

THE RIGHT TO RECEIVE FAIR REMUNERATION FOR WORK IN THE REPUBLIC
OF LITHUANIA

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Abstract. A wage is remuneration for work performed by an employee under a contract. The right to fair remuneration means as follows: pay which guarantees a decent living standard for employees and their families; increased pay for overtime and extraordinary working conditions; equal remuneration for women and men for equal work; proper prior notification of dismissal from work; time limitation on deductions from pay. Issues relating to a pay are one of the most relevant for employees. An issue of this article is whether remuneration received by employees guarantees a decent living standard for employees and their families. The minimum wage in Lithuania, remuneration in the event of non-conformity with the normal working conditions, the right for payment for working in due time is also analysed in this article.

Keywords: wage; equal remuneration; minimum wage; minimum hourly rate; minimum monthly wage.

INTRODUCTION

A wage is remuneration for work performed by an employee under a labour contract. In accordance with Article 141 of the Treaty establishing the European Community [1] pay means an ordinary basic or minimum wage or salary and any other consideration (whether in cash and in kind) which the worker receives directly or indirectly, in respect to his employment, from his employer. That is remuneration for work in the wide meaning. A wage established in p. 2 of Article 186 of the Labour Code of Lithuania [2] comprises the basic salary and all additional payments, also remuneration in the event of non-conformity with the normal working conditions, for work on days-off and public holidays, at night and overtime work, etc. Guaranteeing the right to fair remuneration is crucially important to ensure the employee's welfare. The right to fair remuneration means as follows: pay which guarantees a decent living standard for employees and their families; increased pay for overtime and extraordinary working conditions; equal remuneration for women and men for equal work;

proper prior notification of dismissal from work; time limitation on deductions from pay [3]. Issues relating to a pay are one of the most relevant for employees. In 2004 a major part of complaints received by the State Labour Inspectorate, i.e. 46.5%, are about pay for work [4].

When considering an issue whether remuneration received by employees guarantees a decent living standard for employees and their families the ratio of net to gross wages should be looked at, as well as the amount of non-taxable income (currently – LTL 320), tax share (Individual income tax – 27 % of income received from labour relations: taxes to State Social Insurance Fund (SODRA) – 34 %, contributions to the Guarantee Fund – 0.2 %. 61.2 % in total, and the share paid out to an employee makes only 38.8 %) deductible from the gross pay to employees.

Due to a too heavy tax burden some part of employers being interested in substituting the labour relations for other relations (by executing assignment, service, contract works, copyright, etc. agreements) takes risk to employ individuals illegally, and supports the settlement system of “pay-in-envelope”, etc., due to which the black economy is still very viable in Lithuania. It is obvious that one-fifth of the economy seems

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quite a lot to be called a “natural” size of the black economy [5].

As the global experience shows, the extent of black economy, even if it depends upon assessments and various bureaucratic limitations, is differing in different countries, despite the fact that taxes in these countries are similar. When comparing with gross domestic product (GDP) the biggest black economy is in developing countries, average of 35–44 percent of GDP. In the transiting economy countries where also belongs Lithuania, the black economy is slightly smaller, average of 21–30 percent of GDP. In the wealthy countries the black economy is still smaller, average of 14–16 percent of GDP [6].

From the 1st of July in 2006 the income-tax tariff was reduced in Lithuania from 33 percent to 27 percent and this did not debase revenues, which are obtainable from this tax. As Lithuania Business Employers' Confederation has noticed, even if only three months have passed but the annalists assure that the black economy has “shrunk”. [7] On the other hand it cannot be stated that “pay-in-envelope” has declined because of the reduced taxes. Citizen intention to participate in pension accumulation system, which was implemented in 2003, induces them to legalize the job income, as it helps to obtain loans for accommodation etc. State tax inspectorate, State labour inspectorate and SODRA also made influence as they jointly, since 2003, exercised control over companies and detected “pay-in-envelope” cases. That is why only complex application of all the means is possible in seeking to legalize the job income. On the other hand, the legalization of job income in turn stimulates the decrease in extent of illegal work and danger to person or society, which is connected with this illegal work.

The relevance of the problem caused prerequisites and the need to examine in detail the grounds of the right to fair remuneration for work in Lithuania. As to this purpose, the following aims were targeted at: to analyse the particularities of the establishment of the minimum wage, the particularities of remuneration in the event of non-conformity with the normal working conditions, the procedure of payment of remuneration to workers and to adopt appropriate proposals for the development of legislation seeking for fair remuneration for work. Methods of analyse, comparative, documentary analyse were used in this work.

1. THE MINIMUM WAGE IN LITHUANIA

In seeking to correctly fix a wage for work performed by an employer the rates of the minimum wage (further on referred to as MW) is taken at a starting point: the minimum hourly rate (further on referred to as MHR) or the minimum monthly wage (further on referred to as MMW). In 1994, after ratification of the International Labour Organization Convention No. 131 concerning minimum wage fixing with special reference to developing countries [8] Lithuania committed itself to comply with the provisions, including those estab-

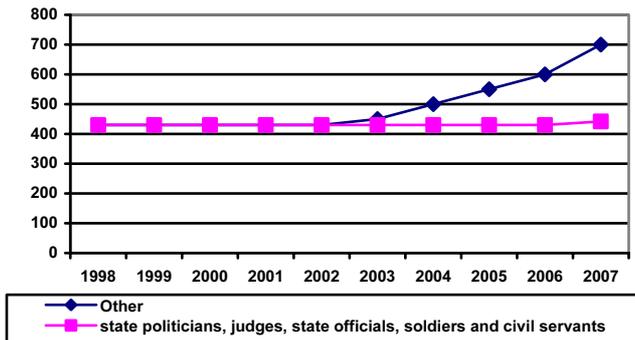
lished in Article 2: minimum wages shall have the force of law and shall subject to abatement; and failure to apply them shall make the person or persons concerned liable to appropriate penal and other sanctions.

Until 28 May 2005 sub-paragraph 4 of paragraph 1 of Article 4 of the Labour Code established “the labour laws shall determine the amount of the minimum wage...”. Thereafter that provision was deleted. Article 187 of the Labour Code establishes that the Government, upon the recommendation of the Tripartite Council, shall determine the minimum hourly pay and the minimum monthly wage. Thus the rate of MW is established not by law, which would be difficult to amend in a fast manner due to its complicated procedure of adoption, but by resolution of the Government. The statement of this fact causes discussions and doubts about the legitimacy of the establishment of this rate.

In accordance with p. 3 of Art. 187 of the Labour Code of the Republic of Lithuania the hourly pay or monthly wage of an employee may not be less than the minimum rates established by the Government. During inspections it was established that 1091 employees in 51 undertakings received wages that were less than the minimum wage established by the Government. The comparison with the previous years (in 2001 the number of undertakings where employees were not paid the minimum wage was 46, in 2002 – 44, in 2003 – 33) suggest the conclusion that the number of violations has been decreasing, and an increase in the number of violations in 2004 can be presumably explained by the fact that the minimum wage was increased.

In Lithuania the minimum wage (MW) was changed rather often due to the changing economic conditions (see in the pictures). The assessment of the effect of the minimum wage increase on the profitability of undertakings showed that an increase of MMW up to LTL 600 would not produce any material effect on the economic state of undertakings (The arguments provided in the research [10] suggest that, even given the situation of 2002, such increase of MMW would reduce profits of undertakings by on average 0.3 percentage point or ~10%, whereas in view of the recent economic growth and the fact that in 2002–2004 a profit of undertakings before tax increased almost twice in Lithuania (or 100%), it is obvious that there is no point to speak about inability of undertakings to pay the minimum wage higher by LTL 100. On the other hand, the increase of the minimum wage in effect from 01 05 2004 (the minimum monthly wage (MMW) up to LTL 500, a minimum hourly pay (MHP) up to LTL 2.95) did not cause materially adverse consequences for business: a) according to the data of the State Labour Inspectorate after 01 05 2004 the cases of non-payment of MMW/MHP did not increase, vice versa, less those cases were registered; b) according to the data of the Company Bankruptcy Management Department under the Ministry of Economy after 01 05 2004 in Lithuania not only the number of initiated bankruptcy cases did not increase, vice versa, that number relatively decreased), as the recent development tendencies of the

Lithuanian economy suggest that currently there exist all assumptions for increasing of the wages to employees in Lithuania (including the minimum wage): only in 2000–2003 the gross domestic product of Lithuania augmented by 24%, working efficiency of employees – by 20%, profits of non-financial undertakings – by 520% (!); whereas the average wage went up by 9%, MW – by 5%. From 1 July 2007: Minimum hourly wage of LTL 4,19 and minimum monthly wage of LTL 700 for employees in undertakings, offices and organizations without regard to the form of ownership and other individuals who are applicable the minimum monthly wage in the procedure prescribed by laws [11]



The specialists have been criticizing the right of the Government to establish the minimum wage claiming that in such a way it unnecessarily interferes with the labour market and causes its disbalance. However, determination of the minimum wage helps to ensure the right to the wage meeting the individual needs. This is justified by the fact that the Tripartite Council involves in the establishment of the MW which is represented by interest groups of three parties – i.e. state, employers and employees. The role of the state in determination of the sums of MW is based on the principle that if no minimum wage is determined employees would acquire the right to abuse this situation, as a result of that wages of part of employees are likely to decrease considerably.

However, the state partly performs functions of the employer by paying remuneration to the public servants, officers, politicians, judges and other employers from institutions financed from the state, municipal and other budgets. The wages of state civil servants are regulated by the Law of Public Service [12]. The wages of state politicians, judges, state officials are regulated by the Law on the Remuneration for Work of State Politicians, Judges and State Officials. [13] Both laws were amended on 19 July 2006, the amendments thereof provided that the amount of the basic salary shall be calculated by multiplying the coefficient of the basic salary by the basic amount. In 2006, the basic amount, applied in the calculation of basic salary of state politicians, judges, state officials and public servants, is equal to LTL 430. The basic amount of the forthcoming year is approved by the Seimas until the end of the spring session of the Seimas, following the proposal from the Government, and having evaluated the proposals from

the trade unions representing public servants, state politicians, judges and state officials, the average annual inflation of the previous year (in calculation of the national consumer price index) and impact of other factors having effect on the average amount of remuneration for work in the public sector and the change thereof. The newly approved basic amount must not be lower than the current basic amount.¹ From 1998 till now the minimum monthly wage has not increased and is made of 430 LTL for State politicians, judges, State officials, soldiers and civil servants. While implementing provisions of Articles 2(2) and 4(2)(3) of the Convention of the International Labour Organization No 131, the establishment, application and periodical check (amendment) of the minimal monthly wage of the employed persons subject to application of the provisions of the Convention, shall be performed taking account to the freedom of collective bargaining and having consultations with appropriate organizations representing employers and employees, and, in case of absence of such organizations, with appropriate representatives of employers and employees [8]. Article 187(1) of the Labour Code allows to establish different amounts of MW for different branches of economy, regions or groups of workers. However, these amounts are to be submitted to the Government by the Tripartite Council. The question is, who represented politicians, judges, soldiers, public servants, officers and other workers in the establishment of different (lower) amounts of MW? A supposition may be drawn that the discussion on these amounts did not include the opinion of social partners and particularly did not include the interests of the employers representing the public sector. On the other hand, following the conclusion of the Constitutional Court [9], differentiated regulation of the relations regarding remuneration for work as such does not imply the provisions relating to discrimination or granting of privileges. <...> The Government Resolutions use (used) the definition of the MMW in legally incorrect way. Such situation misleads the subjects of law and makes a kind of confusion. However, only this cannot be a ground to recognize, that the appropriate provisions are (were) inconsistent with the Constitution of the Republic of Lithuania <...> and the constitutional principle of the rule of law.

Frozen minimal monthly wage for State servants and State officials does not stimulate work productivity and effectiveness; there is noticeable deficiency of State officials in Lithuanian districts (3000 openings) and there are more cases when the corruption was detected. That is why it is suggestible to revise the basic amounts, which should be evaluated as the precondition for fair remuneration for work.

One more important aspect is that by hiding behind the increase of income to employees with the lowest earnings the increased MW is used for additional revenues to the budget, i.e. the greatest benefit of the in-

¹ Law amending Law on Public Service and Law on Remuneration for Work of State Politicians, Judges and State Officials (Valstybės žinios (*Official Gazette*) 2006, No 87–3400).

creased MW is felt not the those who earn the least income, but by the state and SODRA budgets. Employers' representatives have been insistently emphasising that the necessity to reduce the individual income tax and increase the share of non-taxable income, which is reasonable, as the calculations made evidence that given the current share of non-taxable income and the current level of the rates of taxes and contributions, if MMW is increased from LTL 500 to LTL 600 per month, the employer's costs for the minimum monthly wage would grow by LTL 131 – LTL 64 would go directly to an employee, LTL 67 would go to the State Social Insurance Fund budget and the state budget [10]. On the other hand, when the EU boundaries have opened Lithuania felt shortage of qualified specialist as it was caused by the settled emigration of the working power. This had impact upon economical competition for other wage structures, that means, motivated employers to increase waged for the employees.

2. REMUNERATION IN THE EVENT OF NON-CONFORMITY WITH THE NORMAL WORKING CONDITIONS

The employer must pay equal pay for work of equal value. The principle of equal pay for work of equal value is also enforced in the International Labour Organization Convention No.100 concerning equal remuneration for men and women workers for work of equal value [14] as ratified by Lithuania. The states having ratified this Convention must ensure equal pay for men and women for work of equal value. This principle is also enforced by Paragraph 1 of Art. 141 of the Treaty Establishing the European Community [1]. For the purpose of its implementation the European Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [15] was adopted. The principle must be enforced in the national legal acts, collective agreements, and wage-fixing machinery. In Lithuania this principle was enforced by p. 3 of Art. 186 of the Labour Code and p. 5 of Art. 5 of the Law on Equal Opportunities [16], which establishes the employer's duty to ensure equal pay for work of equal value. However, the differences in men and women's wages, though gradually decreasing, still exist. In 2002 women's salaries represented 74.9 % of men's salaries, in 2003 – 75.2 %. In the private sector this difference was lower – 83.8 % in 2003 [17].

Article 192 of the Labour Code provides for remuneration in the event of non-conformity with the normal working conditions. Under those working conditions the increased wage rate must be paid. Specific rates of this payment are established in collective agreements and employment contracts. The State Labour Inspectorate received 8 complaints about payment for work in event of non-conformity with the normal working conditions. However, 6 of them were not reasonable [4]. In view of only the number of complaints filed it is possible to

draw the conclusion that the number of infringements of the rights of employees in this area is not significant.

Payment for overtime work and night work is not less than one and a half of the fixed hourly pay (monthly wage). Payment for work on days-off or public holidays, unless that is established under the schedule, is not less than double or at employee's request he is granted another day-off per month or that day is added to his annual holiday. Art. 8 of the previously effective Law of the Republic of Lithuania on Wages [18] regulating work on days-off and public holidays established that work on a day-off or public holiday, unless that is established under the schedule, is compensated by giving another day-off per month or at employee's request he is paid not less than a double hourly or daily rate without giving an extra day-off. It is considered that the existing regulation is fairer as the employer is left less possibility of self-activity in encouraging employees to work on days-off and public holidays. However, violations are not avoided, e.g.: police officers who worked on public holidays and days-off as well as overtime and at night did not receive increased pay as established in Article 197 of the Labour Code, *inter alia*, when the extent of employee's work is increased versus the established work quota he is paid for proportionally more. On 13 December 2004 The Constitutional Court of the Republic of Lithuania issued a ruling, which states that non-making of this payment constitutes infringement of the right to fair remuneration for work [19].

In accordance p. 2 of Art. 150 of the Labour Code overtime work is usually prohibited, however, according to the Lithuanian Labour Federation to work overtime in Lithuanian is normal, but to receive additional pay for overtime work is unusual. It is supposed that an employee has not managed to fulfil a task due to his personal inability to perform work in a proper and due manner. Whereas, it is unquestioned whether the workload given by the employer is really not too heavy.

Another problem is that employers delegate to perform work that has not been agreed under the employment contract, but is related with the work done, its administration, e.g.: instructing employees to carry out an inspection of goods once per month, clean and tidy the premises, clean the windows, etc., and to do all that between the shifts, i.e. at night. It is possible to draw the conclusion that this problem is rather relevant among employees, as quite a great deal of complaints is filed (897 inquiries were made to the State Labour Inspectorate in 2004 about payment for work. Of which 149 about payment for work on public holidays and days-off, overtime work and work at night. 71 complaints did not prove true [4]), though almost half of them are not reasonable. That means that whether employees are apt to complain for the sake of complaining or they incorrectly understand the labour regulatory provisions for these issues. Employees address quite a lot of issues to the consultants of the Trade Unions relating to remuneration for overtime work and work on days-off and public holidays, therefore it is possible to draw a con-

clusion that employees receive too little information on these issues in the undertakings. Therefore, employers are recommended to better inform employees about remuneration for overtime work and work on days-off and public holidays as well as at night. It is rather complicated to individually solve the problems related with payment for work, therefore as one of the solutions could be more active establishment of trade unions or labour councils as representatives of employees in defending their rights.

Pay for idle time is established in Art. 195 of the Labour Code. During idle time the employer must pay the minimum hourly rate (MHR) not less than established by the Government of the Republic of Lithuania. The exceptions are applicable when the employer may transfer an employee to another job position within the undertaking, but in any case the minimum hourly pay cannot be lower than MHR established by the Government. The same conditions are applicable also to employees who do not go on strikes, but who are unable to perform their work by reason of the strike (p. 3 of Art. 82 of the Labour Code). Payment for idle time is made in the same procedure as the wage.

3. THE RIGHT TO RECEIVE PAY FOR WORK IN DUE TIME.

The right to receive pay for work in due time is one of the most relevant in Lithuania. Out of all violations of payment for work 979 violations or 24.4 % (in 2003 – 1 131 violations or 32.27 %) of total violations of payment for work were established with respect to delayed payment of wages [20]. The number of violations of the procedure for payment of wages are quite large, therefore solutions to this problem need to be sought. As one of the “incentives” for employers to pay wages when due is calculation of penalties for delayed payment of wages and making of other payments related with labour relations (Art. 207 of the Labour Code). The Order of the Minister of Social Security and Labour of the Republic of Lithuania On Approval of the Amount of Penalties [21] establishes penalties in the amount of 0.06%. Penalties are paid in the procedure set by the Law of the Republic of Lithuania on Establishment of Penalties for Delayed Making of Payments Related with Labour Relations. Article 2 of this Law provides that penalties are paid for each delayed calendar day starting calculation after 7 calendar days from the day on which any payments established by the legal acts or collective (or employment) agreement or at the time fixed by the employer had to be paid and ending calculation on their payment day inclusive [22]. A person violating the procedure for calculation and payment of wages may be imposed the administrative liability in accordance with Art. 41 (4) of the Administrative Code [23].

Another provision forcing the employer to settle accounts with an employee being dismissed when due is the amendment to the Labour Code supplementing p. 3 of Art. 141 of the Labour Code with effect from 28 May 2005, which restores the rule of Art. 41 of the Law on

Employment Contract [24] been in effect before the Labour Code: when payment is delayed due to other than employee’s fault the employee is paid the average wage for delayed time. The judicial practice before the Labour Code suggests that this sanction does not intimidate the employer, especially in case of insolvency, therefore violations of the rights of employees are unavoidable.

Laws provide payment of delayed-money as a sanction for the taxes that were not paid on time to the State and municipality budgets, as well as to SODRA. The legal acts do not regulate the case when funds are insufficient to make payments at the same time to employees and the tax administrator, therefore it is necessary to evaluate the cases with respect to the priority right whether to make payments to employees or to the tax administrator without violating the human rights and maintaining the unity principle of the duties. Because paying taxes is the obligation of the employer that is why it is necessary to give the priority to the employee.

CONCLUSION

The number of violations of the procedure for payment of wages is really large, therefore solutions need to be sought to this problem. The provision of the Labour Code establishing that “when payment is delayed due to other than employee’s fault the employee is paid the average wage for delayed time” does not intimidate the employer as a sanction, especially in case of insolvency, therefore violations of the rights of employees are unavoidable.

In solving the problems of fair remuneration for work it is recommended to ensure the principle of “pay which guarantees a decent living standard for employees and their families“ and the influence of payment structure upon economic competition.

In order to avoid the black economy, corruption, “pay-in-envelope” and other tax evasion ways as an increasing negative tendency it is necessary to constantly overlook the sizes of MDU and of basic, mostly in national sector.

Frozen minimal monthly wage for State servants and State officials does not stimulate work productivity and effectiveness; there is noticeable deficiency of State officials in Lithuanian districts (3000 openings) and there are more cases when the corruption was detected. That is why it is suggestible to revise the basic amounts, which would be evaluated as the precondition for fair remuneration for work.

Employees often work overtime, also on holidays and observance days for which laws provide enlarged payment but the employees are not informed about this and thus their rights are violated. As one of the ways to solve this problem could be more active role of trade unions or labour boards in representing the interests of employees.

Also, it is important to evaluate the cases of the priority right to make payments to employees without

violating the human rights and maintaining the unity principle of the duties.

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TEISĖ GAUTI TEISINGĄ APMOKĖJIMĄ UŽ DARBĄ LIETUVOJE

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S a n t r a u k a

Darbo užmokestis yra atlyginimas už darbą, darbuotojo atliekamą pagal darbo sutartį. Pagal Europos Bendrijos sutarties 141 str., atlyginimas reiškia įprastą pagrindinį ar minimalų darbo užmokestį arba kitą atlyginimą (tiek grynais pinigais, tiek natūra), kurį darbuotojas tiesiogiai arba netiesiogiai gauna už savo darbą iš darbdavio. Tai darbo užmokestis plačiaja prasme. Lietuvos darbo kodekso 186 str. 2 d. numatytas darbo užmokestis apima pagrindinį darbo užmokestį ir visus papildomus.

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domus uždarbius, taigi ir užmokestį už nukrypimus nuo normalių darbo sąlygų, už darbą poilsio ir švenčių dienomis, naktinį ir viršvalandinį darbą ir kt. Teisės į teisingą darbo užmokestį garantavimas yra ypač svarbus darbuotojo gerovei užtikrinti.

Straipsnyje keliami visiems rūpimi klausimai: ar teisiškai nustatytas bazinis, minimalus ir kitoks darbo užmokesčiui apskaičiuoti taikomas dydis yra tinkamas ir ar darbuotojų gaunamas darbo užmokestis yra pakankamas, kad garantuotų darbuotojams ir jų šeimoms normalų gyvenimo lygį.

Problemos aktualumas sudarė prielaidas ir poreikį panagrinėti teisės gauti teisingą apmokėjimą už darbą Lietuvoje pagrindus. Tuo tikslu buvo užsibrėžti šie uždaviniai: išnagrinėti minimalaus darbo užmokesčio nustatymo ypatumus, darbo apmokėjimo dirbant nukrypęs nuo normalių darbo sąlygų nustatymo ypatumus bei atsiskaitymo su darbuotoju tvarką ir priimti atitinkamus siūlymus, kaip tobulinti teisinę bazę siekiant,

kad darbuotojams teisingai apmokėtų už darbą. Šiame darbe taikyti sisteminės analizės, lyginamasis, dokumentų analizės ir kiti metodai.

Išanalizavusi problematiką, autorė siūlo įvertinti principo „darbo užmokestis garantuoja darbuotojams ir jų šeimoms normalų gyvenimo lygį“ užtikrinimą ir darbo užmokesčio struktūros įtaką ekonominei konkurencijai. Siekiant išvengti šešėlinės ekonomikos, darbo užmokesčio „vokeliuose“ ir kitų mokesčių vengimo būdų, korupcijos kaip neigiamo reiškinių didėjimo būtina nuolat tikslinti MDU ir bazinius dydžius, taikomus valstybiniame sektoriuje.

Pagrindinės sąvokos: darbo užmokestis, vienodas apmokėjimas, minimalus darbo užmokestis, minimali mėnesio alga, minimalus valandinis atlygis.