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Simplified options to compute wage supplement

Act I of 2012 introduced a number of innovations in the area of labour law which are vital for employees to be familiar with from a guarantee point of view and for employers for the purposes of cost optimisation. With this in mind, five methods will be introduced from which the parties can select if and when employers should for any reason pay wage supplement to employees.

Normally, wage supplement must be computed in accordance with the provisions of the Labour Code.

Wage is the consideration for the work performed by an employee under normal conditions. **In contrast, wage supplement is a benefit employees are entitled to in special cases specified by legislation, in addition to their basic salary**. This additional benefit is calculated – unless otherwise agreed – based on the basic salary of an employee for one hour. This is the reason why basic salary is always calculated at time rates; otherwise, it would be impossible to calculate wage supplements.

If an employee is entitled to wage supplement for a period of time under several legal titles, these must be calculated individually as compared to the basic salary. Upon computation, the basic salary of the employee payable for one hour must be determined. In accordance with the provisions of Subsection 136(3) of the Labour Code, the portion of the monthly basic salary payable for a definite period of time is subject to the days according to the general work schedule applicable to a particular month, and therefore it volatiles.

As contained in Subsection 139(3) of the Labour Code, upon determination of the amount based on which wage supplement is computed, the amount of the monthly basic salary must be divided by one hundred seventy-four hours in case of ordinary total daily work time, or by the proportionate part of one hundred seventy-four hours in case of working in part-time or in total daily work time different from the ordinary one. The latter means that in case of working in part-time for four (4) hours a day, the half of it, while in case of employees employed in stand-by jobs for twelve hours a day, one and a half times must be calculated. The regulations are aimed at ensuring that the rate of wage supplement, unlike basic salary, does not volatile according to the working days of a particular month. In short, the basic salary and the supplement allocated to it must be calculated using two kinds of divisor at the same time, if necessary.

If otherwise agreed by the parties

As I have indicated, the new Labour Code opens up a range of options. Although in principle it provides that derogation from the rule applicable to employment may be granted in favour of the employees; however, the option is also provided for the parties to enter into a separate agreement in many cases. These cases can be identified when the term of "unless otherwise agreed by the parties" is used by legislation and in such case a derogation from the prohibition set forth in Section 43 of the Labour Code is granted. Normally, the prohibition also relates to

the agreement of the parties. The option to derogate, however, was similarly provided already in Act XXII of 1992 and the judicial practice was maintained this way (BH2003.973.). The only barrier for the agreement of the parties is the basic rule for the calculation of wage supplement that allows no derogation stipulating that no wage supplement payable under extraordinary conditions may replace any wage payable under normal conditions.

It means that basic salary must be paid to employees whatever the case may be. On the other hand, it does not violate the law if the parties agree on a wage supplement in the amount of zero Forint in addition to the basic salary provided that the agreement is valid (e.g., by their own free will). Certainly, the parties may depart not only in respect of the basis for calculation of the wage supplement but the obligation to pay wage supplement may also be stipulated in cases other than those specified by legislation.

Derogation may also be made from the rules in a collective agreement

In principle, derogation may be granted in the collective agreement from the provisions contained in Part II and III of the Labour Code under Subsection 277(2) of the Labour Code unless otherwise provided by legislation. This also means that the parties may not only agree on other legal titles to pay wage supplement but also to compute wage supplement in a manner other than those laid down in legislation, or even to rule it out completely.

Wage supplement can be included in basic salary

Subsection 145(1) of the Labour Code allows that certain supplements can be included in basic salary. However, these supplements are listed by legislation as itemised, and therefore this provision may not be applied to all kinds of wage supplement. Supplements for work on Sundays, holidays, at night and in shift are deemed as such by legislation. Considering that the law at this point provides general opportunity for derogation from the main rule, derogation to the detriment of the employee is also allowed by law.

Accordingly, upon inclusion of wage supplements, the only requirement which applies is that the parties should specifically identify each type of wage supplement included; however, the degree of the wage supplements included does not have to be adjusted to any average payment whatsoever. Consequently, in respect of wages above the minimum wage it can also not be excluded that the parties amend the contract of employment in such a way that the basic salary designated therein also include specific wage supplements as from the date set therein. It does not in itself violate the requirement of acting in good faith provided that it has indeed resulted from the mutual intention of the parties. However, at this point one needs to be watchful of the general principles of the Labour Code since this procedure can be challenged successfully in several respects. Similarly to the challenging of mutual agreement, employees may also claim to not have signed the amendment of their own free will.

Flat-rate wage supplement can be applied

Subsection 145(2) of the Labour Code also enables the parties to agree on a monthly flat rate in lieu of any wage supplement in the contract of employment. In addition, the flat-rate payable for stand-by and on-call duties may also include the remuneration for work.

However, in determining the monthly flat rate, the average rate must be taken by the parties as a basis unlike in case of inclusion in the basic salary. Moreover, the flat rate must be determined as per each type of supplement.

Smart people can reduce significant administrative burdens

Computing absentee fee and wage supplement may imply significant administrative burdens. Therefore, it is worth using the opportunities for derogation provided by collective agreements and (in exceptional cases) by legislation in respect of the agreements of the parties.

At the same time, when including wage supplement in the basic salary or applying flat rate wage supplement, attention should be paid that thereafter the entitlement will become independent from statutory conditions. Therefore, they will be payable even when no payment obligation would occur under legislation. In addition, after inclusion, upon computing absentee fee, the flat-rate wage supplement must be taken into account under Subsection 148(1) paragraph (a) of the Labour Code whatever the case may be.

In short, the regulations may greatly reduce administrative burdens. However, it is worth proceeding as gingerly as possible because if employers do not properly apply statutory regulations, they could be confronted by not only employees but also the Labour Inspection.