

Austria

Wage guarantee in case of insolvency

Phase	Act on wage guarantee in case of insolvency (IESG)
Native name	Insolvenz-Entgeltsicherungsgesetz (IESG)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

whole legislation

Description

Employees, freelancers, home workers and apprentices (and their heirs or legal successors) are entitled to claims from the insolvency fund in cases of employer's insolvency/bankruptcy if a) employees are considered to be employed in Austria as defined in § 3 paragraph 1 or 2 (lit. a to d) of the general insurance act ([Allgemeines Sozialversicherungsgesetz, ASVG](#)), b) the insolvency procedure is opened in Austria and c) these claims have not yet been satisfied ([IESG, § 1](#)).

Insolvency is understood as:

- opening of a bankruptcy proceeding,
- appointment of an administrator,
- rejection of an application for opening bankruptcy proceedings due to insufficient assets or lack of court jurisdiction,
- deletion from the commercial register due to lack of assets,
- lack of assets in the case of the death of the entrepreneur or court decision that inheritance proceedings are to be devoted to the creditors.

Eligible are claims from:

- wages and severance payments,
- compensation from damages,
- other claims against the employer (like company pensions, daily allowances etc.), and
- costs related to the legal and administrative procedures to realise payment from these claims,

if they arose up to six months before filing for insolvency, up to a maximum of twice the amount considered for social security ('[Höchstbeitragsgrundlage](#)'), which is adjusted each year and can come up to €5,370 gross for employees and €6,265 gross for freelancers (as at November 2020). Special payments are subject to contributions in the calendar year up to a maximum amount of €10,740.

Employees of the state, federal states (provinces) and municipalities, as well as those having decisive influence on the organisation are not eligible.

Claims based on an avoidable transaction ('*anfechtbare Rechtshandlung*') or applicants who were convicted for a crime related to the insolvency (e.g., fraud, embezzlement, interception) are also not eligible.

Employees must apply within six months after the opening of insolvency proceedings. The claims will then be assessed. The assessment will include a consultation with the employer or insolvency administrator.

Payment is effected by the state-owned Insolvenz-Entgelt-Fonds-Service GmbH (IEF) which was specifically established for this purpose. The fund is financed by employers' contributions and public funds. In 2015, employers' contributions to the IEF were lowered from 0.55% to 0.45% ([BGBl. I Nr. 30/2014](#)), and again lowered to 0.35% from 2016 ([BGBl. Nr. 375/2015](#)).

If an employer does not pay, this does not reduce the benefits of the employees in case of insolvency.

Commentary

As of July 2020, the website of the fund does not provide current budgets and case numbers. It quantifies the number of supported employees with an average of between 24,000 and 35,000 per year ([Insolvenzentgeltfonds 2020](#)).

In 2018, the fund registered 23,525 cases of affected workers. This is a marginal increase from 2017, when applicants numbered 23,279. Disbursements from the IEF increased from €159,2 million in 2017 to €166.9 million in 2018 ([IEF annual accounts 2018](#)). 2017 was

characterised by the lowest insolvency pay since 2001. However, in 2018 the number of corporate insolvencies shrank to a historical minimum for the past 20 years, only 4,980 cases were reported, while in 2017 the cases were 5,079.

In 2013 there was a decline in the insolvency procedures compared to 2012. However, the number of affected workers measured as the number of applicants increased from 27,146 to 35,482 in this time period due to two major bankruptcy cases, Alpine and TAP dayli Vertriebs. Accordingly, the payments for outstanding salaries realised by the IEF increased from €190.8 in 2012 to €291.4 million in 2013. From 2014 to 2015 the number of applicants decreased by 3.9 % and stood at 25,279 in 2015. Disbursements from the IEF also dropped from €236 million in 2014 to €175.3 million in 2015 ([IEF annual accounts 2015](#)).

Additional metadata

Cost covered by	Companies National government
Involved actors other than national government	Other
Involvement (others)	Insolvenz-Entgelt-Fonds-Service GmbH; insolvency administrator
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Austria: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Belgium

Wage guarantee in case of insolvency

Phase	Law of 28 June 1966 regarding the indemnification of employees that have been laid off as a consequence of a closing of an undertaking
Native name	Loi du 28 juin 1966 relative à l'indemnisation des travailleurs licenciés en cas de fermeture d'entreprises
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

18-55

Description

In case of collective layoffs (at least 10 employees in companies with 20-99 employees, at least 10% in firms with 100-299 employees or at least 30 workers in companies with 300 or more staff) as a result of bankruptcy or insolvency of a company, workers receive a closing-down indemnity paid by a closing fund managed by the public employment services. Employees do not need to apply to such funds. This automatically applies to workers employed in companies active in sectors where a collective agreement has been signed.

In order to receive guarantees in case of employer's insolvency, the employment contract must be terminated 12 months before to 13 months after the closing.

There are no exclusions of part-time or fixed-term workers. The fund will intervene in the payment of wages, indemnities and benefits that are due. There is a maximum per employee (with exception of additional payments in case of early retirement), corresponding to about €22,000 yearly or about €1,900 monthly for outstanding salary, holiday pay, severance indemnity and the indemnities and benefits that are due to the employee.

There are no requirements in terms of duration of the employment contract for the worker to be eligible for the wage guarantee in case of insolvency.

The fund is financed through social security contributions which must be paid by all employers in Belgium, levied on the gross salary of employees.

Payment is realised also if the employer has not contributed (something that he/she would have to do purposefully, since the contribution is obligatory).

Commentary

In 2020, the FFE paid €216 million of contractual compensation to 22,244 workers. In the previous years, the number of beneficiaries was the following:

- 2020: 22,244
- 2019: 20,973
- 2018: 23,294
- 2017: 23,850
- 2016: 27,357.
- 2015: 30,989
- 2014: 32,271
- 2013: 30,538
- 2012: 27,535
- 2011: 27,931
- 2010: 23,875
- 2015: 30,989
- 2014: 32,271
- 2013: 30,538
- 2012: 27,535
- 2011: 27,931
- 2010: 23,875

According to a 2019 evaluation report published by the Court des Comptes, in 2017, nearly 3/4 of payments were made more than 8 months after bankruptcy. The average time between the bankruptcy declaration and the payment of compensation (excluding closure compensation) was 311 days, or 10.2 months. The Court des Comptes has invited the FFE to strive to reduce this time; although recognising that technical timelines to ascertain that the worker has not been re-employed need to be respected. The report also found that not all workers are aware of their rights and that awareness raising measure should be

taken to increase the number of application by potential beneficiaries.

In its 2005 annual report, the fund stated that it paid on average within a period of 12 months after the payment requests had been filed. Between 2006 and 2009, about 16,000 applications were registered, and claims of about 72,000 workers were satisfied.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Public employment service Other
Involvement (others)	Fund
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Belgium: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Bulgaria

Wage guarantee in case of insolvency

Phase	Law for guaranteeing workers' and employees' receivables in the event of employer's insolvency; Law on the state social security budget; Social insurance code
Native name	Закон за гарантираните вземания на работниците и служителите при несъстоятелност на работодателя; Закон за държавно обществено осигуряване, Кодекс за социално осигуряване
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Articles 4 to 30 (Law for guaranteeing workers' and employees' receivables in the event of employer's insolvency); Annex 3 (Law on the state social security budget, published annually); Article 5(4) items 1 and 2, article 8(2) item 1, article 20(2) item 4 and (3) item 1, article 33(5) items 6 and 10 (social insurance code).

Description

The procedure to grant and pay guaranteed claims is regulated by the [law for guaranteeing workers' and employees' receivables in the event of employer's insolvency](#) and the [regulation on the procedure and manner for informing the employees and for granting and payment of secured claims in case of insolvency of the employer](#).

The purpose of the law is to provide a maximum degree of protection to workers when insolvency proceedings have been opened. A special Guarantee Fund (guaranteeing the claims of workers and employees in the event of insolvency of the employer) was established to secure the payment of parts of the unsettled claims of the workers affected, including wages and social security contributions and other compensations.

Article 4(1) of the law defines employees entitled to guaranteed claims in case of insolvency. These are employees that are or have been employed and have not been paid their wages, regardless of the type of contract.

Article 22(1) defines the guaranteed amounts, which are the last six accrued but unpaid monthly wages and cash benefits in the last 36 (formerly 12) calendar months, preceeding the month in which the decision of insolvency is entered pursuant but not more than the maximum amount of guaranteed claims, and in case the employee has been in employment with the same employer for at least three months.

Article 25 regulates the beginning of the procedure for receiving the guaranteed claims. The procedure starts based on an application filed by the employee to the [national social security institute](#). This application must be filed within 3 (formerly 2) months from the information to employees about the insolvency proceedings.

According to the [social insurance code](#) the insurers shall provide to the [national revenue agency](#) data on their instalments to the fund for guaranteed claims for each insurable employee. Such obligation also applies to social insurance funds (established by freelancers, cooperatives and so on).

According to article 33(5) item 6, the [national social security institute](#) maintains an information system about paid guaranteed claims and payment of guaranteed claims.

Employers are obliged to pay mandatory monthly contributions to the fund for guaranteeing workers' and employees' rights in the event of employer's insolvency. The amount of these contributions is determined by the law on the state social security budget for each calendar year. The employers' contributions can not be higher than 0.5% of the gross salary and are not bound by the minimum monthly amount of the insurance income by activities and groups of professions.

For 2023, according to the [Law on the state social security budget 2023](#), Art. 15 (1) no contributions shall be paid by employers for the year 2023. Employees whose employment relationship was terminated in the last 36 months prior to the date of registration of the decision under Art. 6 and whose claims are only for accrued but unpaid monetary benefits at the expense of the employer, due under a statutory act or a collective agreement - for these persons the guaranteed claim shall be in the amount of the unpaid benefits, but not more than four times the minimum monthly wage established for the country on the date of termination of the employment relationship [Article 22\(3\)](#).

In 2019, according to article 15, paragraph 1 of the [law on the state social security budget 2019](#), employers did not have to pay contributions to the fund. According to paragraph 2 of the same article, in 2019 the maximum amount of the guaranteed claim that can be

paid to an employee amounted to BGN 1,400 (€716).

Commentary

The adoption and application of the [law for the budget of the state social security](#) marks considerable progress in development of the Bulgarian labour law. It strengthens the protection of employees and widens the protective function of Bulgarian labour law as a whole.

In 2023 the maximum amount of the guaranteed claims under Article 22(2) of the Law for 2023 is BGN 1,950 (EUR 997). In 2018, the maximum amount granted for secured claims was BGN 1,300 (€664.68). The maximum amount for secured claim for the period 2013-2017 was BGN 1,000 - BGN 1,200 (about €510 - €610).

The total budget of the fund for guaranteeing receivables in case of insolvency for 2018 was BGN 6.5 million (€3,323,397), according to the law for the budget of the state social security. The fund had a budget surplus of BGN 6,166,300 (€3,149,000) in 2017 (annex 3, law on the state social security budget 2017). The total accumulative budget for 2016 was BGN 244,212,358 (about €124,864,000). In 2014, the total budget of the fund was BGN 2,403,000 (about €1,229,000).

According to [NSSI report for 2022](#) the guaranteed claims paid to the entitled persons amounted to BGN 996.6 thousand (EUR 509,553). BGN 1,131.9 thousand (EUR 578.3 thousand) of payments from the Fund were for claims of employees of insolvent enterprises and BGN 135,000 (EUR 69,024) of reimbursements from employers for guaranteed claims were paid by the Fund or 77.9% less than planned. In 2022, 608 employees from 64 employers received compensations by the Fund of BGN 1849.90 (EUR 946) on average. In 2012, 485 employees from 47 companies were beneficiaries of the fund. The average compensation was BGN 1,702 (€870). In 2015, the fund paid guaranteed compensations to 280 employees with BGN 1,118,634 (about €572,000). By the end of August 2016, the fund guaranteed payment for 3,132 employees with BGN 9,855,167 (about €5,039,000).

Additional metadata

Cost covered by	Companies National government
Involved actors other than national government	Employer organisation Trade union

Involvement (others) None

Thresholds
Affected employees: No, applicable in all circumstances
Company size: No, applicable in all circumstances
Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Bulgaria: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Croatia

Wage guarantee in case of insolvency

Phase	Bankruptcy Act 71/15, 104/17, 36/22; Act on ensuring workers' claims 70/17, 18/23
Native name	Stečajni zakon 71/15, 104/17, 36/22; Zakon o osiguranju radničkih tražbina 70/17, 18/23
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Bankruptcy Act: Article 69, 120; Act on ensuring workers' claims: Article 8-15, 39

Description

The law guarantees the payment of employees' claims for earned, yet unpaid, gross salaries and other claims arising from the employment contract for three months prior to the initiation of a bankruptcy process, regardless of the type of employment contracts. The same applies for the three-month period prior to the termination of a contract, if it was terminated within the three months preceding the opening of the bankruptcy proceedings. Therefore, employees' claims arising from their employment prior to the opening of the bankruptcy proceedings have priority over all other creditors and claims.

According to article 9 of the Act on ensuring workers' claims, in cases of standing bankruptcy proceedings, the amounts guaranteed to employees are:

- up to minimum average monthly salary for each month for which the salary has not been paid or for which an employee has the right to receive remuneration for sick leave;
- up to minimum monthly salary for remuneration claims for unused annual leave days;
- up to half of the legally prescribed employer's obligation for severance pay;
- up to a third of non-appealable remuneration for indemnification.

According to article 14 of the Act on ensuring workers' claims, in cases of blocked accounts for the employer, the amounts guaranteed to employees:

- up to three minimum monthly salaries for each month for which the salary was not paid;
- up to three minimum monthly salaries for unpaid sickness benefits for each month spent on sickness.

For part-time employees, the highest monthly amount of entitlements shall be calculated proportionally to the agreed working time in relation to the minimum full-time salary.

Such claims are paid to employees by the agency responsible for ensuring workers' claims in the event of an employer's bankruptcy (Agencija za osiguranje radnickih potrazivanja u slucaju stecaja poslodavca). Payments come from the Fund for ensuring workers' claims in the event of an employer's bankruptcy (Fond za osiguranje radnickih potrazivanja u slucaju stecaja poslodavca), established by the agency and financed from the state budget for covering bankruptcy costs if the funds available from the bankruptcy are insufficient. Claims can be paid to employees provided that they have reported them to the agency or to the competent office of the public employment service within 30 days from the competent court's decision on the bankruptcy or starting from the eighth day after the announcement of the bankruptcy process in the Official Gazette.

According to article 39 of the Act on ensuring workers' claims, the agency decides on claims within 15 days of submission. Employees can file complaints on the decision, which finally determines the claim's validity after the ministry of labour and pension system makes its evaluations within 30 days of the complaints' submission. Within 15 days from the decision, the agency must pay out claims directly to employees if the company has been closed down. Otherwise, payments are made out to the company's account designated for this purpose, whose transactions are monitored by the bankruptcy manager. The latter must then transfer the received funds to the employees within eight days.

The law prescribes that employees' claims above the guaranteed three salaries included in insured employees' claims, but up to three minimum gross monthly salaries in total, are included in the bankruptcy file of the employer. It concerns the claims of all employees, except those who were in top management positions.

Commentary

The agency for ensuring workers' claims in the event of an employer's bankruptcy (Agencija za osiguranje radnickih potrazivanja u slucaju stecaja poslodavca) is financed from the state budget. It becomes a bankruptcy creditor of the company for employees' claims. Information on payments made to employees is available on the agency's web page.

According to the data as at April 2020, the Agency paid for 61 workers' claims HRK 849,900 (€ 113,300) and 44 workers a part of unpaid salaries of HRK 152,000 (€ 20,300).

The Agency responsible for the fund in its annual report for 2019 states that there were 2,589 paid demands for a total amount of HRK 58.4 million (€ 7.8 million), while the total received from bankruptcy procedures was HRK 12.3 million (€ 1.6 million).

According to the Yearly Report by the Agency for 2018, there were 1,775 demands in cases of standing bankruptcy proceedings in 2018, while outlays were HRK 33 million (€4.42 million). In 2018, the total number of employers from bankrupt companies was 91. The agency also covers employees' claims in case of blocked accounts for the employer. For this purpose, in 2018 the agency received 150 demands, of which 124 cases were decided in favor of employees. In this case, expenditures were HRK 47.7 million (€6.40 million).

According to the Yearly Report by the Agency for 2022, there were 507 and 1,000 demands in cases of standing bankruptcy proceedings in 2021 and 2022, while outlays were HRK 5,7 million (€0.76 million) in 2021 and HRK 17,9 (€2.38 million) in 2022. The Agency also covers employees' claims in case of blocked accounts for the employer. For this purpose, in 2021 and 2022 the agency received 39 demands for 722 workers and 59 demands for 1,281 workers. In this case, expenditures were HRK 7.6 million (€1.01 million) in 2021 and HRK 16.08 million (€2.03 million).

Subject to approval of the court, the bankruptcy manager can conclude new contracts with employees in order to complete work in process and reduce possible damage. Salaries and other monetary compensations for employees are determined by the bankruptcy manager, based on the approval of the court and in line with the law and collective agreements. Salaries and other employer obligations are covered by the bankruptcy estate. Regional and local governments can award additional one-off payments as an aid to redundant employees, if the bankruptcy concerns the well-being of a substantial part of their citizens. However, this is not prescribed by the law.

Additional metadata

Cost covered by National government

Involved actors other than national government Public employment service Regional/local government Other

Involvement (others) Bankruptcy manager, agency for ensuring workers' claims

Thresholds
Affected employees: No, applicable in all circumstances
Company size: No, applicable in all circumstances
Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Croatia: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Cyprus

Wage guarantee in case of insolvency

Phase	Law 25(I)/2001 - The Protection of the Rights of Employees in the Event of Insolvency of the Employer Law of 2001, as amended by by law 14 (I)/2006, law 89(I)/2006 and law 20(I)/2008, law 13(I)/2014, law 37(I)/2023
Native name	N. 25(I)/2001 - Ο περί της Προστασίας των Δικαιωμάτων των Εργοδοτούμένων σε Περίπτωση Αφερεγγυότητας του Εργοδότη Νόμος του 2001, όπως τροποποιήθηκε από Ν. 14(I)/2006, Ν. 89(I)/2006, Ν. 20(I)/2008, Ν. 13(I)/2014, Ν. 37(I)/2023
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
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Article

Articles 3.1 and 4.1 of law 25(I)/2001; Article 2 of law 13(I)/2014; Article 3 of the Protection of the Rights of Employees in the Event of Insolvency of the Employer Law of 2001 to 2023, as amended by law 37(I)/2023

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.

Commentary

From 2009 to 2022, the insolvency fund has received 660 applications. Almost half of those applications (310) were from 2013 and 2014, and the only other years with a considerable amount of applications were 2019 (70) and 2020 (40). 2021 was the first and only year with zero applications, and there were only 3 applications made in 2022.

Only 84 cases were approved between 2009 and 2022, and the last year with approved applications was 2018. It is noteworthy that only approved 2 applications were approved by the fund in 2018, and none since then. From 2008 to 2019, the fund has made payments to applicants amounting to only €318,342, and since no applications were approved since then, no more payments were made. Until 2019 the administrative costs of the fund 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 to 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.

With the amendment of the Law in 2023 the demands of the trade unions were satisfied, at least partially. The Law now provides that the following are entitled to a payment from the Fund : a) an employee whose employment is terminated because his employer has become insolvent, b) an employee whose employment is terminated by the initiation of liquidation proceedings of the employer pursuant to the provisions of Part V and Part VI of the Companies Law or pursuant to of the provisions of the Bankruptcy Law, if the employer ultimately becomes insolvent, and c) an employee whose employment is terminated following the appointment of a receiver or administrator pursuant to the provisions of Part VI of the Companies Act, provided that the receiver or administrator certifies that the employer has ceased to carry on any work and there are no sufficient assets to pay his wages.

Additional metadata

Cost covered by Companies

**Involved actors other
than national
government** Other

Involvement (others) The insolvency fund

Thresholds
Affected employees: No, applicable in all circumstances
Company size: No, applicable in all circumstances
Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Cyprus: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Czechia

Wage guarantee in case of insolvency

Phase	Act No. 118/2000 Coll., on the protection of employees in the event of insolvency of their employer; Act No. 182/2006 Coll., on bankruptcy and settlement (Insolvency act)
Native name	Zákon č. 118/2000 Sb., o ochraně zaměstnanců při platební neschopnosti zaměstnavatele ve znění pozdějších předpisů; Zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení (insolvenční zákon ve znění pozdějších předpisů)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Section 169 and 305 in Act No. 182/2006 Coll., on bankruptcy and settlement (Insolvency act); Section 2–5, 10, 11 in Act No. 118/2000 Coll., on the protection of employees in the event of insolvency of their employer

Description

In case of employer insolvency, employees' claims have priority in the liquidation process (judicial liquidation and reorganisation). All private law employment relationships are eligible, including part-time workers, fixed-term workers, domestic servants, but excluding some public officials.

In the following cases, employees are excluded from protection:

- employees who are members of the employer's statutory body and shareholders with half and higher participation;
- employees who work for the employer as temporary agency workers (TAW) and whose wages are covered by a TAW insurance in case of insolvency.

In court decisions, wages have the same rank as the claims of the liquidation administrator ('super priority') (Bankruptcy law).

Managers must not obtain any property from assets of their employer (Bankruptcy law).

The application for claims has to be submitted for approval by the employee to the public employment service. The employee has to apply within 5 months and 15 calendar days following the date on which the labour office published its to official board information regarding the employer who has filed an insolvency petition or had been impounded property. The application has to be submitted to the public employment service which approves or rejects it. The instruction of the Deputy Minister for Employment of the MoLSA came in force in January 2019. It pinpoints the due date of the wage entitlements for the purposes of Act No. 118/2000 Coll.

All claims (wage, replacement alimony, payment for holidays, termination of a job, payment for time off to visit a doctor, etc.) that arose in the period of three months before and three months after the month when the insolvency was announced are covered. Wage claims are covered for a maximum period of three months, for a monthly amount of one and a half average wage in the Czech Republic as it is determined by law.

The guarantee is financed by the state; there are no employers' contributions.

Commentary

The number of employers, processed applications (satisfied workers) and paid funds followed the economic cycle in the country, as it can be seen in the table below.

Year	Number of employers - submitted applications	Submitted applications	Processed applications	Paid funds (thousands CZK)	Paid funds (thousands EUR)
2007	382	5,983	6,888	196,033	7,128
2008	386	3,973	5,055	150,330	5,467
2009	750	16,281	19,451	844,033	30,692
2010	847	9,998	11,028	497,837	18,103
2011	840	7,100	8,253	389,142	14,151

Restructuring legislation database

2012	961	9,101	7,694	451,799	16,429
2013	802	8,031	8,202	333,208	12,117
2014	693	6,094	6,830	391,856	14,513
2015	437	4,569	5,610	229,500	8,500
2016	345	3,826	4,402	250,339	9,300
2017	316	2,177	3,290	167,343	6,436
2018	n.d.	n.d.	3,793	257,154	9,891
2019	n.d.	n.d.	4,431	277,672	10,680
2020	n.d.	n.d.	3,737	273,895	10,670
2021	n.d.	n.d.	n.d.	155,614	6,067
2022	n.d.	n.d.	n.d.	178,546	7,267

Source: until 2020 publication "Analysis of the development of employment and unemployment",

https://www.mpsv.cz/documents/20142/2419647/Anal%C3%BDza_text_2020.pdf/3052205e-07fb-99a3-fbac-e4

Expenditure on employment policy in the Czech Republic,

<https://www.mpsv.cz/web/cz/vydaje-na-statni-politiku-zamestnanosti>

Additional metadata

Cost covered by	National government
Involved actors other than national government	Public employment service Court
Involvement (others)	None

Thresholds

Affected employees: No, applicable in all circumstances

Company size: No, applicable in all circumstances

Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Czechia: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Denmark

Wage guarantee in case of insolvency

Phase	Danish Act on the Employees' Guarantee Fund (Consolidation Act no 686 of 20/06/2011)
Native name	Bekendtgørelse af lov om Lønmodtagernes Garantifond (LBK nr 686 af 20/06/2011)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Whole legislation

Description

Employees can apply to the Employees' Guarantee Fund (Lønmodtagernes Garantifond, LG) for wage and holiday compensation, indemnification for interruption of the employment relationship and compensation in connection with discharge from employment.

The claims have to arise in the period of four months after bankruptcy or six months after notice of suspension of payments or the death of the employer.

LG is an independent national institution governed by the social partners and regulated by law. All private employers pay a quarterly contributions based on company size to the fund.

Support is provided in case of bankruptcy, the employer's death where the court declares the company is insolvent, the termination of the business while it is proven that the employer is unable to pay the employees' claims or during the employer's court-supervised suspension of payments according to the provisions of the bankruptcy law.

All employees are eligible, including part-time and fixed-term workers, except for family members and close associates of the insolvent employer.

There is no minimum duration for the employment relationship in order for workers to qualify for the guarantee. An employee's claim is usually paid 4 weeks after the fund has received the application from the employee.

The maximum compensation from the fund is DKK 160,000 (€ 21,300).

Commentary

In 2022, LG paid DKK 794 million (€ 106 million as at 31 December 2022) to 10,701 employees as a consequence of 1,582 bankruptcies

In 2021, LG paid DKK 310 million (€ 41 million as at 31 December 2021) to 11,127 employees as a consequence of 1,259 bankruptcies

In 2020, LG paid DKK 780 million (€ 104 million as at 31 December 2020) to 15,456 employees as a consequence of 1,651 bankruptcies

In 2019, LG paid DKK 569 million (€ 76 million as at 31 December 2019) to 17,365 employees as a consequence of 1,937 bankruptcies

In 2018, LG paid DKK 531 million (€ 71 million as at 31 December 2018) to 16,960 employees as a consequence of 1,945 bankruptcies.

In 2017, LG paid DKK 483 million (€ 65 million as at 31 December 2017) to 14,771 employees as a consequence of 1,854 bankruptcies.

In 2016, LG paid DKK 435 million (€ 58 million as at 31 December 2016) to 14,486 employees as a consequence of 1,968 bankruptcies.

In 2015, LG paid DKK 488 million (€ 65 million as at 31 December 2015) to 16,217 employees as a consequence of 1,838 bankruptcies.

In 2014, LG paid DKK 531 million (€ 71 million as at 31 December 2014) to 20,280 employees as a consequence of 1,615 bankruptcies.

Additional metadata

Cost covered by

Companies

Involved actors other than national government	Employer organisation Trade union Other
Involvement (others)	Employees' Guarantee Fund
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Denmark: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Estonia

Wage guarantee in case of insolvency

Phase	Unemployment insurance act.
Native name	Töötuskindlustuse seadus
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Chapter 4 Unemployment Insurance Act: Chapter 9, § 52 (4)(5)

Description

Insolvency is understood as either the bankruptcy of the employer or the abatement of bankruptcy proceedings (if the assets cannot meet the costs of liquidation).

The trustee in bankruptcy or an interim trustee submits a standard format application to the unemployment insurance fund ([Töötukassa](#)) which pays insolvency benefits to employees in case of company bankruptcies.

Benefits upon insolvency of the employer include:

- unreceived salary from the period before the declaration of the employer as insolvent;
- unreceived holiday pay from the period before the declaration of the employer as insolvent;
- benefits from the period before or after the declaration of the employer as insolvent which were not received at the time of cancellation of the employment contract.

In case of unreceived salary, the amount paid is up to the employee's gross wages for the last three months of work but not exceeding in total the amount equal to three average gross monthly wages in Estonia during the quarter preceding the declaration of the employer as insolvent (according to the data published by the Statistical Office).

In case of unreceived holiday pay, the maximum paid amount is one gross monthly wage of the employee but not exceeding the amount equal to one average gross monthly wage in Estonia during the quarter preceding the declaration of the employer as insolvent (according to the data published by the Statistical Office).

In case of unreceived benefits, the maximum paid amount is equal to the employee's two gross monthly wages but in total not exceeding the amount equal to one average gross monthly wage in Estonia during the quarter preceding the declaration of the employer as insolvent (according to the data published by the Statistical Office).

Entitled are all employees, public servants, natural persons providing services on the basis of a contract, non-working spouses accompanying and officials serving in a foreign mission of the Republic of Estonia who have paid the unemployment insurance premiums pursuant to the procedure provided for in this act, including part-time and fixed-term workers, irrespective of the duration of the employment.

Exempted are sole proprietors, notaries, bailiffs, sworn translators, other independent persons engaging in a profession in public law, creative persons engaged in a liberal profession, management or controlling bodies of a legal person, some civil servants, those who have reached pensionable age and persons receiving early retirement pension.

Employers are defined as legal persons or structural units thereof if granted the rights of an employer, or a natural person with active legal capacity.

There has been a reform in the unemployment insurance benefit system, which affects the length of the grant of the benefit. An unemployed person shall be paid unemployment insurance benefit additionally for 60 calendar days on one occasion if the following conditions are fulfilled in the month the period of payment of unemployment insurance benefit ends: 1) registered unemployment rate in the calendar month before the previous calendar month was higher than 8.5%; 2) the period of payment of unemployment insurance benefit ends between 1 September 2021 and 28 February 2022.

Also, the unemployment insurance fund shall calculate the registered unemployment rate for the previous calendar month and publish it on its website once a month not later than by the tenth day of the given calendar month.

In addition, since 30th of June 2023, the length of the benefit payment period is not only dependent on the work experience but also the situation on the job market. At the end of the base benefit payment period, the situation will be reevaluated, whether on average the unemployment rate has worsened or improved in the last 3 years (also a reference to the average of the past 10 years is made). If the unemployment rate has increased, there will be an extensions of the benefit payment, as it has been harder to find a job. If the situation

has improved, no extension is given. Individuals with work experience of more than 5 years can get an extension of 60 days twice or 120 days once. People with less than 5 years of experience can get a maximum of 60 days of extension.

Commentary

As shown from the table below, the number of people entitled to benefit upon insolvency of the employer was significantly higher during the economic downturn. The COVID-19 pandemic has also increased the number of cases.

Year	Number of insolvency cases	Number of people entitled to benefit	Average size of the benefit in EUR
2008	176	2,249	1,912
2009	491	6,709	2,020
2010	567	6,341	1,712
2011	289	2,467	1,749
2012	179	2,225	1,678
2013	172	1,493	2,232
2014	147	1,578	2,063
2015	142	1,212	2,334
2016	145	1,614	2,385
2017	146	1,217	2,628
2018	117	1,229	2,920
2019	154	1,033	2,979
2020	210	2,419	3,363

Source: Estonian unemployment insurance fund

Additional metadata

Cost covered by	National government
Involved actors other than national government	Public employment service Other
Involvement (others)	The trustee in bankruptcy or an interim trustee
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Estonia: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Finland

Wage guarantee in case of insolvency

Phase	Pay security act (866/1998)
Native name	Palkkaturvalaki (866/1998)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Whole regulation

Description

In case of employer insolvency, wages and other claims of employees resulting from the employment contract are secured by the national pay security system, which is financed by the employer's contribution to unemployment insurance. Pay security includes wages, holiday compensation and daily allowances.

An employer is considered insolvent if the employer is unreachable or has terminated the business activity and it can be proven that the amount in question cannot be paid from the assets, or if the employer has been declared bankrupt or else been established to be unable to pay its debts. Insolvency can also be based on if the employer has failed to pay the required employer contributions or the statutory pay-as-you-earn taxes on time.

The guarantee covers all claims that have been applied for as wage guarantee within three months of the pay or other claims falling due, irrespective of the duration of the employment or the type of contract. Exceptions to this time limit are applied in cases where the employer is either convicted of serious work-related exploitation and in cases where there are reasonable grounds to believe that such exploitation has occurred. In the first mentioned a claim can be made up to three months after the criminal judgment becomes final, and in the later up to 18 months after employment termination.

The maximum amount to be paid per employee and employment contract with the same employer is €19,000. The employee can submit the application themselves or it can be done by a trade union on behalf of the employee.

Since 2016, the pay security system of the entire country is administered by the Uusimaa Centre for Economic Development, Transport and the Environment (ELY centre) in Helsinki. The centre makes decisions in pay security matters and handles other functions connected with enforcement of the Act. On 1 January 2025 administrative responsibility is however transferred to the Development and Administrative Centre (KEHA centre). Applications for claiming pay security must be submitted to the KEHA centre or to the municipal or joint municipal authority responsible for organising public employment services.

Commentary

According to statistics by the Ministry of Economic Affairs and Employment, the total amount paid through the pay security system was €25.9 million in 2022.

Statistics by the ministry and the ELY centres show earlier total payments of pay security:

- €26.3 million in 2017
- €31.2 million in 2016
- €27.4 million in 2015
- €35.4 million in 2014
- €39 million in 2013

The number of pay security beneficiaries was 5,015 in 2022. A few years earlier, in 2017 they were 5,800 and 5,200 the year before that.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Public employment service Other National government
Involvement (others)	Public employment services; Centre for Economic Development, Transport and the Environment (ELY centre); the Development and Administrative Centre (KEHA centre).

Thresholds

Affected employees: No, applicable in all circumstances

Company size: No, applicable in all circumstances

Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Finland: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

France

Wage guarantee in case of insolvency

Phase	Labour code
Native name	Code du travail
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

articles L.3253-2 to L.3253-21, D.3253-1 to D.3253-3, R.3253-4, D.3253-5 and R.3253-6

Description

Wage guarantees are offered in the case that an employer is bankrupt (debt cannot be covered by assets), reorganises the company, or is in temporary financial difficulties. All employees are eligible irrespective of the duration of the employment contract including part-time and fixed-term workers, workers that temporarily work outside of France as well as foreign workers working in France for an employer located in another European Union Member State.

Wage guarantees cover everything that is owed to the worker on the day of filing for insolvency including indemnification in case of termination of the employment contract, claims from financial employee participation and social plans.

There is a maximum amount per employee which takes into account the following considerations:

- If the contract has been concluded less than 6 months before the opening judgement for insolvency, the maximum is set at €58,656 for 2023.
- If the contract has been concluded between 6 months and 2 years before the opening judgement for insolvency, the maximum is set at €73,320 for 2023.

- If the contract has been concluded more than 2 years before the opening judgement for insolvency, the maximum is set at €87,984 for 2023.

There is no minimum duration of the employment relationship.

The guarantee is administered by the [Wage Guarantee Scheme](#) (Association pour la Gestion du regime de garantie des creances des salaries). The insolvency administrator appointed by the court has to draft an overview of all employees' claims. He/she has to compile in a statement the employee's identity including the national identification number; the nature of his/her employment contract; the date he/she joined the company; his/her function and job title; the termination date of his/her employment contract; the sums already paid and the outstanding amounts to be paid. In a next step, the insolvency administrator submits this statement to the AGS.

An employee representative is appointed by employees to check the amount of sums due and paid to employees and serves as the intermediary between the employees and the administrator or court.

At receipt of the statement of wage claims compiled by the insolvency administrator, the AGS checks that the claims fall within the guarantee scope of the AGS. The AGS, as an advance, makes a payment to the insolvency administrator who distributes the payment to the employees.

Commentary

In practice, statements are drawn up and presented to the AGS by the administrator within a period of less than 30 days from the start of the insolvency proceedings for salaries and incidental expenses, and of less than three months for all other receivables (including severance pay). The AGS provides a judicial representative with the funds required to pay the amounts owed to employees within a period of 5 days following receipt of the statement of wage claims.

According to the last AGSs' annual report, in 2022, over 17,000 companies and more than more than 130,000 employees benefited from the wage guarantee. As a result, AGS Scheme interventions increased by 58% compared with 2021, although without reaching the 2019 benchmark. As a direct consequence of the increase in the number of cases opened and the number of beneficiaries, the amount of advances paid by the AGS Scheme has rebounded by almost 30% compared with 2021, to €1,137 million.

The year 2022 saw the start of a real turnaround, with an upsurge in the number of business failures, which intensified in 2023. In 2022, businesses with fewer than 10

employees accounted for more than 85% of cases opened. Businesses with between 10 and 49 employees experienced the sharpest rise, with an increase of 84.4% compared with 2021.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Public employment service Other
Involvement (others)	Association pour la Gestion du regime de garantie des creances des salaries (AGS); insolvency administrator
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), France: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Germany

Wage guarantee in case of insolvency

Phase	Social code book III
Native name	Sozialgesetzbuch III
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Articles 165-172 - Insolvency compensation Article 358 - Raising the fund

Description

In case an employer terminates business activities and does not pay the remaining due wages to workers, workers are entitled to receive financial insolvency compensation (Insolvenzgeld). The insolvency compensation is restricted: Compensation will only be paid for the three month prior to the opening of insolvency proceedings or the rejection of insolvency proceedings. In case the employment relationship between a worker and a company ended before that decision, workers are eligible to receive insolvency compensation for the three months before the termination of the employment contract. Redundant workers already receiving unemployment benefits are not entitled to receive insolvency compensation. An employer is considered insolvent if the company is definitely closed down, if there is a high probability that payment obligations cannot be settled at the due date, or if the assets are not sufficient to cover the company's debts. In this process, different actors have a duty to inform the affected workers: Workers must be informed by the works council (as stipulated by the Works Constitution Act in case of insolvency) and the employer or the responsible insolvency manager.

The insolvency compensation comprises net wages including holiday remuneration, payment in case of illness, remuneration for overtime, travel costs, subsidies for maternity benefit, subsidies for voluntary health insurance, and capital-forming benefits, with certain maximum limits; income from a new employment contract or from self-employment

during the 'insolvency income period' will be deducted.

The compensation is covered by a centralised contribution system ('Insolvenzzumlage') set up for potential claims of workers in the case of insolvency. The fund rests on monthly contributions by private employers (0.06% of the pay roll in 2023, 0.09% in 2022) which are paid alongside with social security contributions to the statutory health insurers. The insurers transfer the contributions to the Federal Employment Agency (Bundesagentur für Arbeit) that governs the funds. Private households, public employers, and public agencies/bodies exempt from the risk of insolvency do not have to contribute to this fund. For 2023, the insolvency compensation is capped at a wage level of €7,300 in Western Germany and €7,100 in Eastern Germany.

All workers employed with private employers are entitled to this provision, including trainees, apprentices and home workers. The compensation is paid by the Federal Employment Agency.

Application for insolvency income has to be filed with the Federal Employment Agency within two months after the agency has attested the termination of business or the insolvency, otherwise the employee loses the entitlement.

Commentary

The Federal Employment Agency provides statistics on the claimants of insolvency compensation ('Insolvenzgeld'). In 2020, 60.286 employees claimed insolvency compensation. 2.954 claims were made by other actors (e.g. maintenance claims or claims in the context of a seizure), and 59.850 by collection agencies (the employment agency pays on request also the compulsory contributions to statutory health, pension and social care insurance that are in arrears for the insolvency benefit period, as well as the contributions to employment promotion). In 2021, 33.720 employees claimed insolvency compensation. 1.699 claims were made by other actors, and 47.283 by collection agencies. In 2022, 36.989 employees claimed insolvency compensation. 1.597 claims were made by other actors, and 44.822 by collection agencies.

Note that the number of claims is higher than the number of affected employees due to overlapping claims by employees, social security institutions and third parties.

Additional metadata

Cost covered by Companies

Involved actors other than national government	Public employment service Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Germany: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Greece

Wage guarantee in case of insolvency

Phase

-Law 4738/2020 (Official Government Gazette A' 207/27.10.2020). "Debt Settlement and Facilitation of a Second Chance", as amended by Law 4818/2021 (Official Government Gazette A 124/18.07.2021) "a) Incorporation into Greek legislation of provisions of Directives (EU) 2017/2455, (EU) 2019/1995 and (EU) 2018/1910 regarding obligations arising from value added tax for the provision of services and distance sales of goods and related arrangements; b) Amendments to Law 4649/2019 "Programme for the provision of guarantees in securitizations of credit institutions" (A ' 206), based on the approval decision of the European Commission under documents C(2021) 2545/9.4.2021 (2021/N) for the extension of the program " HERAKLIS" c) Provisions for the settlement of debts and the provision of a second chance -Amendments to Law 4738/2020 and other provisions d) Other urgent provisions of the competence of the Ministries of Development and Investments, National Defence, Culture and Sports, Infrastructure and Transport, & Law 5043/2023 (Official Government Gazette A' 91/13.04.2023), "Regulations concerning Local Government Organizations of the first and second degree; Provisions for the well-being of companion animals; Provisions for the human resources of the public sector; Other regulations of the Ministry of the Interior and other urgent provisions" -Circular no. 1027/2018 Amendment of the bankruptcy code (Law 3588/2007 – GG A 153) by Law 4446/2016 (GG A 240), Law 4472/2017 (GG A 74), Law 4491/2017 (GG 152) and Law 4512/2018 (GG A 5): Key changes in the bankruptcy process and provision of directions; Law 1836/1989 - Promoting employment and vocational training and other provisions

Native name	<p>-Νόμος 4738/2020 (ΦΕΚ Α' 207/27.10.2020), "Ρύθμιση οφειλών και παροχή δεύτερης ευκαιρίας και άλλες διατάξεις", όπως τροποποιήθηκε από το Ν. 4818/2021 (ΦΕΚ Α' 124/18.07.2021), "α) Ενσωμάτωση στην ελληνική νομοθεσία διατάξεων των Οδηγιών (ΕΕ) 2017/2455, (ΕΕ) 2019/1995 και (ΕΕ) 2018/1910 όσον αφορά υποχρεώσεις που απορρέουν από τον φόρο προστιθέμενης αξίας για παροχές υπηρεσιών και πωλήσεις αγαθών εξ αποστάσεως και σχετικές ρυθμίσεις β) Τροποποιήσεις του ν. 4649/2019 «Πρόγραμμα παροχής εγγύησης σε τιτλοποιήσεις πιστωτικών ιδρυμάτων» (Α' 206), βάσει της υπό στοιχεία C(2021) 2545/9.4.2021 (2021/N) εγκριτικής απόφασης της Ευρωπαϊκής Επιτροπής για παράταση του προγράμματος «ΗΡΑΚΛΗΣ» γ) Διατάξεις για τη ρύθμιση οφειλών και την παροχή δεύτερης ευκαιρίας -Τροποποιήσεις του ν. 4738/2020 και λοιπές διατάξεις δ) Λοιπές επείγουσες διατάξεις αρμοδιότητας Υπουργείων Ανάπτυξης και Επενδύσεων, Εθνικής Άμυνας, Πολιτισμού και Αθλητισμού, Υποδομών και Μεταφορών", και το Ν. 5043/2023 (ΦΕΚ 91/Α/13.04.2023), "Ρυθμίσεις σχετικά με τους Οργανισμούς Τοπικής Αυτοδιοίκησης α' και β' βαθμού; Διατάξεις για την ευζωία των ζώων συντροφιάς; Διατάξεις για το ανθρώπινο δυναμικό του δημοσίου τομέα; Λοιπές ρυθμίσεις του Υπουργείου Εσωτερικών και άλλες επείγουσες διατάξεις" -ΠΟΛ.1027/2018 Τροποποίηση του Πτωχευτικού Κώδικα (ν. 3588/2007 - Α' 153) με τους ν. 4446/2016 (Α'240), ν. 4472/2017 (Α' 74), ν. 4491/2017 (Α' 152) και ν. 4512/2018 (Α'5): Επισήμανση βασικών μεταβολών στη διαδικασία της πτώχευσης και παροχή οδηγιών; Ν. 1836/1989 - Προώθηση της απασχόλησης και της επαγγελματικής κατάρτισης και άλλες διατάξεις</p>
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

-Law 4738/2020, Chapter III: 'Consequences of Bankruptcy as to Employment Agreements', Article 109, para 1, 2 & 3: 'Employment Contracts', as amended by Law 4818/2021, Article

35, para 8 & 9: 'Improvement of arrangements during bankruptcy - Amendments to Book Two of Law 4738/2020' -Circular no. 1027/2018 whole regulation; Article 17 of Law 4472/2017; Law 1836/1989 Article16

Description

-By virtue of art. 109, of Law 4738/2020, as amended by Law 4818/2021, in any case of bankruptcy, the validity of the termination of the employment contract does not require the payment of the legal severance compensation (para 1). With regard to employment contracts, the annulment of the contract is equivalent to termination, and, as such, with the obligation to provide compensation to the employee (para 1a, as added by para 8, art. 35 of Law 4818/2021). The employees' claims from wages and other benefits that arose before the declaration of bankruptcy, as well as any claim related to the declaration, such as in particular statutory compensation, are bankruptcy claims, for which the employees are satisfied as bankruptcy creditors in the most specific relevant classification of creditors provisions (article 109, para 2). An employee who actually continues to provide work after the bankruptcy is declared, for wages and related benefits, is satisfied as a group creditor. In this case of continued employment, claims arising from subsequent termination of the employment contract are satisfied as group credits (para 3, as amended by para 9, art. 35 of Law 4818/2021).

-The inclusion of employees in the list of creditors in cases of the bankruptcy of an enterprise has changed, with absolute priority being given to the payment of compensation to unpaid workers for a six-month period, calculated as 2.75 multiplied by the minimum wage of €586.08, for example €1,611.72 per month. Essentially, this sum of €1,611.72 multiplied by six months (corresponding to €9,670.32) will be the maximum limit for the absolute priority of unpaid employees over all the other creditors of an enterprise ([Circular no. 1027/2018](#)).

The purpose of the 'account to protect employees in the event of an employer's insolvency' is to pay salary arrears of up to three months to employees in a dependent employment relationship who have not been paid because of the insolvency of their employer. The labour force employment organisation ([OAED](#)) takes the place of the employer in respect of the rights of employees and pays the relevant social security contributions in respect of their salaries. Any outstanding salaries paid to beneficiaries must fall within the six-month period prior to the date of the employer's application for the business to be declared bankrupt or the date of publication of the ministerial decision withdrawing the operating licence (for liquidation of a business). Thereof, the maximum amount that the beneficiaries can claim is up to three months' salary, including credits such as holiday payments, among others. Severance pay is not reimbursed.

Beneficiaries

The recipients of benefits due to employer insolvency are employees:

- of a business declared bankrupt by a judicial decision ruling that the undertaking has definitively closed down and that there is no need to initiate bankruptcy proceedings due to insufficient assets;
- of a business which has entered liquidation; or
- of an (insurance) business whose operating licence has been revoked due to violation of the provisions of private insurance legislation.

Deadlines

The right of an employee to receive salary in arrears from the account to protect employees in the event of an employer's insolvency is exercised by the employee's written application to the competent service of the OAED (public employment service), no later than six months after:

- the publication of the decision declaring the employer's bankruptcy;
- the date that the undertaking entered into liquidation; or
- the date that the operating licence of the (insurance) undertaking was revoked due to violation of the provisions of private insurance legislation.

Entitlement to these benefits lapses after six months.

Commentary

-Article 109 of Law 4738/2020 repealed a 100-year-old provision, according to which, for the validity of a dismissal notice, the payment of compensation is mandatory. Henceforth, in any case of bankruptcy, the termination of employment contracts no compensation is required ; employees for compensations, salaries, accruals, etc. they will be classified as joint creditors in line with the State, Banks and Funds. Under Law 4738/2020 the consequences of bankruptcy affects employees' rights since the payment of the legal severance compensation is now classified simply as a bankruptcy claim; the employees' claims from wages and other benefits that arose before the declaration of bankruptcy, as well as any claim related to the declaration, such as in particular statutory compensation, are bankruptcy claims, for which the employees are satisfied as bankruptcy creditors. Law 4818/2021 provides (as it previously provided) that the validity of the termination of the employment contract does not require the payment of compensation. However, the Law added paragraph 1A to article 109 of Law 4738/2020 (with para 8, art. 35, Law 4818/2021) which defined that, the termination of the employment contract (in any case, i.e. sale, total

or separate), is equivalent to a termination and is therefore a generative reason for the payment of compensation. Finally, para 2 (of Law 4738/2020) and para 3 (as supplemented by Law 4818/2021) define which labour claims constitute bankruptcy and which group loans.

-The wage guarantee in case of insolvency has been provided to many individuals, given that since 2010 the number of enterprises which become insolvent has grown substantially. However, there are no data published by the OAED regarding how many individuals exactly have received the wage guarantee.

The wage guarantee in case of insolvency is an important benefit for people who lose their job in Greece, where the rate of enterprises closing down is high (estimations by the Hellenic Confederation of Professionals, Craftsmen and Merchants - [GSEVEE](#) - show that between 2010 and 2015 230,000-250,000 SMEs closed down, which led to 800,000 people losing their job), and the unemployment benefit is low (approximately €360 per month in 2017 and 2018) compared to the [cost of living](#) and provided for a limited time only (approximately one year). Since February 2019, the benefit increased to €399.25 per month.

Even if the wage guarantee in case of insolvency is a relief for people entering unemployment, it is provided for a limited time and given that social protection in Greece is in general limited, it cannot guarantee in the mid- and long-term a living standard above the limit of poverty for the people who lose their jobs.

An extra provision (not in the sense of wage guarantee but in the sense of taking extra steps to guarantee a proper income for a limited period of time) in case of insolvency is provided for in the law (Law 4472/2017, Article 17: In Article 3 of Law 1387/1983 (GG A 110), paragraph 4): 'In the framework of consultations with employee representatives, the employer may suggest a social plan for the workers being made redundant, that is measures to alleviate the effects of redundancy, such as sums to cover self-insurance, sums available through corporate social responsibility for training and counselling for reintegration into the labour market, actions to exploit special OAED programmes for dealing with the threatened unemployment of the workers being made redundant, and the possibilities, methods and criteria for their priority rehiring.'

Additional metadata

Cost covered by Employer Companies

Involved actors other than national government	Court Trade union Works council
Involvement (others)	State, Bankruptcy Administrator, E-auction platform, Creditors' Assembly
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Greece: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Hungary

Wage guarantee in case of insolvency

Phase	Act LXVI of 1994 on Wage guarantee fund; Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings
Native name	1994. évi LXVI. törvény a Bérgarancia Alapról; 1991. évi XLIX. törvény a csődeljárásról és a felszámolási eljárásról
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Act LXVI of 1994: (the whole act), Act XLIX of 1991: Article 57(2)

Description

Insolvency can be declared by the court if the debtor cannot repay its debts within 20 days of the due date, failed to complete the payment even after the written demand of the creditor, missed the deadline specified by the court thereafter, the enforcement is unsuccessful, the court terminated the bankruptcy proceedings and it is demonstrated that the debtor is unable to repay the debt. With an effect of 1 July 2022, under Article 1 of Act 66 of 1994 on Wage guarantee fund, the provisions apply not only to companies but to insolvent individual entrepreneurs who are registered and conduct their operations domestically. The category is defined in Act CV of 2015.

The Hungarian legislation provides detailed provisions on two insolvency related proceedings: bankruptcy ('csődeljárás') and liquidation proceedings ('felszámolási eljárás').

Bankruptcy proceedings are those where the debtor is granted a suspension of payment (grace period) with a view to seeking an arrangement with creditors or attempts to enter into a composition arrangement with creditors.

In bankruptcy proceedings, worker-related claims (specifically wage/salary claims) are not affected by the moratorium nor enjoy any special priority. Should the insolvent debtor be

able to cover wages and related costs (which is usually the case during the period of the moratorium of 90 days, which could be extended upon the debtor's request), workers receive their wages in due time.

If a company is insolvent, it is subject to liquidation. In liquidation procedures, liquidation costs can be satisfied upon maturity. workers have the opportunity to turn to the labour court to get their wages or to the Wage guarantee fund (see below for more information). This does not mean complete security because the Wage guarantee fund has a maximum limit regarding to the payable wages.

If the insolvent debtor is unable to cover the wages and related costs, the company begins the liquidation procedures. These aim to provide satisfaction to the creditors of an insolvent debtor upon the dissolution of the debtor without legal successor. The employer as a debtor has the opportunity to announce their claim to the liquidator within 40 days from the publication of the liquidation.

In liquidation procedures, liquidation costs can be satisfied upon maturity (if circumstances allow) and as such enjoy a privileged status. Liquidation costs include, among others, wages and other personnel costs payable by the debtor, including severance pay due upon the termination of employment and any other benefits fixed in the collective agreement or in the contract of employment. Liquidation costs also enjoy a similar privileged status when debts are already satisfied from the assets of the debtor subject to liquidation: liquidation costs are the first priority in the payment order.

Act 49/1991, Article 57(2) specifies when the claims must be satisfied in liquidation proceedings (according to the order of priority) and specifies the manner in which the debtor's annuity-type and future guarantees and indemnification obligations will be fulfilled. Debts from the assets of the entity subject to liquidation shall be settled in the following order:

In the first place, are the costs of liquidation, including:

- wages and fringe benefits of the debtor, including, in particular, severance pay, benefits provided in a collective agreement or employment contract, and payment obligations incumbent on the employer in connection with the unlawful termination of employment, as well as the obligations included in a contract concluded with a student cooperative (wages and fringe benefits), and
- tax and contribution liabilities if wages and fringe benefits due before the commencement date of the liquidation were paid by the liquidator after the commencement date of the liquidation.

All further obligations must be fulfilled only subsequently – the law defines the groups (classes) of each claim, also in the order given.

The appointed liquidator can turn to the Wage guarantee fund for an interest-free financial assistance in order to cover workers' wages and related costs if the financial sources of the debtor do not allow their payment in due time. The actual unpaid wages have to be requested as an advancement by the liquidator, but the maximum amount advanced to a worker from the fund within the entire liquidation proceeding cannot be more than five times the statistical national monthly gross average wage in the second year prior to the year of application to the Fund. The Central Statistical Office ('Központi Statisztikai Hivatal', KSH) set this amount at HUF 2,194,000 (about €5,881) in 2023, as the equivalent of five times the monthly gross average salary. After one year had elapsed from the start of the liquidation procedure, the liquidator can claim an addition amount equal to twice the monthly gross average wage (HUF 877,600 or €2,352 in 2023), if all additional criteria are met (Act 67/1994 Article 7(1-2)).

As of 1 July 2022, under Article 1 of Act 66 of 1994 on Wage guarantee fund, co-operatives that work with schools, parents who stay home with kids or pensioners can obtain assistance that does not have to be refunded within 15 days of the notification of the liquidation procedure.

The Wage guarantee fund is an allocated part of the National Employment Protection Fund, overseen by the Ministry for innovation and technology, which is financed by the social contributions of workers and employers levied on wages by the central state budget and other additional sources. As of January 1 2023, under Article 3 of Act 66 of 1994 on Wage guarantee fund, the name of the National Employment Protection Fund was changed, from now on it is referred to as "Fund". This modification does not entail a structural change of the fund, it is still overseen by the Ministry for Innovation and technology, the change was made only for administration purposes.

Administratively, the public employment services ('Nemzeti Foglalkoztatási Szolgálat', National Employment Service) deal with the applications, make the decisions and order the payments from the fund. There is a standard form to be filled in and submitted by the liquidator. The form may be filled in online. The authority makes its decision on the application within eight days. Transfers are set from the fund within 15 days after the authority's decision. Net wages are directly transferred to employees, while wage-related contributions are transferred separately to the tax offices. All payments from the fund are reimbursable by the debtor in the framework of the liquidation proceeding (as part of the liquidation costs).

Employees can turn to court only during liquidation procedures and they generally do so if they cannot settle with the help of the Wage guarantee fund (because the value of unpaid wages exceeds the guaranteed amount). They must turn to court within three years from the start of liquidation procedure, or the case lapses.

The resolution on insolvency also has, as a third possible consequence (besides bankruptcy procedure or csődeljárás and an insolvency procedure or felszámolási eljárás), the process sometimes referred to as 'voluntary liquidation' – but it is in fact liquidation. This is a procedure in which entities that resolve their termination without a successor satisfy their creditors, including wages and fringe benefits; that is, no debt can remain unsettled. This procedure is regulated by Act V of 2006 on Company disclosure, court company procedure and liquidation.

In connection with the liquidation procedure, note that the rules of this procedure must be applied even if the business organisation is removed from the company register by the court because its operation is illegal. For instance, from 15 March 2014 the new Civil Code increased from HUF 500,000 to HUF 3 million (€8,333 €8,042) the amount that a limited liability company (KFT) must show as assets, and those that did not comply with this, were compulsorily terminated with the application of full liquidation procedure rules.

Commentary

None

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Public employment service Other
Involvement (others)	Wage Guarantee Fund; insolvency practitioner Bérgarancia Biztos
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Hungary: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Ireland

Wage guarantee in case of insolvency

Phase	Protection of Employees (Employers' Insolvency) Acts 1984 - 2006
Native name	Protection of Employees (Employers' Insolvency) Acts 1984 - 2006
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

3; 4; 6

Description

In the event of employer insolvency, affected employees are paid statutory minimum payments - statutory redundancy (if applicable), unpaid wages - through the redundancy payments scheme (via the Social Insurance Fund, SIF), which is administered by the Department of Social Protection.

This provision concerns all employed in an employment relationship underlying full social security protection, irrespective of the duration of the employment contract. Part-time and fixed-term contracts are covered. For temporary agency workers, the party which pays the wage/salary is considered the employer - if the hirer company pays wage/salary and becomes insolvent/liquidated, the temporary agency worker comes under the criteria for access to the SIF.

An employer is considered insolvent if the company went bankrupt, has been put under liquidation, filed for insolvency (either in Ireland or in another EU member state) or is legally administered because of the death of the entrepreneur. Examinership, receivership and winding up of partnerships are excluded.

The protection for employees, and critically, access to the SIF, is only guaranteed if the insolvency is formal, i.e. the company has been formally wound up at the courts. If an employer is informally insolvent (no court-approved wind up), affected employees cannot get access to the SIF. However, the minister can apply for a company to be wound up to enable affected employees get access to minimum payments through the SIF.

To apply for support, employees have to fill in the relevant forms and submit them to the insolvency administrator who checks them and confirms them at the guarantee fund. The SIF pays the claims to the insolvency administrator who forwards them to the employees after deducting taxes and similar. The insolvency administrator is also responsible to answer employees' questions regarding the extent of the claims. For other questions, employees are referred to the insolvency income department of the ministry.

Guaranteed are non-paid wages, holiday remuneration as well as other claims the employee has against the employer, such as severance payments, maternity payments or similar. Non-paid wages, sickness payments, holiday remuneration and income for non-worked hours are paid for a maximum of eight weeks. In most of the cases, claims that arose during the 18 months prior to the insolvency/being made redundant are considered. There is a maximum weekly level on an individual's earnings that can be considered for the calculation of payments from the SIF, which is subject to change (€600 as of 2021).

The fund is financed by employers' and employees' contributions, as well as through taxation. The guarantee of the fund is independent of the employer paying the contributions. The regulation provides that the fund should satisfy the employee within 60 days of the request. The Minister for Enterprise, Jobs and Innovation can also use the fund to make payments into the assets of an occupational pension scheme so as to cover contributions that could not be paid by the employer due to insolvency.

Commentary

While there is no centralised state record of the number of redundancies each year, the redundancy payments scheme (paid out via the Social Insurance Fund) has statistics on what is paid to workers made redundant where their former employer is unable to pay their statutory redundancy. The payout for workers since 2015 is as follows:

Year	Applications received under the Redundancy payments scheme	Redundancy payments scheme expenditure (millions €)
2015	4,333	32.76

Restructuring legislation database

2016	4,372	30.99
2017	3,056	23.49
2018	2,845	18.91
2019	2,446	26.82
2020	4,157	37.10
2021	2,017	/
2022	1,778	/
2023 (Jan - Sep)	1,515	/

The weekly cap on an individual's earnings that is considered for payment from the SIF (€600 as of 2023) is the same cap that applies to statutory redundancy payments (which, as of 2023, is two weeks' pay per year of service, plus one week's pay).

Additional metadata

Cost covered by	Companies National government
Involved actors other than national government	Other
Involvement (others)	Social Insurance Fund; insolvency administrator
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: None indicated

Sources

Citation

Eurofound (2015), Ireland: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Italy

Wage guarantee in case of insolvency

Phase	Legislative Decree 27 January 1992, no. 80, Implementation of Directive 80/2987/EC concerning employees' protection in case of employer's insolvency
Native name	Decreto Legislativo 27 gennaio 1992, n. 80, Attuazione della direttiva 80/2987/CE in materia di tutela dei lavoratori subordinati in caso di insolvenza del datore di lavoro
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

1-5

Description

An employer is considered insolvent if the management of the company is handed over to a liquidator.

In the case of the employer's insolvency, the law protects all workers irrespective of the duration of the employment relationship, including part-time and fixed-term workers, workers of public companies as well as working partners of a cooperative. However, it does not protect workers employed in private households and fisherman.

A Guarantee Fund (Fondo di Garanzia) pays workers' claims. All claims related to income (including sickness, pregnancy, and holidays) and some payments related to the termination of the employment contract are eligible. All claims arisen during the previous three months of the employment relationship and within the last 12 months before application are covered. The Guarantee Fund covers a maximum of three times the monthly amount of the short-time allowance (Cassa Integrazione Guadagni) net of social security contributions.

The fund was established within the National Institute of Social Security (Istituto Nazionale della Previdenza Sociale, [INPS](#)) by Law 29 May 1982, no. 297. Pursuant to Legislative Decree 27 January 1992, no. 80, in addition to replacing the insolvent employer in the payment of the severance pay (Trattamento di Fine Rapporto, TFR) to the worker, it protects the latter also in relation to claims other than TFR, arising from the employment contracts. In this case, requirements to access the Guarantee Fund are set out in article 2 of the aforementioned law. There are some situations governed by this norm that allow for the modification of the date when the obligation to pay claims arises. For instance, if the worker has terminated the employment relationship before the beginning of the insolvency procedure, the date of filing, before the court, of the first appeal that initiated the insolvency procedure is taken as a reference date. On the other hand, if the termination of the employment relationship has occurred during the continuation of business activities, the 12-month period is calculated from the date of dismissal or resignation of the worker. This provision can be applied only to those workers who have actually worked after the beginning of the insolvency procedure.

Workers whose claims are guaranteed by another fund (such as the Wages Guarantee Fund – Cassa Integrazione Guadagni, CIG) are excluded.

Employees shall register their claims during the insolvency procedure, in which they have a privileged position. Yet, the fund applies only upon termination of the employment contracts, and claims cannot be accepted if the company eventually prosecutes activities keeping claimants at work.

The application shall be submitted within 15 days after the publication of the insolvency decision.

The INPS administers the Guarantee Fund which is financed through employers' contributions (0.2% of monthly payrolls).

The payments from the Guarantee Fund are guaranteed to workers even if the employers has failed to pay the related contributions.

The Guarantee Fund covers also the cases of companies operating in two EU Member States, established according to the law of another country, if the worker has regularly worked in Italy.

Commentary

A judgement by the Court of Cassation (no. 7473 of 14 May 2012) clarified some points of this set of rules. In particular, the court provided details on the payment, by an employer,

of salaries and social security contributions in the case of temporary operation of the company declared bankrupt or of cessation of business. This ruling is based on the assumption that a company that has been declared bankrupt does not cease to exist, but it just shifts from an operational condition aimed at production (which is likely to continue or be resumed) to a setting aimed at its liquidation.

Furthermore, the Court of Cassation tried to harmonise the rules governing the effects of bankruptcy on the employment contract in the framework of article 36 of the Italian Constitution and of article 2119, paragraph 2 of the Italian Civil Code.

The Court of Cassation ruled that, owing to the absence of an employment relationship, there is no obligation upon the employer to pay social security contributions.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Other
Involvement (others)	National Institute for Social Provisions
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Italy: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Latvia

Wage guarantee in case of insolvency

Phase	On protection of employees in case of insolvency of the employer
Native name	Par darbinieku aizsardzību darba devēja maksātnespējas gadījumā
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

The law on protection of employees in case of insolvency of the employer

Description

For cases where the company becomes bankrupt, an Employee Claims Guarantee Fund has been established in Latvia, operated by the Insolvency Control Service (state agency). The employee can submit the claim to the fund after the court's decision on the company's insolvency (as defined by the insolvency law). No claims can be submitted before. All employees are eligible to the fund in case of insolvency of the employer. Employer's insolvency applies from the day when a court judgement regarding insolvency of the employer enters into legal effect. There is no minimum duration of the employment contract required for workers to qualify. From the resources of the Employee Claims Guarantee Fund, the following payments have to be covered: work remuneration, reimbursement for annual paid leave, reimbursement for other types of paid leave, severance pay in connection with the termination of an employment relationship, reimbursement for injury in connection with an accident at work or an occupational disease. Employee claims are satisfied according to the following rates: * work remuneration for the last three months of employment relationship in the 12 months before the insolvency of the employer came into effect; * reimbursement for annual paid leave, the right to which has been acquired in the 12 months before the insolvency of the employer came into effect; * reimbursement for other types of paid leave for the last three

months of employment relationship in the last 12 months before the insolvency of employer came into effect; * severance pay as prescribed by the labour law, the right to which has been acquired not earlier than 12 months before the insolvency of the employer came into effect; * reimbursement for damages for the whole period of unpaid time; * reimbursement of damages for the four subsequent years. Resources of the Employee Claims Guarantee Fund consist of the share of the state entrepreneurial risk fee (employers' contribution for each employee, amount determined by the Cabinet of Ministers), gifts and donations, and resources recovered by administrators. The risk fee is €0.36 per employee.

Commentary

In 2009, due to the economic crisis the amount of resources in the Employee Claims Guarantee Fund went critically low, and the government limited the payout amount. The maximum payout was linked to the national minimum wage. In 2018, the size of the Employee Claims Guarantee Fund exceeded €10 million, and the government decided to increase the limit set in 2009, when due to the economic crisis the amount of resources in the Employee Claims Guarantee Fund was critically low, and the government limited the payout amount, to 1.5 times the amount of the national minimum wage. In 2018, 1,552 employees' claims to the fund were satisfied, for a total amount of €1,278,486. In 2019, 1,269 employees' claims to the fund were satisfied, for a total amount of €1,711,943. In 2020, 1,376 employees' claims to the fund were satisfied, for a total amount of €1,980,915. In 2021, 349 employees' claims to the fund were satisfied, for a total amount of €572,217. From January 2022 till November 2022, 282 employees' claims to the fund were satisfied, for a total amount of €631,597.

Additional metadata

Cost covered by	Companies National government
Involved actors other than national government	Other Court
Involvement (others)	Insolvency Control Service (state agency)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Latvia: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Lithuania**Wage guarantee in case of insolvency**

Phase	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
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
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

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 2022 it was € 730, in 2023 €840 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.

Commentary

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 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. While in 2022, 1,193 company insolvencies were opened. Comparing the 2022 figures with 2021, the number of insolvency proceedings increased by 47.6% (2021: 808 companies). The amount requested for employee benefits was €9.1 million in 2020. The average amount requested per employee was €2,674.6. In 2022, the Guarantee Fund paid benefits to 5,072 workers, with a total of €11,015.6 thousand, or €2.2 thousand on average per worker, an increase of 17.9% compared to 2021. The amount paid to employees is 32.8% higher than in 2021 and the average payment per employee is 15.8% higher than in 2021 (average payment in 2021: EUR 1.9 thousand). In 2022, decisions were taken to pay benefits to employees of four companies in restructuring. 95 employees received benefits and were paid EUR 199.1 thousand, with an average benefit per employee of EUR 2.1 thousand.

In the period between the introduction of the Enterprise Bankruptcy Law (15 October 1992) and 31 December 2022, 30 433 companies were declared bankrupt, of which 94% (28 617 companies) went through bankruptcy proceedings completed (27,811 enterprises deregistered, 359 insolvency proceedings revoked, 447 insolvency proceedings terminated or out-of-court insolvency proceedings terminated, of which 153 conciliation agreements were signed, 174 companies. By 2022, 1 816 enterprises were undergoing bankruptcy proceedings, of which 1 325 were in liquidation, 491 were in bankruptcy. For 491 bankrupt firms, decisions on the continuation of the bankruptcy proceedings had not yet been taken.

Additional metadata

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

Affected employees: No, applicable in all circumstances

Company size: No, applicable in all circumstances

Additional information: No, applicable in all circumstances

Sources**Citation**

Eurofound (2015), Lithuania: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Luxembourg

Wage guarantee in case of insolvency

Phase	Labour Code; Civil Code
Native name	Code du travail; Code civil
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

L.126-1 of the Labour Code - modified by law 12 April 2019.

Description

The national Employment Fund (Fonds pour l'Emploi) guarantees the payment to the employees of any financial claims arising from their contract of employment should the employer become insolvent.

The entitlement is not subject to a minimum period of employment and this provision also covers apprentices and part-time and fixed-term contracts. The Employment Fund guarantees payment of any remuneration or other compensation and indemnities due to the employee which arise from the final six months of their employment prior to the court's declaration of the employer's bankruptcy. This includes any payments due as a consequence of the termination of employment. The guarantee applies to the final six months of employment of the employees concerned, irrespective of the date on which court proceedings begin or whether the six-month reference period is situated immediately before the decision of the court. The maximum amount that can be claimed is six times the monthly adult minimum wage for an unskilled employee (in September 2023 equivalent to a total of €15,425,58).

Commentary

The insolvency procedure has been redefined in a new 2023 legal framework (Loi du 7 août 2023 relative à la préservation des entreprises et portant modernisation du droit de la faillite).

Additional metadata

Cost covered by	National government
Involved actors other than national government	Employer organisation Trade union Other
Involvement (others)	Fonds pour l'Emploi (National Employment Fund)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Luxembourg: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Malta

Wage guarantee in case of insolvency

Phase	Cap. 452 - Employment and Industrial Relations Act, 2002; Guarantee Funds Regulations (Legal Notice 432 of 2002, amended by Legal Notices 444 of 2004 and 413 of 2005 and L.N. 283 of 2017)
Native name	Kap. 452 - Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, 2002; Regolamenti dwar Fond ta' Garanzija (Avviż Legali 432 tal-2002, kif emendat bl-Avvizi Legali 444 tal-2004 u 413 tal-2005 u Avviż Legali 283 of 2017)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Employment and Industrial Relations Act - Articles 20 and 21; Guarantee Fund Regulations- (Whole regulation) as amended by L.N. 432 of 2002 as amended by L.N. 44 of 2004; L.N.413 of 2005; L.N. 427 of 2007; L.N. 445 of 2011; L.N. 283 of 2017 L.N. 283 of 2017

Description

Article 20 of the Employment and Industrial Relations Act states that any claim by any employee in respect of a maximum of three months wage, as well as compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary. In every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.

The Guarantee Fund Regulations amounts to €582,343.35 which shall be paid out of the Consolidated Fund. In accordance with Article 102 of the Constitution of Malta all revenues

and other moneys raised or received by Malta (not being revenues or other monies payable into some other fund) shall, unless the parliament provides otherwise, be paid into and from one Consolidated Fund.

The amount of €582,343.35 shall be paid over a maximum period of five years, at a minimum rate of €116,468.67 per year. The fund is administered by a Guarantee Fund Administration Board. This is composed of the chairperson who is the Director General of Employment and Industrial Relations; four representatives of employees and four representatives of employers appointed on the Employment Relations Board (ERB); a member nominated by the Minister of Finance; the Chairperson of [Jobs+](#); and a member of the legal profession appointed by the Minister responsible for Employment and Industrial Relations.

The fund shall be utilised to guarantee payment of valid claims for employees' outstanding wages and for contributions to be paid by the employer in respect of occupational pension schemes resulting from contracts of service when the Administration Board is satisfied that the employer of an employee has become insolvent.

According to the Guarantee Fund Regulation for a claim to be valid the employee must have:

- registered a valid claim for unpaid wages with the Administration Board within two months from the insolvency of the employer;
- the employee provides certified evidence that he has registered a valid claim for the unpaid wages in the insolvency proceedings of the employer and with the Department for Industrial and Employment Relations;
- the claim registered by every individual employee shall be limited to the unpaid amounts due for unpaid wages, which shall consist of the basic wage for the relevant unpaid period, any unpaid overtime, arrears for any leave entitlement for the current and preceding calendar year, and any notice money payable in accordance with the provisions of the Act; and
- the claim registered by every individual employee refers to unpaid amounts which were due for wages payable within six months preceding the date of insolvency of the employer or preceding the termination of employment.

The employee binds himself to reimburse the Guarantee Fund. The sum reimbursed has to be equivalent to the amount paid out of the fund by the Administration Board. This amount can be derived from any amounts retrieved from any court proceedings or from any settlement received from a liquidator.

Any person who is found guilty of registering a false claim for unpaid amounts or who is found guilty of acting in collusion with an employer or an employee in order to obtain payments from the fund, shall be guilty of an offence and shall be liable on conviction to a fine (multa) which is equivalent to 10 times the amount paid out of the Guarantee Fund, together with any other punishment to which the offender shall be liable according to any other applicable law.

The Guarantee Fund Regulation does not indicate a minimum duration of the employment relationship for beneficiaries to be eligible to benefit from this fund. In order to recover money owed by the employer (which might include unpaid basic wage, overtime, compensation in lieu of notice and arrears for any leave entitlement for the current and preceding calendar year), the employee can register a valid claim with the Administration Board of the Guarantee Fund. The beneficiary is eligible to receive a total amount of money that does not exceed the equivalent amount of 13 weeks of the national minimum wage, payable at the time of the dismissal or termination. As of 1 January 2019, for an employee aged 18 years and over the national minimum wage is of €175.84 per week; for an employee who is aged 17 years the minimum wage is of €169.06 per week; and for an employee who is below 17 years of age the minimum wage is of €166.22 per week.

This regulation does not apply to private domestic servants and an employee who, on his/her own or together with members of his immediate family, was the owner or part owner of the employer's undertaking or business and had a considerable influence on its activities.

Commentary

Article 21 of the Employment and Industrial Relations Act sets up the Guarantee Fund. Data for the years 2010-2015 show that the fund was only used in 2011 and 2014. During 2011, 52 claims were processed and the sum of €44,667.96 was paid out of the fund. During 2014, one claim was processed and the sum of €2,108.47 was paid out. In 2010, 2012, 2013 and 2015 no claims were made.

According to the Department of Industrial and Employment Relations (DIER), in 2016 the Guarantee Fund was used on three separate occasions where the employer was declared insolvent. In total, 31 claims were processed and the sum of €57,657 was paid out from the Guarantee Fund. Between 2018 and May 2020 the guarantee fund was used once due to insolvency declared by the employer. This sole claim was processed and the sum of €2,184 was paid out. The Department of Industrial and Employment Relations (DIER) believes that the wage guarantee fund is likely to increase its relevance due to the COVID-19 crisis as it is expected that more companies would be declared insolvent. From May 2020 to December 2023, the Guarantee Fund Administration Board processed 107 claims,

amounting to € 246,775.40.

Labour legislation and related amendments are discussed at the formulation stage in the tripartite Employment Relations Board (ERB). Members forming this board come from trade unions, employer associations and the government.

Additional metadata

Cost covered by	National government
Involved actors other than national government	Employer organisation Trade union Other
Involvement (others)	Liquidator; Guarantee Fund; Employment Relations Board
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Malta: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Netherlands

Wage guarantee in case of insolvency

Phase	Pay guarantee regulation/Unemployment Insurance Act
Native name	Loongarantieregeling/Werkloosheidswet – WW
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 61-68 (Chapter IV)

Description

Insolvency

If employees have a financial claim against an employer who is insolvent (permanently unable to fulfil its payment obligations), they can benefit from the guarantee in case of:

- bankruptcy (declared by court);
- suspension of payments (surceance van betalen);
- debt restructuring (if a private person, after the finalisation of bankruptcy proceedings, is still confronted with debts they are unlikely to pay in future, the debtor has to do everything possible to collect the money needed to pay creditors for three years);
- permanent cessation of payments.

Eligibility

There is no minimum duration of the employment relationship in order to be eligible. Part-time and fixed-term workers are also eligible, alongside employees with permanent contracts. There are requirements in terms of the timing of the request made by the employee. The employee is required to file the request within a week after the date on

which he or she normally would receive their payment or after it becomes clear the employer cannot fulfil its payment obligations (article 63 of the Unemployment Insurance Act). Domestic civil servants that usually work fewer than three days a week are excluded from the pay guarantee regulation.

Funding of the guarantee

In cases of bankruptcy, employees' pay and unpaid premiums constitute debts which are paid directly out of the estate with preference over the claims of other creditors.

The employees have to claim the benefits from the public employment service (UWV). The maximum benefits awarded may comprise pay (over the last 13 weeks immediately preceding the date of notification of the dismissal and the period of notice for dismissal), holiday payments and holiday bonuses to which the recipient is entitled over the past year. The benefits to which employees are entitled under this regulation are determined on a monthly basis and have been maximised at 150% of the maximum daily wage (€264.57 per day as of July 2023), multiplied by the number of days worked. This has been done to cap employers' costs for high-wage workers. The UWV operates as the guarantee institution. Benefits are paid out of the general unemployment fund, funded by premiums paid by employees and employers. There is no direct link between payment of these premiums and the right to receive benefits. In addition to this, the employee can be eligible to receive support for payments to third parties (e.g. pension funds) if he/she is in a position to incur a financial disadvantage due to the fact that the employer has not paid such parties.

Commentary

This regulation is fairly uncontroversial and is supported by trade unions and employer organisations alike. As a consequence, it is unlikely to change in the next term of government. Figures on how often the articles are invoked are not readily available and no evaluations seem to have taken place.

Additional metadata

Cost covered by	Companies Employee National government
Involved actors other than national government	Public employment service
Involvement (others)	None

Thresholds

Affected employees: No, applicable in all circumstances

Company size: No, applicable in all circumstances

Additional information: No, applicable in all circumstances

Sources**Citation**

Eurofound (2015), Netherlands: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Norway

Wage guarantee in case of insolvency

Phase	Act on state guarantee for wages in case of insolvency
Native name	Lov om statsgaranti for lønnskrav ved konkurs m.v. (lønnsgarantiloven)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

1, 2

Description

In the case of bankruptcy, the employees receive by the state through a guarantee system any outstanding payment, accrued holiday pay and pension, and the compensation for the termination period. The scheme is administrated by the Norwegian Labour and Welfare Administration (NAV) and employees have to make a claim to NAV in order to get the compensation.

Claims should be put forward within the deadline set by the court. NAV Wage Guarantee will process claims that are submitted in writing to the administrator of the estate before the bankruptcy proceedings are closed, or within six months of commencement of the bankruptcy proceedings.

The guarantee applies to all employees that are in an employment relationship where the employer is to pay social security contributions to the national insurance scheme. Self-employed and shareholders who hold more than 20% are not covered.

Claims have to be put forward by the employees (individually or with help from their trade union or a legal adviser) and the following can be covered:

- Pay for a maximum of six months. The pay claim must not have been due for payment more than 12 months before the deadline. This time limit is absolute.
- Holiday pay accrued in the same year as the final date of claim (i.e. when bankruptcy proceedings commenced in court) and the year before.
- Pension benefits for a maximum of six months.
- Compensation for lost remuneration for the performance of work for a maximum of six months.
- Interest.
- Reasonable costs linked to filing a petition for bankruptcy.

Maximum coverage is limited to a gross amount equivalent to two times the National Insurance basic amount, which is adjusted every year (NOK 199,716 or €20,752 in 2019). Reasonable costs linked to filing a petition for bankruptcy are in addition to this.

Once bankruptcy proceedings have commenced, claims are covered for one month from the date on which bankruptcy proceedings commenced. This applies even if a longer period of notice applies through agreement or by law.

Commentary

The number of employees making claims under this scheme in 2013 was around 18,000 and the scheme paid out in total around €105 million (NOK 820 million) (no more recent data available).

Additional metadata

Cost covered by	National government
Involved actors other than national government	Public employment service Trade union
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Norway: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Poland

Wage guarantee in case of insolvency

Phase	Act of 13.07.2006 concerning the protection of workers' claims in the event of the insolvency of their employer
Native name	Ustawa z dnia 13.07.2006 r. dotycząca ochrony roszczeń pracowników w przypadku niewypłacalności pracodawcy
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

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.

Commentary

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.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other
Involvement (others)	Guaranteed Employee Benefits Fund
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Poland: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Portugal

Wage guarantee in case of insolvency

Phase	Labour Code (Law 7/2009 of 12 February); Decree-Law 59/2015 of 21 de April, amended by Law 71/2018 of 31 December
Native name	Código do Trabalho (Lei 7/2009 de 12 de fevereiro); Decreto-Lei 59/2015, de 21 de abril, alterado pela Lei 71/2018 de 31 de dezembro
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour code, article 336; Decree-Law 59/2015 of 21 de April, amended by Law 71/2018 of 31 December - whole document

Description

The Labour Code in its article 336 determines the Wage Guarantee Fund (Fundo de Garantia Salarial - FGS). A new system for the FGS was approved in 2015: the fund ensures the financial protection of employees in case of the employer's insolvency (defined as a debtor's inability to meet his commitments as they fall due - article 3 of [CIRE](#)) or of the employer's coverage by the revitalisation special process or by a procedure for extrajudicial recovery (in order to recover companies which are in a difficult economical situation or in imminent insolvency, but not in a current insolvency situation, a special revitalisation procedure has been created which allows the company to establish negotiations with its creditors to reach agreement on the recovery of the company. During this period, any pending judicial proceedings will be suspended). The fund guarantees the payment of wages, holidays, Christmas and food allowances and redundancy compensation.

The fund ensures the payment of labour credits due to workers since the six months preceding the start of the insolvency procedure, of the Extrajudicial Recovery Procedure

(Regime Extrajudicial de Recuperação de Empresas - RERE), or the submission of the application to Special Revitalisation Process (Processo Especial de Revitalização - PER).

The payment of the claims referred to above is subject to a double limitation:

- one of a temporal nature, since the worker is requested to file the application for the payment of outstanding labour credits at district centres or local social security services within one year from the day following the day on which the employment contract ended; and
- another of a pecuniary nature, as the fund simply ensures the payment of claims arising from the employment contract for at maximum of six months, and with the maximum monthly amount up to three times the minimum guaranteed monthly wage (€760 in 2023).

Under the new regime, the fund now also covers employees who work or have habitually worked within the national territory for an employer with activities in the territories of at least two EU Member States, even if the employer is declared insolvent by a tribunal or competent authority of another Member State of the European Union or of the European Economic Area.

Commentary

The Constitutional Court

(<https://www.jornaldenegocios.pt/economia/detalhe/tc-diz-que-prazo-de-um-ano-para-aceder-ao-fundo-de-garantia>) declared unconstitutional the one-year deadline for workers require this Fund, without it being possible to suspend or interrupt it.

According to the Observador [media](#), the number of requests to FGS registered an increase of 22.5% in 2020 compared with 2019 (14,278 applications in 2020, more 2,621 than in 2019). On average, in 2020, 1,189 applications were received per month.

In 2020 the expenditure on payment of salary credits was €75,848,547.04, representing an increase of 8% compared with 2019. This expenditure corresponds to 13,979 applications. The average amount paid per application was €5,426.

Additional metadata

Cost covered by Companies National government

Involved actors other than national government	Other Employer organisation
Involvement (others)	Institute of Financial Management of the Social Security (Instituto de Gestão Financeira da Segurança Social - IGFSS); Institute of Management of Capitalisation Funds of the Social Security (Instituto de Gestão de Fundos de Capitalização da Segurança Social, I. P. – IGFCSS)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Portugal: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Romania**Wage guarantee in case of insolvency**

Phase	Law no. 200/2006 regarding the establishment and use of a guarantee fund for debt salaries; Law no. 227/2015 - Fiscal Code
Native name	Legea nr. 200/2006 privind constituirea și utilizarea Fondului de garantare pentru plata creanțelor salariale; Legea nr. 227/2015 - Codul fiscal
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

8, 10, 13 and 14 (Law no. 200/2006); 209–215 (Law no. 227/2015)

Description

The Guarantee Fund for unpaid salaries is designed to ensure payment of outstanding claims arising from individual employment contracts and collective agreements concluded by employers who were given final judicial decision to open insolvency procedures and to which total or partial removal of the right of management was prepared (employers in the state of insolvency).

Employers are required to pay a monthly contribution to the Guarantee Fund, in the quota of 0.25% of the total monthly wages. They are also obliged to notify the fiscal administration, by day 25 of every month, about the amount of contribution to the Guarantee Fund. The fund is administrated by the National Agency for Employment (Agentia Nationala pentru Ocuparea Fortei de Munca, ANOFM), through its local agencies.

From the Guarantee Fund's resources outstanding wages or compensatory payments and indemnities for temporary interruption of activity may be paid. The fund cannot pay the outstanding social contributions of companies in insolvency.

From the Guarantee Fund, employees may claim the outstanding wages for a period of up to three calendar months in case their employer is in insolvency. Employees or organisations representing them may apply for payment from the territorial employment agency themselves, or the payment application may be filed by the legal administrator of the insolvent employer. Claims for the payment of overdue salaries are assessed by the local employment agencies, which also make the actual payments. Outstanding salaries are paid out of the Guarantee Fund regardless of whether the insolvent employer had paid the contribution to the Guarantee Fund in time. The total amount of the outstanding claims incurred by the Guarantee Fund may not exceed the amount of three monthly salaries at national level per employee.

Commentary

Romanian legislation is in line with the EU [Directive 2008/94/EC](#) on the protection of employees in the event of the insolvency of their employer. It has also taken into account the [ILO Convention no. C 173 on the protection of workers' claims](#) from 1992, even though this has not yet been ratified by Romania.

Romanian law does not distinguish between different categories of workers; it applies to all employees, either on fixed-term or open-ended contracts, and regardless of their position in the company. However, employees working for public institutions will not benefit from the provisions of the law because these employers can not be subject to insolvency proceedings.

The annual laws of the state social security budget stipulate the amounts estimated to be collected from employers, respectively paid from the Guarantee Fund for debt salaries. There is a constant surplus set for each year: * for 2014 revenues 265.9 million lei (€57.8 million), expenses 43.6 million lei (€9.5 million) ([Law No. 340/2013](#)) * for 2015 revenues 245.6 million lei (€53.4 million), expenses 21.6 million lei (€4.7 million) ([Law No. 187/2014](#)) * for 2016 revenues 301.2 million lei (€65.5 million), expenses 22 million lei (€4.8 million) ([Law No 340/2015](#)) * for 2017 revenues 370.8 million lei (€80.6 million), expenses 23.5 million lei (€5.1 million) ([Law No. 7/2017](#)) * for 2018 revenues 839.0 million lei (€174.4 million), expenses 23.7 million lei (€5.1 million) ([Law No. 3/2018](#)) * for 2019 revenues 905.2 million lei (€191.0 million), expenses 18.2 million lei (€3.8 million) ([Law No. 47/2019](#)) * for 2020 revenues 1.25 billion lei (€263.2 million), expenses 11.5 million lei (€2.4 million) ([Law No. 6/2020](#)) * for 2021 revenues 1.30 billion lei (€267.7 million), expenses 110.3 million lei (€22.7 million) ([Law No. 16/2021](#))

Emergency Ordinance 95/6 December 2017 issued by the Romanian Government modified article 8 of the law.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Public employment service
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Romania: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Slovakia

Wage guarantee in case of insolvency

Phase	Act on Social Insurance No. 461/2003; Act on Bankruptcy and Restructuring No. 7/2005, as amended; Act on Labour Code No. 311/2001
Native name	Zákon o sociálnom poistení č. 461/2003; Zákon o konkurze a reštrukturalizácii č. 7/2005, v znení neskorších predpisov; Zákonník práce č. 311/2001
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

2 d), 4 (4), 7, 12, 18, 25, 102, 103, 109, 116, 120, 165 (461/2003); 11, 24, 56 (7/2005); 21 (311/2001)

Description

In cases of employer's insolvency, workers' wage claims are guaranteed through the [Act on Social Insurance](#) and the [Act on Bankruptcy and Restructuring](#).

All workers with an employment relationship that lasted at least 18 months before the insolvency (the last working day before the employer filed for insolvency) are eligible, including employees with fixed-term contracts, part-time workers and employees working externally according to assignment contracts. However, employees of the state, public organisations, support organisations, national funds and municipalities, as well as domestic workers in a family business or people working for their family relatives who have not entered into an employment relationship are not eligible.

An employer is considered insolvent if it has filed for insolvency at the court.

The guarantee covers non-paid wages, bonuses, holiday remuneration, severance payments and travel expenses. The benefit covers employees wage claims for a maximum

duration of three months. In 2019, the average payment for an employee was €2,173, but in 2022, this payment has increased to the amount of €2,608. As of October 31, 2023, the Social Insurance Agency paid benefits for 1438 beneficiaries in the first 10 months of 2023 in the total amount of €3,292,687. On average, one benefit costs €2,290.

To get access to the wage guarantee benefits, the employee has to apply within 60 days after the insolvency or termination of the employment relationship. The Social insurance Agency (SP), which administers the guarantee fund, has to decide and pay the benefit within 60 days from the application. The fund is financed by employers' contributions.

In context of the COVID-19 pandemic, the government meet employers and the self-employed by postponing the deadlines for mandatory payments to insurance funds.

Commentary

The Social Insurance Agency paid 1,446 wage compensations from the Guarantee fund in the total expenditure €2.29 million to employees of 78 insolvent companies in 2017. In 2018, it paid more compensations, 1,702 in the total amount of €2.58 million, but the number of concerned insolvent companies was 63. In 2022, Social Insurance Agency paid 713 wage compensations from the Guarantee Fund to employees with a total expenditure of €1.86 million.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other
Involvement (others)	Social insurance organisation; Guarantee Fund
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Slovakia: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Slovenia

Wage guarantee in case of insolvency

Phase	Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP); Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia Act (ZJSRS)
Native name	Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju (ZFPPIPP); Zakon o javnem štipendijskem, razvojnem, invalidskem in preživninskem skladu Republike Slovenije (ZJSRS)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 21 of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP); Articles 13, 14, 16, 16a, 17, 18, 19, 24 and 28 of the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia Act (ZJSRS)

Description

The Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia (hereafter the Guarantee Fund) protects claims of the employees whose employment has been terminated due to bankruptcy proceedings, a valid decision on compulsory composition, an insolvency procedure in one of the other EU Member States or European Economic Area (the job was being carried out or generally being carried out in the Republic of Slovenia), or the company being deleted from the court register without liquidation under the provisions of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP). All employees are eligible, irrespective of the type of their employment contract. In case of insolvency, unpaid wages, severance pay, and social contributions for the last six months are priority claims in the insolvency procedure.

Coverage by the Guarantee Fund includes the right to receive payment (total amount not exceeding four and a half minimum wages) of:

- unpaid wages for the period of the last three months prior to the termination of the employment relationship (maximum of three minimum wages prescribed by the Minimum Wage Act, lowered by taxes and contributions);
- unpaid wage compensation for sick leave for the last three months before the termination of the employment relationship (maximum of three minimum wages prescribed by the Minimum Wage Act, lowered by taxes and contributions);
- wage compensation for unused annual holidays to which the employee was entitled in the current year (maximum of one half of minimal wage prescribed by the Minimum Wage Act, lowered by taxes and contributions);
- severance payment, as provided by the law on employment relations (maximum of one minimum wage prescribed by the Minimum Wage Act, lowered by taxes and contributions).

The Guarantee Fund is financed (with regard to covering payments to the employees) by the state budget, by employers (0.06% of the payroll costs) and by the Guarantee Fund through means of transfer and enforcement of claims from the insolvent employer.

The deadline for filing the request to enforce the above mentioned rights is 90 days after the termination of the employment relationship. The Guarantee Fund has to meet all its obligations within 30 days after the final decision.

Commentary

In the period 1997–2021, the Guarantee Fund paid out wage guarantees to 91,712 individuals in the amount of €138 million. The largest share of this sum was spent in the first two years as the law on the Guarantee Fund had retroactive force. The most recent economic crisis brought about a progressive increase in the number of workers' claims, reaching the peak in 2011 when €20,617,799 was disbursed to 7,205 individuals, a record in the history of the Guarantee Fund. In the last years, the bankruptcies of small businesses (in which administrators find it difficult to establish all claims of employees) prevail. In 2020, the trend of bankruptcies of mainly micro and small enterprises continued, and the Fund disbursed funds worth €1,8 million to 582 beneficiaries. Thus, despite the COVID-19 pandemic, there were not many enterprises as well as large enterprises going bankrupt in 2020 and 2021.

The Guarantee Fund disbursed €1,7 million to 505 individual employees in 2021, while it rejected 29 claims of workers (Annual Report for the year 2021, p. 56). In 2018, the average net payment amounted to €1,970 per beneficiary. The Guarantee Fund received most

income protection requests from former ECC Escada Competens Centrum and Inkos employees.

Additional metadata

Cost covered by	Companies National government
Involved actors other than national government	Other
Involvement (others)	Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Slovenia: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Spain

Wage guarantee in case of insolvency

Phase	Law 22/2003 (Insolvency Act 22/2003 of 9 July 2003), Royal Decree 20/2012 (Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budgetary stability and promote competitiveness), Statute of Workers' Rights (Royal Decree Law 2/2015), Royal Legislative Decree 1/2020, of 5 May, approving the revised text of the Insolvency Act.
Native name	Ley 22/2003, de 9 de julio, Concursal; Real Decreto-ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad; Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores; Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal.
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
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Article

Articles 84, 90, 91 of Law 22/2003; Article 19 of Royal Decree 20/2012; Art 33 Statute of Workers' Rights (Royal Decree Law 2/2015); Art 243, Art 514 Art 541 Royal Legislative Decree 1/2020.

Description

There is a special insolvency state fund (Fogasa) addressed to workers whose employer has been declared insolvent or bankrupt, or who had to stop paying wages for certain economic reasons. Law 22/2003 defines insolvency as the situation in which a debtor company cannot regularly meet its required debtor obligations.

The insolvency law from 2003 establishes the workers' privilege as creditors in cases where the company becomes insolvent. The claims of the workers of the company (wages for the 30 days before the opening of the collective procedures; wages for work after the start of the collective procedures; economic compensation related to termination of the employment contract etc.) have the priority, ranking ahead of all other claims.

The wage guarantee fund only becomes active if there are not enough assets available.

Anyone providing services for an employer and receiving wage for this, including part-time and fixed-term workers, irrespective of the duration of employment is eligible by the wage guarantee fund.

Domestic servants employed by families, artists, partners of workers' cooperatives are exempted.

The guarantee covers wages, bonuses and fringe benefits as well as financial employee participation that arises up to one year before the insolvency.

In terms of wages pending to be paid, the fund pays an amount equivalent to the double of the daily National Minimum Wage per each unpaid working day. Since the Royal Decree 20/2012 entered into force, on the 15 July 2012, a maximum of 120 days can be covered with the fund. Before, it was 150 days.

In terms of severance pay, there is a maximum payment of 12 months per year worked. However, the wage taken into consideration in order to calculate the severance pay cannot be higher than the double daily minimum wage (national monthly minimum wage was set at €950 as of February 2021, according to Royal Decree 742/2016). FOGASA covers only severance pay acknowledged by a court sentence or deriving from a resolution of the Labour Authority, and when dismissal is applied because the company is considered insolvent or goes bankrupt.

The guarantee is administered by the Guarantee Institution Fogasa of the labour ministry and financed by employer contributions.

Commentary

In 2007, 39,032 applications were solved, and claims of 20,498 companies and 73,447 workers were satisfied. In 2008, figures remained more or less stable compared to 2007: 49,792 applications were solved and claims of 25,637 companies and 90,320 workers were satisfied. Figures increased compared to 2008: in 2010, 135,577 applications were solved, and claims of 71,866 companies and 232,722 workers were satisfied. In 2012, 160,036 applications were satisfied, and claims of 84,257 companies and 254,931 workers were

satisfied. That increase led the government to reduce the level of payment by means of Royal Decree 20/2012. In 2013, claims of 82,373 companies (-2% compared to 2012) and 234,686 workers (-8%) were satisfied. In 2017, 90,321 workers' application and claims by 24,069 companies were made, for a total amount of €590.60 million. In 2018, 81,790 workers' application and claims by 21,324 companies were made, for a total amount of €556.10 million. In 2019, 72,369 workers' application and claims by 19,514 companies were made, for a total amount of €520.98 million. In 2020, 64,585 workers' application and claims by 15,620 companies were made, for a total amount of €459.15 million. In 2021, 64,354 workers' applications and claims by 20,785 companies were made, for a total amount of € 576.72 million.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	Other
Involvement (others)	Guarantee Institution Fogasa
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Spain: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin

Sweden

Wage guarantee in case of insolvency

Phase	Wage guarantee act (1992:497)
Native name	Lönegarantilag (1992:497)
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Whole regulation

Description

In the case of employer insolvency, employees are eligible for wage guarantee. The wage guarantee aims at giving employees time to look for other jobs. Claims are not only guaranteed in cases of employer insolvency (permanent inability of the employer to pay the debts), but also in cases of restructuring events (current or foreseeable inability of the employer to pay the debts at due date, but there are activities to make the company survive a temporary crisis and avoid insolvency).

The wage guarantee is independent of the duration of the employment contract. It covers all claims that arose within the previous three months before registering for insolvency and one month after the decision of the insolvency court. The maximum amount per employee for 2021 amounts to around €18,600 (SEK 190,400) ([Länsstyrelsen Stockholm, 2021](#)). The guarantee is financed by the payroll tax and the state; there is no specific fund, but the financial means are registered as a special element in the national budget.

The benefit is paid out to employees by the Swedish government. Non-eligible workers include those who have been hired with the intervention of the public employment service and those who, alone or together with close relatives, own 20% or more of the company.

Commentary

Examples of wage costs that can be replaced by the wage guarantee:

- Salary for the time the employee worked before the application for business reconstruction was submitted (usually a maximum of three months), as well as salary for the first month after the decision to reconstruct;
- Vacation pay for the current and the previous year (if still employed in the company);
- Termination salary and vacation allowance during the termination notice period, if terminated during the reconstruction.

There have been numerous cases of fraud related to the regulation. Wage guarantee payments were originally processed by the county administrative boards. In order to improve the decision-making information base for paying agents, the government decided in 2017 ([DS 2017:67](#)) that the state would be responsible for processing wage guarantee payments. The government can accordingly appoint the authority responsible for the payment. The amendments entered into force on 1 January 2019.

Additional metadata

Cost covered by	Employer National government
Involved actors other than national government	Regional/local government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Sweden: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin