall be calculated exclusively on the basis of the base salary, the expert of Kovács Réti Szegheő Attorneys at Law revealed further regulations.

Supplement, on-call duty and stand-by duty

Wage supplement and night shift supplement shall be considered at calculation if the employee performed work in the reference period at least for a time equalling at least 30 percent of his/her regular working time in the period entitling him to shift or night shift supplement.

Wage supplement paid for the time of on-call and stand-by duty shall be taken into account if the employer instructed the employee to perform work for at least 96 hours on average of on-call or stand-by duty in the reference period.

It is apparent from the above that as the new provisions on calculating absentee pay take effect, the scope of claims that can be considered has diminished, the reference period has become shorter thus for some employees at the disbursement of absentee pay, an amount lower than the average salary shall be paid, summarised dr. Mónika Kapetz.