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Lithuania: Wage guarantee in case of insolvency

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Lithuania

Phase:
 Type:

Management
 Wage guarantee in case of insolvency

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Native name:

Darbo kodeksas Nr. XII-2603, LR juridinių asmenų nemokumo įstatymas Nr. XIII-2221, LR garantijų darbuotojams jų darbdaviui tapus nemokiam ir ilgalaikio darbo išmokų įstatymas Nr. XII-2604, Vidutinio darbo užmokesčio skaičiavimo tvarkos aprašas, patvirtintas LR Vyriausybės nutarimu Nr. 496, LR naujojo koronaviruso (COVID-19) sukeltų pasekmių poveikio Lietuvos Respublikos juridinių asmenų nemokumo įstatymo taikymui įstatymas Nr. XIII-2861

English name:

Labour code No XII-2603, Law on insolvency of legal entities No XIII-2221, Law on guarantees for employees in the event of employer insolvency and long-term service allowances No XII-2604, Description of the procedure for calculating the average wage (Resolution of the government of 21 June 2017, No 496), Law of the Republic of Lithuania on the impact of the consequences of the new coronavirus (COVID-19) to the application of the Law on insolvency of legal entities of the Republic of Lithuania No XIII-2861

Article

Labour code (62, 149); Law on insolvency of legal entities (2, 8, 9); Law on guarantees for employees in the event of employer insolvency and long-term service allowances (4, 5, 6, 7); Resolution of the government No 496 (3.1-3.5, 5.1); Law of the Republic of Lithuania on the impact of the consequences of the new coronavirus (COVID-19) to the application of the Law on insolvency of legal entities of the Republic of Lithuania (2).

Description

According to the Labour code (LC), the employer is deemed insolvent upon becoming subject to bankruptcy proceedings or in other cases established by law (article 149). The Law on insolvency of legal entities defines the insolvency of a legal entity as the state when the legal entity is unable to discharge its property obligations in time or the obligations of the legal entity are in excess of the value of its assets (article 2). In cases of employer insolvency, employee claims related to employment relations shall be satisfied in accordance with the procedure established by the Law on guarantees for employees in the event of employer insolvency and long-term service allowances.

According to the LC (article 62), upon a court order to institute bankruptcy proceedings against the employer becoming effective, the appointed bankruptcy administrator shall draw up a list of employees with whom fixed-term employment contracts will be concluded to work at the workplace during the bankruptcy process. These fixed-term employment contracts may not continue past the end of the enterprise's bankruptcy process. Other employees shall be given written notice of the impending termination of their employment contracts and the employment contracts with them shall be terminated no sooner than 15 working days after said notice. Employees being dismissed shall be paid severance pay in the amount of two times their average remuneration or, for employment relationships of less than one year, severance pay in the amount of half of one average remuneration. The period for calculating average salary is the last three calendar months preceding the month for which (or part of) the average salary is paid. The average salary of an employee is calculated as the salary for the work performed or time worked during the calculation period (unless otherwise provided by law), including all types of remuneration specified in sub-paragraphs 3.1–3.5 of the Description of the procedure for calculating the average wage (Resolution of the government of 21 June 2017, No 496).

According to the Law on guarantees for employees in the event of employer insolvency and long-term service allowances, if the insolvent company lacks sufficient funds and fails to discharge its obligations to employees, guarantees for employees shall be secured with the resources of the Guarantee fund (GF) (article 6). The latter is a state fund intended to ensure guarantees for employees in the event of company insolvency (article 4). The main source of the Guarantee fund is the employers' contributions, equal to 0.16% of the gross wage of the insured employee. The fund is financed through other sources, like voluntary contributions from natural and legal persons, other organisations and their subdivisions (article 5).

The following benefits not paid before the date of application to the Guarantee fund shall be paid to the employees from the Guarantee fund:

salary, cash compensation for unused annual leave, severance pay, compensation for damages incurred due to accidents at work or occupational diseases, and payment for downtime. According to Article 7 of the Law on guarantees for employees in the event of employer insolvency and long-term service allowances, where the amount of employees' claims does not exceed the amount of six minimum monthly wages (MMWs) (in July 2021, MMW was €642 in Lithuania), the employee shall be paid a benefit in the amount of six MMWs as per approved claim. In the event that the amount of the claim exceeds six MMWs, the employee shall be paid a benefit of six MMWs and the remaining amount of the wages shall be paid in accordance with the Law on insolvency of legal entities (if the bankrupt company has sufficient assets).

It should also be noted that on 25 April 2020, Law No XIII-2861 of the Republic of Lithuania on the impact of the consequences of the new coronavirus (COVID-19) on the application of the Law on insolvency of legal entities of the Republic of Lithuania entered into force in Lithuania. This law applies to legal entities that have experienced financial difficulties and/or become insolvent due to the global spread of COVID-19 after the introduction of lockdown by the government of the Republic of Lithuania on 16 March 2020. Article 2 of this law stipulates that when insolvency proceedings are initiated by the head or creditor of a legal entity, the time limit for concluding an agreement on assistance to overcome financial difficulties shall be suspended and the obligation of the head of the legal entity to apply to court for restructuring or bankruptcy proceedings or to initiate out-of-court bankruptcy proceedings shall not apply during lockdown and three months after its revocation. The government of the Republic of Lithuania, after the assessment of the economic situation and its impact on the solvency of legal entities, had the right, until 31 December 2020, to extend the above-mentioned terms (and the government did not do so). Therefore, although the law has entered into force in April 2020 and has not yet expired, the government no longer has the right to extend the above-mentioned terms. However, the mentioned terms will apply once the government announces a new lockdown due to the COVID-19 pandemic.

Articles 8 and 9 of the Law on insolvency of legal entities of the Republic of Lithuania set a time limit of not less than 15 days and not more than 30 days from the date of service of the notice on the creditor to agree on assistance or to decide on out-of-court bankruptcy proceedings.

Lockdown was announced in Lithuania twice: the first lockdown lasted from 16 March 2020 until 17 June 2020 and the second lockdown lasted from 7 November 2020 until 31 June 2021.

Comments

In 2020, the Guarantee Fund Administrator (GFA) received 351 applications, which is by 53.1% less than the number of applications in 2019. In 2020, the number of employees covered by the applications was 3,404, which is by 50.1% less than the number in 2019. The amount requested for employee benefits was €9.1 million in 2020. The average amount requested per employee was €2,674.6. The decrease in the number of applications was mainly due to an approximately 51% decrease in the number of enterprise bankruptcies as a result of Law No XIII-2861 of the Republic of Lithuania on the impact of the consequences of the new coronavirus (COVID-19) on the application of the Law on insolvency of legal entities of the Republic of Lithuania, which was enacted in Lithuania on 25 April 2020.

According to the Authority of Audit, Accounting, Property Valuation and Insolvency Management, the number of bankruptcies and thus applications to the Guarantee fund are likely to start growing faster in Lithuania three months after the end of the first lockdown (i.e. from 17 September 2020) or even later, as companies facing financial difficulties could enjoy a number of COVID-19 measures and tax aids during the lockdown in Lithuania.

Cost covered by

Companies
Employer
National government

Involved actors other than national government

Employer organisation
Trade union
Other








Involvement others

The Guarantee fund is administrated by the State Social Insurance Fund Board under the Ministry of Social Security and Labour.

Thresholds

No, applicable in all circumstances

Sources

-  Labour code No XII-2603
-  Law on insolvency of legal entities No XIII-2221
-  Law on guarantees for employees in the event of employer insolvency and long-term service allowances No XII-2604
-  Description of the procedure for calculating the average wage
-  Law of the Republic of Lithuania on the impact of the consequences of the new Coronavirus (COVID-19) to the application of the Law on insolvency of legal entities of the Republic of Lithuania No XIII-2861
-  Annual report of the Guarantee fund 2020. The Administrator of the Guarantee fund, 2021.
-  Overview of insolvency processes in 2020. Authority of Audit, Accounting, Property Valuation and Insolvency Management.

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