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Cyprus: Wage guarantee in case of insolvency

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Cyprus

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 12 July, 2021

Native name:

Ν. 25(Ι)/2001 - Ο περί της Προστασίας των Δικαιωμάτων των Εργοδοτούμένων σε Περίπτωση Αφερεγγυότητας του Εργοδότη Νόμος του 2001, όπως τροποποιήθηκε από Ν. 14(Ι)/2006, Ν. 89(Ι)/2006, Ν. 20(Ι)/2008, Ν. 13(Ι)/2014

English name:

Law regulating the protection of the rights of employees in the event of the employer's insolvency law 25(I)2001; amended by law 14 (I)2006, law 89(I)2006 and law 20(I)/2008, law 13(I)/2014

Article

Articles 3.1 and 4.1 of law 25(I)/2001 and article 2 of law 13(I)/2014

Description

The law regulating the protection of employees' rights in case of employer's insolvency aims to protect workers in the event of bankruptcies. In particular, all outstanding payments by employers to employees are safeguarded thanks to a special fund established for this particular purpose. The fund is financed exclusively by employers' contributions: 16.6% of employers' contributions paid to the redundancy fund (correspond to approximately 0.2% of total gross salaries) are reserved for the insolvency fund.

Over a period of 78 weeks prior the date the employer's insolvency commenced, the employee is entitled to the following payments from the fund:

- the overdue wages of up to 13 weeks of employment prior to the insolvency declaration;
- the equivalent of all unclaimed paid leave for the above mentioned 13 weeks (in the event that the employer possesses a certificate of exemption from payment of contributions to the Central Holidays Fund);
- the equivalent of the 13th and 14th salary or the wages of the 53rd–54th weeks for the same period.

Excluded from eligibility for payments from the fund are employees that:

- employees who have special links and common interests with their employer, leading to collusion between employee and employer;
- employees who are shareholders and members of the board of directors;
- employees of the naval, military and air forces of the UK government;
- employees who do not habitually reside in Cyprus;
- employees who alone or with first generation relatives own a substantial part of the business;
- officers working for the government.

Comments

From 2009 to 2020, the insolvency fund has received 657 applications. However, 310 of the applications were from 2013 and 2014, and only 84 cases were approved by the end of 2020. It is noteworthy that from 2018 to 2020, the fund has only approved 2 applications. From 2008 to 2019, the fund has made payments to applicants amounting to only €318,342, while the administrative costs amounted to €569,938. The annual surplus of the insolvency fund, from 2008 to 2019, averaged to nearly €14 million annually. In 2015, the fund increased its reserves to approximately €179 million. The fund's reserves at the end of 2017 amounted to €205 million and at the end of 2019 to €237 million.

Employer organisations are from time to time raising the demand to reduce their contribution to the insolvency fund, as the fund has built up huge reserves. Trade unions, nevertheless, consider the legislation as insufficient. They suggest the revision of the current legislation with the view to ease procedures, so as to facilitate more dismissal cases to qualify for consideration by the insolvency fund.

In 2020, the Ministry of Labour, Welfare and Social Insurance has prepared a draft law amending the basic law. The draft law is aiming at extending coverage to employees who had been dismissed prior the declaration of insolvency. However, at the time of dismissal, the

bankruptcy procedure on the basis of the bankruptcy law or part V of the companies law had already begun and the employer has been eventually made insolvent. Following the presentation of the draft law in the House of Representatives, trade unions have requested further changes to extend the scope of the law. The Pancyprian Federation of Labour (PEO), for example, requested a written intervention to extend the definition of insolvency to cover following cases:

- when the competent court has issued a declaratory judgment certifying that the employer has ceased economic activity and does not have sufficient means to cover pending wages and salaries of his/her employees;
- when on the basis of an agreement an official receiver has been appointed who has then proceeded to dismissals and the assets of the employer are not sufficient to cover the pending wages and salaries of affected employees; and
- the employer has ceased operations and has no assets or other means to cover the pending wages and salaries of redundant employees.

As of the end of June 2021, it is not clear whether the draft law would include further changes, other than the one initially pursued by the Ministry of Labour, Welfare and Social Insurance. The draft law is still pending in the Labour Committee of the House of Representatives.

Cost covered by

Companies

Involved actors other than national government

Other

Involvement others

The insolvency fund

Thresholds

No, applicable in all circumstances

Sources

- 📖 EMCC support of restructuring
- 📖 A.R.E.N.A..S project, National Background Paper Republic of Cyprus
- 📖 European Commission, 2011, Report on the implementation and application of certain provisions of Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer, Brussels, COM(2011) 84 final
- 📖 ERM database on restructuring support instruments
- 📖 Law regulating the protection of the rights of employees in the event of the employer's insolvency law 25(I)2001 (Ο Περί της Προστασίας των Δικαιωμάτων των Εργοδοτούμενων σε Περίπτωση Αφερεγγυότητας του Εργοδότη Νόμος του 2001 (25(I)/2001))
- 📖 Ministry of Labour, Welfare and Social Insurance / Social Insurance Services
- 📖 Labour department, Statistics

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