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Poland: Wage guarantee in case of insolvency

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Poland

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 18 June, 2021

Native name:

Ustawa z dnia 13.07.2006 r. dotycząca ochrony roszczeń pracowników w przypadku niewypłacalności pracodawcy

English name:

Act of 13.07.2006 concerning the protection of workers' claims in the event of the insolvency of their employer

Article

Article 3, 4, 5, 8, 12, 25

Description

Insolvency is considered as a situation in which the employer cannot fulfil its obligations. Such a situation needs to be permanent, hence the employer should start a liquidation process. In the case of employer insolvency all claims of workers, previous workers and their surviving dependents are guaranteed by the Guaranteed Employee Benefits Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*).

After a liquidation process the court shall issue one of the following orders:

- an order on insolvency;
- an order on dismiss of application because of lack of resources for the liquidation process;
- an order on dismiss of application because of mortgage or pledge charging the debtor's assets.

All of these three court orders have the same impact on the right of the employee for payments. Payments will only be made for the first insolvency of the same employer and the same employees. Eligibility to receive financial support from the fund does not depend on the duration of the employment relationship with the employer.

The fund covers all claims stemming from the employment relationship or its termination that have not been paid to the employee due to the insolvency or economically difficult situation of the employer. These costs include work income, compensation for non-worked hours that arose without the fault of the employee, sickness and holiday payments, severance payments, retirement payments that arose up to three months before the start of the insolvency procedure or up to the end of the employment relationship (as long as this did not happen longer than nine months before the insolvency).

The total monthly payment from the fund cannot exceed (including for example severance pay or sickness pay) the level of employee's average salary from the previous quarter.

The fund is mainly financed by employers' contribution (0.1% of monthly pay for each employee) supplemented by debt collection, recovery of funds from employers and other sources, donations, voluntary payments of employers or subsidies.

Payments to employees are independent of the fact that the particular employer pays the obligatory fixed contribution to the fund.

In 2017, the act was amended. Article 8a, stating that the insolvency of the employer also occurs in the case of non-payment of employee claims due to lack of financial resources in the event of the actual cessation of the employer for more than two months was deleted. This will definitely significantly reduce the number of cases when a former employee who needs support does not receive it.

Pursuant to the Act of 31 March 2020 amending the Act on special solutions related to the prevention and eradication of COVID-19, other infectious diseases and crisis situations caused by them, as well as certain other acts, the funds of the guaranteed employee benefits fund are used to finance the reduced working time and economic downtime (article 15g and subsequent). In the case of reduced working time, the maximum amount of funding (from the FGŚP) per employee will be PLN 2,452.27 gross (€ 557) including social security contributions due from the employer on the benefit granted. The amount of co-financing is based on working time.

Co-financing shall not apply to the remuneration of employees whose remuneration received in the month preceding the month in which the application was submitted was higher than 300% of the average monthly salary.

Entrepreneurs, during periods of economic downtime or reduced working time, are entitled to funds from the guaranteed employee benefits fund to pay social security contributions of employees due from the employer.

Comments

Benefits from the Guaranteed Employee Benefits Fund were paid to 17,764 employees in 2016, which is less than in 2015 (18,966). According to currently available aggregated data 889 employers were supported in 2015, of which 53.6% were companies employing up to 20 people. The sum spent by the fund amounted to PLN 121.640,000 in 2015.

Cost covered by

Employer

Involved actors other than national government

Other

Involvement others

Guaranteed Employee Benefits Fund

Thresholds

No, applicable in all circumstances

Sources

- Deutsch, A. (2011), Europäische Beispiele für die Insolvenzentgeltsicherung, Vienna, Federal Ministry of Labour, Social Affairs and Consumer Protection/IEF
- Sargent, M. (2007), Implementation Report Directive 80/987 EEC amended by Directive 2002/74/EC [protection of employees in the event of the insolvency of their employer], Human European Consultancy/Middlesex University Business School
- Kwiatkiewicz, A., and Hernik, K. (2009), National background paper Poland, Anticipating and managing restructuring in enterprises: 27 national seminars, ARENAS Report, European Commission, Brussels
- Act of 13 July 2006 concerning the protection of workers' claims in the event of the insolvency of their employer (in Polish)
- ERM database on restructuring support instruments: Guaranteed Employee Benefits Fund
- Fundusz Gwarantowanych Świadczeń Pracowniczych
- Sprawozdanie z wykonania planu działalności MRPiPS za rok 2016

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