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Negotiation skills for effective collective bargaining

Work-related remuneration as an important aspect of a collective agreement

Negotiation skills for effective collective bargaining – compendium

Bundle 3: Work-related remuneration as an important aspect of a collective agreement

Project: Strengthening the Competences of Social Partners in a Collective Bargaining Process, 2017–2021

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Introduction

This is the third bundle in the compendium issued as part of our project **Negotiation skills for effective collective bargaining**. The first bundle was issued in 2018 and concerned collective bargaining; the second was issued in 2019 and concerned good communication as an essential condition for effective bargaining; the third, issued this year, concerns work-related remuneration as the most important aspect of collective bargaining. The enacting terms of a collective agreement are mostly dedicated to tariffs – their definitions and amounts.

Collective agreements are an important supplementing instrument to the Employment Relationships Act (*Zakon o delovnih razmerjih*), which lists all types of remuneration in Chapter Work-Related Remuneration (Articles 126–146), but does not provide all their complete definitions nor their systemic structure. Prior to 2003, this subject (work-related remuneration), along with the contents of an employment contract, was regulated in general and industry-level collective agreements. The law left some issues to be agreed in industry-level collective agreements (hereinafter referred to as: the KPd), however, due to a simplified wording of the text problems emerged in practice, which were not an issue under the previous General Collective Agreement for Commercial Activities (*Splošna kolektivna pogodba za gospodarske dejavnosti*). The transfer of this content into law also meant that social partners no longer have full authority to autonomously agree on the remuneration system and model.

This text provides a comprehensive presentation of statutory law concerning work-related remuneration and the related tax treatment. Special attention is also paid to the fact that an **agreement on the basic salary is one of the most important aspects of an employment contract**, while other worker's rights apply directly based on the law and the collective agreement binding on the employer.

The last chapter concerns a special statutory provision which enables social partners to conclude a company-level collective agreement and agree on **derogation from minimum standards agreed in an industry-level collective agreement**, if they believe that this would enable them to prevent the loss of jobs and the deterioration of the general financial standing of the employer. Industry-level collective agreements already contained such provisions before the Collective Agreements Act established this measure at the statutory level.

The freely available Chamber's website provides a page entitled **PLAČNI KAŽIPOT** (Guidelines on the calculation of wages), which includes useful information on work-related remuneration with regard to individual industry-level collective agreements.

It is important to note that negotiators in the process of collective bargaining must also have sufficient knowledge of work-related remuneration, as this is an aspect regulated in all collective agreements. The purpose of our project is to strengthen the competences of negotiators in this field.

Metka Penko Natlačen
Editor

I. Legal aspects of work-related remuneration[1]

1. Introduction

Rules concerning work-related remuneration are one of the most important provisions of industry-level and company-level collective agreements, since they concern the largest heading of expenses in a company or industry. Until 2003, i.e. until the introduction of the modern labour legislation, only collective agreements regulated the following, based on the provisions of a Yugoslav federal law (Act on Basic Rights Stemming from Employment (*Zakon o temeljnih pravicah iz delovnega razmerja*), hereinafter referred to as: the ZTPDR of 1989) and the Yugoslav state law (Employment Relationships Act (*Zakon o delovnih razmerjih*), hereinafter referred to as: the ZDR of 1990):

- the contents of an employment contract,
- types of work-related remuneration,
- additional basis for the calculation of duration of annual leave (except the minimum),
- employee education and rights concerning it,
- conditions for the performance of activities of a company-level trade union.

Therefore, with regard to the unified regulatory framework of work-related remuneration, the General Collective Agreement for Commercial Activities (*Splošna kolektivna pogodba za gospodarske dejavnosti*) of 1997 and its predecessor the General Collective Agreement Concerning The Business Economy (*Splošna kolektivna pogodba za gospodarstvo*) of 1993, which provided continuity of regulation of work-related remuneration until 2005, played an important role in ensuring a unified framework for the entire economy.

An interesting fact is that this framework was never based on any statutory provisions and emerged based on a special collective agreement entitled Common Grounds For The Conclusion Of Collective Agreements (*Skupni temelji za sklepanje kolektivnih pogodb*), concluded in 1988 by the Federal Free Trade Union (*Zvezni svobodni sindikat*) and the Chamber of Commerce and Industry of Yugoslavia (*Gospodarska zbornica SFRJ*). Even though this document was not among the legal instruments included in the Slovenian legal order after independence, it never-

1 *Author: Metka Penko Natlačen*

theless remained an excellent standard for agreeing on individual elements of collective agreements concerning work-related remuneration.

In 2006, the Collective Agreements Act (*Zakon o kolektivnih pogodbah*, hereinafter referred to as: the ZKolP) established the contents of a collective agreement, however, neither the ZKolP nor the ZDR-A (the act amending the Employment Relationships Act) or ZDR-1 (the new Employment Relationships Act) established with sufficient detail the elements of work-related remuneration. The ZDR-1 regulates all work-related remuneration in chapter **Work-Related Remuneration**, Articles 126–141. It regulates, in general, the terms salary, basic salary, job performance, various bonuses, vacation pay, severance pay upon retirement, wage compensation and profit sharing. The aforementioned work-related remuneration includes a salary and other types of remuneration or reimbursement of expenses, which are of various legal nature; most importantly – not all are considered payment for the work performed. **Therefore, it still falls on collective agreements to define in more detail the contents and systemic structure of work-related remuneration.**

However, after 2005, when the framework General Collective Agreement ceased to apply, **individual industries have regulated these issues independently**, which is why various models of work-related remuneration have emerged, and especially various (and often inconsistent) definitions of the main type of work-related remuneration – i.e. the salary. This applies especially to the **definition of the basic salary and the minimum basic salary**, which are the most important elements of the wage system, i.e. the payment **for the work performed or not performed**.

A collective agreement should define basic terms concerning work-related remuneration, such as: salary, basic salary, minimum basic salary, payment, gross/net amount. It should also systematically list other types of personal remuneration, because the ZDR-1 does not regulate them and leaves these elements (with the exception of salary) to be defined in a collective agreement.

Personal remuneration of workers under an employment relationship can be classified as follows:

1. a. **salary or compensation** and a year-end bonus, if classified as a salary;
2. b. **other types of payments**, including:
    - other types of personal remuneration,
    - reimbursement of work-related costs.

2. Statutory basis for the regulation of work-related remuneration in the ZDR-1

The ZDR-1 defines a salary as a type of work-related remuneration in Articles 126 and 127. These two Articles provide

- 126(1): Remuneration for work carried out on the basis of an employment contract includes a **salary**, which must always be paid out in monetary form, and **any potential other types of remuneration**, if so provided in a collective agreement. With regard to salary, an employer must take into account the minimum provided by law or a collective agreement, which is directly binding on an employer.
- 126(2): A salary is composed of the **basic salary**, a part of the **salary for job performance** and **bonuses**. A further constituent element of the salary is also **remuneration for business performance**, if provided in the collective agreement or an employment contract.
- 127(1): The **basic salary** shall be determined taking into account the degree of difficulty of work for which the worker concluded an employment contract.
- 127(2): The worker's **job performance** shall be determined taking into account the **cost-effectiveness, quality and scope of the performed work** for which the worker concluded an employment contract.
- 127(3): **Bonuses** shall be determined **for special working conditions** related to the distribution of working time, i.e. for night work, overtime, Sunday work, and work on statutory public holidays. Bonuses for special working conditions related to special workload, unfavourable environmental impacts, and danger at work, which are not considered within the degree of difficulty of work, may be laid down in a collective agreement.

The ZDR-1, therefore, only defines the basic salary as a "minimum provided by law or a collective agreement, which is directly binding on an employer". Any more detailed regulation would be excessive, because ever since 1991, work-related remuneration has been well and **usefully regulated in industry-level collective agreements**. The new statutory provision does not hinder such regulation in the future. What is more, since the regulation of a basic salary and a minimum basic salary is typically included in collective agreements, the ZDR-1 does not provide whether a collective agreement should establish tariff or payment categories. However, it does provide that a worker's basic salary should be defined in such manner so as to **reflect the degree of difficulty of work**, for which an employment contract was concluded. The manner in which such is established (whether by tariff or payment categories, points, norm, etc.) is left to be agreed in collective agreements and employment contracts. The employer is free to choose such method.

An EXAMPLE of a possible regulation of an employee's salary:

(Salaries)

(1) A worker's salary consists of: a basic salary, various bonuses, part of a salary based on job performance, and part of a salary based on business performance, if so agreed in a collective agreement, a general act of employer or an employment contract.

(2) The employment contract should provide the amount of basic salary.

A worker's basic salary should be equal or higher than the minimum basic salary established for a particular tariff category in this collective agreement.

(3) A minimum basic salary is equal to the **least demanding work in a tariff category** *for an average monthly working time, which is 174 hours for full-time work, on condition of a 40-hour working week, or part-time work if equal to full-time work under the law, or the working hour calculated on this basis, all for normal working conditions and working results established in advance.*

(4) A **basic salary** *is provided on a monthly or hourly basis.*

The agreed monthly amount applies to:

- *an average monthly working time, calculated on the basis of an annual working time, which is 174 hours for full-time work on condition of a 40-hour working week;*
- *the degree of difficulty of work in the position for which a worker concluded an employment contract;*
- *the normal workload, unfavourable environmental impacts and danger at work;*
- *work results established in advance, which a majority of workers achieve in equal or similar positions.*

(The amount of minimum basic salary)

(1) The amount of minimum basic salary is established in a tariff annex, which is an integral part of this collective agreement.

(2) The amount of minimum basic salary in a particular tariff category applies as of the first calendar day of the month after the publication of this collective agreement in the Official Gazette of the Republic of Slovenia (Uradni list RS).

(Part of the salary based on a worker's job performance)

(1) The part of the salary based on a worker's job performance shall be established taking into account the criteria provided by an employer for the work for which a worker concluded an employment contract.

(2) Job performance may be measured individually or collectively.

3. Basic salary as a concrete amount of payment for a particular work a worker performs under an employment contract

Indents 6 and 8 of the first paragraph of Article 31 of the ZDR-1 provide, *inter alia*, that the following are mandatory elements of an employment contract:

- whether the employment contract is concluded for **full-time or part-time**;
- the **amount of the worker's basic salary in Euro**, which the worker is entitled to for the performance of work under the employment contract, and any potential other payments.

The law does not provide a definition of a worker's basic salary. It only provides that the basic salary reflects the degree of difficulty of work, for which the worker concludes an employment contract. A basic salary is, therefore, **a concrete amount of payment for a particular work with regard to its degree of difficulty and a particular worker.**

What is provided is a manner of establishing a basic salary, which must be included in an employment contract **in a nominal amount on the day of its conclusion.** A basic salary is **usually** established in a monthly amount, as salaries are usually paid out in such manner – but it can also be established per hour. The agreed monthly amount applies to an average monthly working time, calculated on the basis of an annual working time, which is 174 hours for full-time work on condition of no more than a 40-hour working week and no less than a 36-hour working week if equal to full-time work under the law. In the event of reallocation of working hours during a year, an employer decides whether remuneration for work shall be **calculated based on actual work performed** or **as an average in a reference period**.

A basic salary is a salary that applies **under normal working conditions**, which are those that are characteristic of a position or type of work for which an employment contract is concluded, provided that the work is mostly performed under such conditions. Such working conditions also imply the degree of difficulty of work.

A basic salary is a salary for **pre-established work results**, i.e. those that are actually achieved in practice, objectively established and which a tested majority of employees achieve in equal or similar positions. A worker shall receive 100% of basic salary for achieving 100% of work results, based on the measurement criteria. The term "estimated work results" is misused in practice, because pre-established work results cannot be equated with the estimated, i.e. with what is planned.

The important question regarding the employer's remuneration model is to what degree is over-achievement and under-achievement of pre-established work

results permissible – i.e. **what is the prescribed relationship between the fixed and the variable part of the salary.** Since this is not prescribed, naturally, as it depends on a position or type of work as well as its degree of difficulty, various methods have been implemented in practice, for example a payment for a maximum of 20% over-achievemnt and a maximum of 20% under-achievement of pre-established work results. Lately, the proportion of the variable part of the salary is increasing with regard to the proportion of the fixed part. In any event, **the proportion of the variable part of the salary may not exceed the proportion of the fixed part**. Such remuneration based on the variable part is only legal if specific criteria of **quantity, quality and cost-effectiveness** are used, regardless of whether they are used individually or collectively.

A worker's basic salary, which is equal to or higher than the minimum basic salary in a particular tariff category, **does not increase automatically with an increase in a collective agreement**, unless such provision is expressly included in the collective agreement. However, such provisions are regularly used in employment contracts.

4. A minimum basic salary as an abstract category – the value of the least demanding work in a particular tariff category under a collective agreement

The minimum basic salary is the **value of the least demanding work in a particular tariff category** for:

- **an average monthly working time**, as calculated based on an annual working time;
- **the conditions of work, characteristic of the positions or types of work in a particular tariff category.**

The minimum basic salary is adjusted in a manner provided by the parties to a collective agreement, unless the adjustment is established in another regulation.

In the majority of industry-level collective agreements, the term minimum basic salary (*najnižja osnovna plača*) substituted the previous term initial salary (*izhodiščna plača*) in a tariff category, which is still used in some collective agreements. The minimum basic salary as a minimum amount of remuneration in a particular tariff category is equal to the initial salary after adjustment for the so called Rop bonus (*Ropov dodatek*). At the level of individual industries, the manner of adjusting for the Rop bonus was performed in various ways.

The minimum basic salary is the amount established by the parties to a collective agreement for the least demanding work in a tariff category. In doing so, the par-

ties should take into account the average monthly working time, calculated on the basis of an annual working time, which is 174 hours for full-time work on condition of no more than a 40-hour working week and no less than a 36-hour working week if equal to full-time work under the law. If the actual monthly working time would be taken into account, the amounts of minimum basic salary (and thereby also hourly rates for such tariff categories) **would differ from month to month, even though the amount of basic salary would not change.** The conditions of work, characteristic of the positions or types of work or degree of difficulty of work in a particular tariff category, are those that are normal for such positions or types of work, under which such work is usually performed.

The minimum basic salary is adjusted in a manner provided by the parties to a collective agreement, unless the adjustment is established in state regulations.

If such adjustment is not appropriately agreed, **annual negotiations would probably have to be conducted** to agree on the new amounts of minimum basic salaries. Whatever the case, the minimum basic salary corresponds to the average or at least the lowest economic capability of companies in a particular industry. If the minimum basic salaries are only considered as the price of labour, i.e. as a market category and without the required reference to achieving the pre-established work results, the amounts in certain lower tariff categories, where there is a shortage of workers, could surpass the amounts in higher tariff categories, or lower tariff categories, where workers demand higher amounts, could artificially increase the amounts in all other tariff categories, where there is no shortage of workers. In any case, employers will adapt to such market conditions of greater demand for workers in a particular tariff category by **offering a higher basic salary when concluding an employment contract.**

It is no longer usual that the minimum basic salaries in different tariff categories should keep a constant ratio to each other, as was the case with the initial salaries. However, even with initial salaries, such ratios were not a guaranteed right but merely an indication of how to define tariff categories.

A basic salary of a worker must be equal to or higher than the lowest basic salary, as established for a particular tariff category in a collective agreement concerning a particular industry or a particular company. If such salary, including bonuses, for full-time employment turns out to be lower than the minimum wage, the employer would have to pay the worker a minimum wage in the amount as prescribed by law, because the minimum wage is defined as a minimum payment. It is established as a social corrective measure and **applies to all employees, regardless of the degree of difficulty of work or the work results.** Until 2015, the minimum wage included all bonuses and elements of a salary; however, since 2015 and 2019, this has changed – bonuses are no longer included.

If the minimum basic salary is lower than the minimum wage, the worker must receive the amount of the minimum wage. The higher salaries actually paid out on this basis **do not constitute a higher productivity of an individual industry, because the payments to employees are higher only due to the mandatory payment of a minimum wage.**

5. Job performance

The criteria listed in the law for establishing a worker's job performance must be normatively established in a company-level collective agreement or in a general act of employer; they must also be objective and known to the workers prior to their commencing work. A worker must be aware that he is required to perform their work to 100% in order to receive 100% of the payment. The principle of legal certainty is not fulfilled if an employer requires that a worker performs all the work listed in an act on systematisation that needs to be performed in a certain period.

In addition to the job performance bonus awarded in the form of a stimulation, as described in the previous paragraph, it can also be awarded in the form of a special reward for a work well done, which is a form of an occasional/temporary stimulation. Other irregular stimulations are also possible.

It is also important to note the provision of a collective agreement, under which **all amounts concerning personal work-related remuneration are listed in gross amounts.** The salary and compensation are listed in gross amounts (including the worker's and the employer's contributions based on a net salary), and other types of personal remuneration are listed in an amount on which personal income tax is charged, as well as social security contributions, if required. The aforementioned provision is usually the opening provision of the **normative tariff part** of a collective agreement, which defines work-related remuneration and its characteristics.

6. Seniority bonus

Under the ZDR-1, **bonuses** are established **for special working conditions** that concern the distribution of working time, such as night work, overtime work, or work on Sundays or statutory holidays. Such bonuses are mandatory under the law and their amounts are established in a collective agreement. Bonuses for special working conditions that concern **special workload**, unfavourable environmental impacts and danger at work, **which are not considered within the degree of difficulty of work** (and are, therefore, not considered in the basic salary), may be laid down in a collective agreement and added to the basic salary.

Seniority bonus is one of such special bonuses. Article 129 of the ZDR-1 provides that a worker is entitled to a seniority bonus, and that the amount of such bonus is to be established in an industry-level collective agreement.

This is a special bonus, which has been part of our remuneration system since the Second World War. In the system of socialist associated labour, this bonus was an additional payment for the total years of service of a particular worker, not just for the years of service with a particular employer. However, since 1997 there has been a tendency in commerce to change the conditions of this bonus so as to apply only to the years of service with the last employer. This tendency was included in transitional provisions of the then applicable General Collective Agreement for Commercial Activities of 1997 (hereinafter referred to as: the SKPgd(1997)), but was never realized. To the contrary – Article 238 of the ZDR-A of 2003 provided that all workers who were employed on 1 January 2003 (i.e. the day when the ZDR-A became applicable) have the right to the seniority bonus. ZDR-1 also includes a similar provision. This provides that workers, whose seniority bonus on the day ZDR-1 became applicable amounted to at least 0.5% of their basic salary for each year of service, shall keep such bonus, **unless provided otherwise in an industry-level collective agreement.** The term "otherwise" may also mean a less favourable provision, which may be included in a particular industry-level collective agreement even *in peius* (less favourable to the worker), based on this statutory provision. The regime concerning bonuses, as provided in a particular collective agreement, is presented in the annex.

7. Other personal work-related remuneration

Other types of personal remuneration include:

- **vacation pay:** under the ZDR-1, the minimum vacation pay is equal to the minimum wage;
- **long-service bonus:** industry-level collective agreements and company-level collective agreements define this bonus with regard to the term of service with a particular employer;
- **solidarity assistance:** this is also defined in industry-level collective agreements and company-level collective agreements;
- **severance pay** upon retirement, upon withdrawal from an employment contract due to business reasons and reasons of incompetence, and upon termination of a fixed-term employment contract.

Included among other types of personal remuneration, the Employment Relationship Act defines severance pay upon retirement and upon withdrawal

from an employment contract due to business reasons or reasons of incompetence, while vacation pay is only defined in its minimum amount and mandatory deadlines are provided for its regular or delayed payment in the event of insolvency.

The next type of work-related remuneration, which concerns the performance of work for the employer, is the right to the **reimbursement of work-related costs**:

- costs of commuting to and from work,
- meals during work,
- reimbursement of costs for work-related travel,
- bonus for working outside of one's office,
- compensation for separation from family.

With regard to the reimbursement of costs, the ZDR-1 provides that **if this is not regulated in a collective agreement, an executive regulation shall regulate it.** However, such executive regulation is not one defining tax treatment of work-related remuneration (a tax decree), and it has not yet been issued for the private sector. In any case, it should be noted that a worker is entitled to reimbursement of costs to the amount provided in a collective agreement; usually, such amounts are lower than the actual work-related costs incurred. If the amount is not provided in a collective agreement, a worker is entitled to 100% reimbursement under general rules of civil law.

8. Tariff annex and its contents

A tariff annex is a concrete expression of the normative part of a collective agreement with regard to work-related remuneration. It contains at least the amounts of minimum basic salaries in particular tariff categories, established for a certain month and year, and probably also the manner of their adjustment. The amount of vacation pay is not a mandatory part of a tariff annex, because its minimum is established in the ZDR-1. However, it is possible to provide a higher amount of vacation pay in a tariff annex, or its payment in several instalments, or its delayed payment in the event of business difficulties. The payment of vacation pay after 1 July of a current year is only permitted if so agreed in a collective agreement – this is a provision *in peius*, which must be included in an industry-level collective agreement.

It is advisable that for reasons of transparency a **tariff annex lists the amounts of all types of remuneration of employees**, i.e. including reimbursement of costs and maybe even the amount of bonuses. Some tariff annexes have long been

listing the amounts of all reimbursements of costs. In any case, the contents of a tariff annex depend on the established negotiating standards, requirements in individual industries, and the will of the parties.

9. Manner of payment of work-related remuneration, and confidentiality of data concerning it

Work-related payments must be **paid through a worker's bank account** or in another non-cash manner, which enables the worker and the tax authorities to keep records. This does not apply to reimbursement of the costs of meals and commuting to and from work, but only if the employer is providing the service in kind or organises and provides it themselves. The custom of providing vacation pay in the form of vouchers for a selected provider is not legal, because this personal remuneration must also enable the worker to freely chose where to spend it.

An important provision is the one regulating which data on work-related payments is public and which is not. It is advisable that a collective agreement clearly state, in accordance with the Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*), that the minimum basic salary, the provisions on the amount of bonuses and the criteria for measuring performance are public. However, any calculation of the actual salary of a particular worker with a particular employer is strictly confidential. This data is not available even to a trade union, unless a worker authorises access to such data to a trade union. However, every worker has the right to consultation of their calculated salary, and to receive a salary calculation with a specification of each element of the salary, which is a statutory requirement since the ZDR-1 became applicable (Article 135(2) and (3) of the ZDR-1). The legislation on enforcement provides that a written wage slip is deemed an authentic instrument, which allows for a direct enforcement against the employer.

10. Minimum wage as a statutory minimum payment to an employee

Minimum wage is regulated by the **Minimum Wage Act** (*Zakono minimalni plači,* Official Gazette of the Republic of Slovenia (*Uradni list RS*), Nos. 13/10, 92/15 and 83/18).

A worker who is employed full-time with an employer in the Republic of Slovenia has the right to **be paid for the work performed** at least in the amount of the minimum wage determined under the Act. This means that a minimum wage is a state prescribed amount of payment to a worker.

A minimum wage is a monthly salary for the work performed full-time. A worker who works part-time has the right to a proportional amount of minimum wage.

Since the amendments to the law became applicable, the following is **no longer included in a minimum wage:**

- bonuses provided under the law or another regulation or under a collective agreement,
- part of the salary for job performance, and
- bonus for business performance, as agreed in a collective agreement or an employment contract.

This means that the institute of a minimum wage completely changed its legal nature compared to the regime prior to 2015.

This definition of a minimum wage begins to apply to the payment for the work performed as of 1 January 2020. The amount of minimum wage is:

- EUR 886.63 for the work performed from 1 January 2019 to 31 December 2019,
- EUR 940.58 for the work performed from 1 January 2020 to 31 December 2020,
- with regard to the work performed as of 1 January 2021, in accordance with Article 3 of the Act and under a special formula, the Minister of Labour, Family and Social Affairs declares the amount of minimum wage by the end of January of a current year.

If the basic salary for full-time work, which no longer includes any bonuses, is lower than the amount of minimum wage, the employer must pay the worker **an additional amount to reach the minimum wage, because this is provided as a minimum payment.** However, all bonuses, calculated on the basis of a basic salary, are then added to the minimum wage.

A minimum wage is established as a social corrective measure for full-time work and applies to **all employees, regardless of the degree of difficulty of work or the work results.**

The higher salaries actually paid out on this basis **do not constitute a higher productivity of an individual industry,** because the payments to employees are higher only due to the mandatory payment of a minimum wage, regardless of the value actually created.

If the basic salary is lower than the minimum wage, the minimum wage is the salary that is actually paid out to the worker. The higher salaries actually paid out

on this basis **do not constitute a higher productivity of an individual industry, because the payments to employees are higher only due to the mandatory payment of a minimum wage**.

11. On the impact of social partners on the regulation of work-related remuneration in the past and in the present

The regulation of work-related remuneration in a collective agreement, an employment contract and in the law itself is of fundamental importance to the negotiators concluding a collective agreement, and to the workers entering an employment relationship. Until 2003, parties to a collective agreement or an employment contract were free to decide on the contents of an employment contract, and thereby also on the regulation of work-related remuneration, including compensation. This enabled the parties to create a wide spectrum of types of work-related remuneration, and to create a different remuneration model or foundations for one in each collective agreement. When after 2003 this subject was transferred from collective agreements to an Employment Relationships Act, the regulation of work-related remuneration became a lot more rigid, and the social partners have lost their influence on the matter (which they gained in 1990 when collective agreements were introduced to our labour system). With regard to the flexibility of employment relationships and the increased autonomy of collective bargaining, this development is opposite to the direction in which modern labour law is evolving.

The new regulation of minimum wage is also diminishing collective bargaining with regard to work-related remuneration, because the so called “balancing payment to a minimum wage” is gaining a special meaning, even with regard to the costs for the employer, while not representing any type of remuneration know under the law or collective agreements.

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II. Rules on work-related remuneration in industry-level collective agreements, and tax treatment of such remuneration[1]

1. Introduction

This text on the rules of work-related remuneration in collective agreements is based on the previous article **Legal aspects of work-related remuneration**, which is why legal bases for individual types of remuneration and their systematic structure are not repeated here. For the benefit of the reader and for clarity, special features of regulation are emphasised, and examples of calculations provided.

For ease of use in practice, tax treatment is provided with each type of remuneration. This is of special importance with regard to the total cost of work for the employer.

2. Work-related remuneration, with tax commentary

2.1. Worker's salary and compensation

Under the ZDR-1, remuneration for work carried out on the basis of an employment contract includes a salary and any potential other types of remuneration. With regard to salary, an employer must **abide by the statutory minimum or the minimum agreed in a collective agreement directly binding on the employer.** A salary is composed of the basic salary, a part of the salary for job performance, and bonuses, as well as remuneration for business performance, if provided in the collective agreement or an employment contract.

The important information for the worker is the amount of initial salary or the minimum basic salary agreed in an industry-level collective agreement binding on the employee and the employer. Regulation of initial salary or the minimum basic salary in collective agreements is important, because an employment contract must include at least the amount of such salary – this is a worker's right to remuneration for work of a particular degree of difficulty. The initial salary or the minimum basic salary in an industry-level collective agreement reflects the economic strength of an industry, which even the economically weakest employer

1 *Author: Cvetka Furlan*

in such industry is able to provide. All initial salaries or minimum basic salaries under industry-level collective agreements, which the Chamber concludes as an employer, under particular tariff categories, as agreed in industry-level collective agreements, are published on the Chamber's website PLAČNI KAŽIPOT (Guidelines on the calculation of wages)[2].

Industry-level collective agreements have on average nine tariff categories. The banking and savings sector has the least tariff categories (6), while the construction sector has the most (14). Ratios between tariff categories are not prescribed. Comparing the minimum wage and the initial or minimum basic salary is not appropriate, because the minimum wage is the lowest gross salary prescribed by law, which a worker must receive for working full-time, and it also includes bonuses, contributions and withheld income tax. The initial or the minimum basic salary, on the other hand, is the lowest amount of salary, which an employment contract must provide as an established payment for work in a position for which the contract is concluded.

In the following presentation, three very different industry-level collective agreements[3] have been chosen to show how remuneration is regulated in various areas. They also concern three very different time periods, which is why the comparison of an initial salary/minimum basic salary between these three collective agreements is even more interesting:

- Collective agreement for the small economy – 2020
- Collective agreement for the paper and paper-processing industry – 2019
- Collective agreement for the trade sector – 2020

Tariff category	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector*
I.	583.99	477.38	578.38
II.	665.75	541.78	600.58
III.	747.48	606.33	636.26
IV.	840.92	670.77	679.17
V.	940.21	783.95	757.04
VI. – I.	1,121.26	1,014.49	911.75

2 http://www.gzs.si/slo/skupne_naloge/pravni_portal/si_delodajalec/placni_kazipot.
3 *A record of collective agreements is available at: https://www.gov.si/teme/delovna-razmerja/.*

VI. – II.		1,198.94	
VII.	1,273.09	1,521.75	1,087.37
VIII.	1,518.34	1,752.32	
IX.	1,822.02		

*The Collective agreement for Slovenia's trade sector also includes the provision on adjusting minimum basic salaries, which provides: "As of including 2020, minimum basic salaries shall change and adjust to inflation, as measured by the consumer price index of the Statistical Office of the Republic of Slovenia (SURS) concerning months I–VI of the current year/I–VI of the previous year, however only on 1 July of the current year, but for no more than 2% annually. If inflation is negative in a specific calendar year, the minimum basic salaries remain unchanged."

Under Article 137 of the ZDR-1, a worker is entitled to wage compensation for a period of absence in events and for the duration as provided by law; and in cases when a worker is absent and does not perform work due to reasons on the side of the employer. In the majority of cases, an employer pays wage compensation to a worker when the worker is unable to work due to illness or injury, whether connected with work or not, or when a worker is taking their annual leave or exercising the right to paid absence due to personal circumstances, education, statutory public holidays, or when a worker is not performing work due to the reasons on the side of the employer.

Type of compensation	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector
Illness	80%	80%	80%
Occupational illness and work accidents	100%	100%	100%
Annual leave	100%	100%	100%
Statutory holidays	100%	100%	100%

Article 137(8) of the ZDR-1 provides that in the event of a worker's absence from work due to illness or injury not related to work, The basis for the calculation of wage compensation is the **worker's salary in the preceding month for full-time work.** Under the ZDR-1, such compensation cannot be lower than 80% of the basis.

Unless the ZDR-1 or another act, or regulation issued based on such act, provides otherwise, the worker's wage compensation shall amount to his **average monthly salary for full-time work in the previous three months** or in the period of the last three months prior to his absence. If a worker has not been working in the

previous three months and has been receiving wage compensation for the entire period, the basis for the calculation of wage compensation is equal to the basis for wage compensation in the last three months prior to his absence. However, if a worker did not receive even one monthly salary in the entire period of the previous three months, they are entitled to a wage compensation **in the amount of their basic salary, as agreed in their employment contract.** The following statutory provision is also important: **the amount of wage compensation cannot exceed the amount of salary that the worker would have received had they been working**, which means that wage compensation received when a worker is justifiably absent cannot exceed the salary earned by working.

2.2. Bonuses paid on top of a basic salary

Under the ZDR-1, bonuses paid on top of a basic salary are:

- A bonus for special working conditions **due to the distribution of working time** (e.g. night shifts, overtime, work on Sundays or statutory public holidays);
- A bonus for special working conditions **related to special workload, unfavourable environmental impacts, and danger at work.** If such bonuses are **not taken into account in the degree of difficulty of work,** they may be provided in a collective agreement (e.g. noisy environment etc.).

Under the ZDR-1, the amount of bonuses may be provided in a collective agreement in a nominal amount or as percentage of basic salary for full-time work or the corresponding hourly rate. There is practically no case of a collective agreement where bonuses would be provided in nominal amounts.

Examples of regulation in industry-level collective agreements:

Type of bonus	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector
Bonus for working the afternoon and night shift, when work is organised in two shifts or cycle (one night shift*)	10%	10%*	10%
Bonus for working a split shift, for each split of more than an hour	15%	-	20%
Bonus for being on call			
Bonus for working a night shift	30%	55%	75%
Bonus for overtime work	50%	50%	30%

Bonus for work on Sundays and statutory public holidays	50%	60%	100% (6.05€/h)
Bonus for work on statutory public or other holidays	100%	150%	250%
Bonus for difficult working conditions	10%		2%
Bonus for exposure to danger	to be established at the level of employer	to be established at the level of employer	to be established at the level of employer
Bonus for being on call at home	20%	15%	10%

A worker is also entitled to a **seniority bonus**, which is also regulated by industry-level collective agreements. Article 222 of the ZDR-1 provides that seniority bonus may also be regulated differently in a particular industry-level collective agreement. If there is no special regulation at the level of individual industry, the statutory provision applies directly and grants all persons who have been employed on the day the ZDR-1 became applicable, i.e. on 13 April 2013, seniority bonus in the amount of 0.5% of their basic salary.

Seniority bonus	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector
Years of service before KPd became applicable	0.5% for each full year of total years of service	0.5% for each full year of total years of service	0.5% for each full year of total years of service
Workers who have already been employed with the employer when KPd became applicable	0.5% for each full year of total years of service	0.5% for each further year with the last employer	0.5% for each further year with the last employer
Workers who became employed with the employer after KPd became applicable	0.5% for each full year of total years of service	0.5% for each full year of total years of service before KPd became applicable (2014) + 0.3%/ annually with the last employer	0.5% for each full year of total years of service before KPd became applicable (1 May 2014) + 0.5%/ annually with the last employer

2.3. Fiscal aspect of salary

2.3.1. General

Article 37(1) of the Slovenian Personal Income Tax Act 2 (*Zakon o dohodnini*, ZDoh-2) provides that income under an employment relationship includes especially the following:

1. Salary, wage compensation and any other payment for the work performed, which also includes fees;
2. vacation pay, long-service bonus, severance pay, solidarity aid;
3. reimbursement of work-related costs;
4. benefits provided by the employer in favour of a worker or his family member;
5. compensation provided by the employer based on an agreement with a worker for any condition of employment or due to a change in conditions of employment; each employer's payment concerning termination of the employment contract; each payment due to a termination of employment, and similar payments;
6. payments received due to a temporary failure to pay income under an employment relationship;
7. compensation and other payments received from an employer or another person under other regulations as a consequence of employment or mandatory social security insurance;
8. income based on participation in profit sharing, received under an employment relationship.

These types of income under an employment relationship are established as such in labour law. Article 4 of the ZDR-1 defines an employment relationship as **a relationship between a worker and an employer whereby the worker integrates voluntarily in the employer's organised working process and in which he or she, in return for remuneration, continuously performs work in person, in accordance with the instructions and under the supervision of the employer.**

2.3.2. Social security contributions

Salary or wage compensation and all other work-related remuneration, including benefits paid out in money, vouchers or in kind, are the basis for the payment of contributions of workers under an employment relationship. Contributions I are paid by the worker and contributions II are paid by the employer. The total rate

of social security contributions paid by the worker amounts to 22,10%, and the employer's part amounts to 16,10%.

2.3.3. Personal income tax and tax allowances

Personal income tax is a tax paid on income of natural persons concerning all taxable income in a calendar year. When calculating withheld income tax concerning employment, which is paid by the main employer, the following rates and scale, calculated per 1/12 of a year apply in 2020:

If monthly net tax base (in EUR) is …		… then withheld income tax (in EUR) is	
more than	up to		
	708.33		16%
708.33	2,083.33	113.33	+ 26% above 708.33
2,083.33	4,166.67	470.83	+ 33% above 2,083.33
4,166.67	6,000.00	1,158.33	+ 39% above 4,166.67
6,000.00		1,873.33	+ 50% above 6,000.00

When calculating withheld income tax on monthly income under an employment relationship, general tax allowance, personal tax allowance and special tax allowances are also taken into account.

2.3.4. What is not included in a tax base and is exempt from the payment of contributions and taxes?

Article 44 of the ZDoh-2 provides which income under an employment relationship is **not included in a tax base**, which means it is exempt from the payment of contributions and taxes.

3. Reimbursement of costs

With regard to reimbursement of work-related costs, a labour law aspect and a tax treatment aspect should be taken into account. A worker's right to reimbursement of work-related costs is regulated in the ZDR-1, where Article 130 provides that an employer must ensure reimbursement of costs to a worker concerning meals during work, commute to and from work, and costs incurred by a worker when performing individual tasks on a business trip. The amount of reimbursement of such costs is provided in an industry-level collective agreement or in an implementing regulation.

Examples of regulation in industry-level collective agreements:

	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector
Meals	EUR 3.56	EUR 4.25 + EUR 0.53 after 11 am for each full hour above 8 hours	EUR 4.45
Commute	65% of public transport/EUR 0.15/km	70% of public transport/ EUR 0.13/km	70% of public transport/EUR 0.16/km
Bonus for working outside of one's office	EUR 3.13/day	EUR 3.07/day	*
Compensation for separation from family	/	EUR 334/month	Decree
Business travel:			
Daily allowance (Slovenia)	6–8 hours = EUR 5.26 8–12 hours = EUR 7.51 more than 12 hours = EUR 15.02	Decree	6–8 hours = EUR 6.42 8–12 hours = EUR 9.18 more than 12 hours = EUR 18.10
Daily allowance (abroad)	Decree (abroad)	Decree (abroad)	Decree (abroad)
Commute	Decree	Decree	Decree
Accommodation	Decree	Decree	Decree

* The Collective Agreement for the Slovenia's Trade Sector also includes a provision on adjusting reimbursement of costs, which provides: "Reimbursement of work-related costs, except compensation for separation from family, is adjusted on 1 July of the current year with the average annual consumer price index for the period from January to June of the current year compared with the period of January to June of the previous year."

Reimbursement of work-related costs under conditions and up to a ceiling determined by the government is also included in the income under an employment relationship, which is not taken into account when calculating the tax base (Article 44 of the ZDoh-2). For this purpose, the Government adopted the following:

- The Decree on the tax treatment of reimbursement of costs and other income from employment (*Uredba o davčni obravnavi povračil stroškov in drugih dohodkov iz delovnega razmerja*, Uradni list RS (Official Gazette of

the Republic of Slovenia), Nos. 140/06, 76/08, 63/17 and 71/18; hereinafter referred to as: the Decree);

- The Decree on reimbursement of costs for travelling abroad on official mission (*Uredba o povračilu stroškov za službena potovanja v tujino*, Uradni list RS, No. 76/19; hereinafter referred to as: the Decree (abroad)).

If an employer is reimbursing such costs in the amount exceeding the amounts provided in the Decree for individual reimbursement, the part of such amount exceeding the threshold provided in the Decree is included in the tax base. This means that contributions I, contributions II and withheld income tax are paid on the surplus. Below, we provide the contents of decrees concerning certain types of remuneration, based on the explanations of the Financial Administration of the Republic of Slovenia (FURS).

Meals during work (Article 2 of the Decree)[4]

Reimbursement of costs of meals during work for each day when a worker is working at least 4 hours is not included in a tax base if it is agreed at EUR 6.12 or less. If a worker is working for more than 10 hours, the tax base does also not include EUR 0.76 for each further full hour of work on top of 8 hours.

Commuting to and from work (Article 3 of the Decree)[4]

Reimbursement of costs of commuting to and from work is not included in a tax base up to the amount of the cost of public transport from the location of work to the workers habitual residence, which is closest to the location of work, provided that the distance from the worker's habitual residence to the location of work is at least 1 kilometre. If due to justified reasons a worker is unable to use public transport, the tax base does not include reimbursement of costs of commute up to EUR 0.18 for each full kilometre of distance between a worker's habitual residence and the location of work. Justified reasons are, above all: Lack of public transport, inappropriate time-table, and less favourable working hours. If a worker has the right to use a company vehicle for private purposes and if the employer also provides the worker with fuel, reimbursement of costs of commute is included in the tax base for the calculation of personal income tax.

Bonus for working outside of one's office (Article 7 of the Decree)[4]

Reimbursement of costs for working outside of one's office is not included in the tax base, if it is paid to a worker, who spends at least two consecutive work days (and the night) away from their habitual residence and the registered office of the

4 *Source: Financial Administration of the Republic of Slovenia (FURS).*

employer, in the amount of up to EUR 4.49 per day, if the employer provides meals and accommodation.

The Decree also regulates **compensation for separation from family** (Article 8 of the Decree) and reimbursement of costs related to business travel, such as **daily allowance** (Article 4 of the Decree), reimbursement of **travel costs** on a business trip (Article 5 of the Decree), and reimbursement of **accommodation costs** on a business trip (Article 6 of the Decree).

4. Other types of personal remuneration

4.1. Vacation pay

The right to annual leave also includes the right to vacation pay. An employer must pay the vacation pay by no later than 1 July of the current calendar year. An industry-level collective agreement may enable a later payment of vacation pay, but by no later than 1 November of the current calendar year. The amount of vacation pay is regulated by law and it must be equal to or higher than the minimum wage. The minimum wage for 2020 is EUR 940.58, which is also the amount of vacation pay.

The Employment Relationships Act (ZDR-1) includes the minimum of rights that must be provided, which is why a higher amount of vacation pay may be agreed in a collective agreement.

Examples of regulation in industry-level collective agreements:

	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector
VACATION PAY – in monetary form	Minimum wage + 1%	Law – minimum wage	Law – minimum wage
VACATION PAY – in non-monetary form	-	-	EUR 970 = 55% monetary form 45% non-monetary form

Vacation pay is not included in the tax base of income under an employment relationship, namely up to 100% of the average monthly salary of employees in Slovenia as established under the newest data of the Statistical Office of the Republic of Slovenia (Article 44 of the ZDoh-2).

Contributions are paid on the amount of vacation pay which exceeds 100% of the last known average salary, as established by the Statistical Office of the Republic

of Slovenia. If vacation pay is paid in two or more instalments, the total amount of vacation pay is calculated upon the last payment, when the amount of contributions due on individual instalments of vacation pay is also calculated.

With regard to vacation pay included in the tax base, the tax base is reduced by the part of mandatory contributions paid by the worker based on special regulations, which is proportional to the amount of vacation pay included in the tax base. If vacation pay is paid by the main employer, the withheld income tax is calculated based on the average rate of withheld income tax on a monthly income. In order to calculate the average rate of withheld income tax on a monthly income, vacation pay as income is usually divided in as many equal parts as there are months it refers to, but no more than 12. If vacation pay is paid by the employer who is not the recipient's main employer, the withheld income tax is calculated at a rate of 25% of the tax base.

4.2. Severance pay

The Employment Relationships Act (ZDR-1) regulates the following:

1. severance pay upon withdrawal from an employment contract concluded for an indefinite term;
2. severance pay upon termination of an employment contract concluded for a fixed term;
3. severance pay upon retirement.

4.2.1. Severance pay upon withdrawal from an employment contract concluded for an indefinite term

Severance pay in the event of regular withdrawal – Article 108 of the ZDR-1

A worker is entitled to severance pay in the event of regular withdrawal from an employment contract due to business reasons or a reason of incompetence. A worker is entitled to such severance pay if he had been employer with the employer for more than a year. This period also includes the period of employment with employer's legal predecessors.

Severance pay in the event of extraordinary withdrawal of a worker – Article 111 of the ZDR-1

A worker is also entitled to severance pay if they withdraw from an employment contract for extraordinary reasons on the side of the employer. In such case, a worker is entitled to the same severance pay as with a regular withdrawal of an employer.

The basis for the calculation of severance pay is the average monthly salary received by the worker (or which the worker would have received had he been working) in the last three months prior to withdrawal.

A worker is entitled to severance pay in the amount of:

- 1/5 of the basis under the previous paragraph for each year of employment with the employer, provided that the worker had been employed with such employer for more than one year and up to ten years;
- 1/4 of the basis under the previous paragraph for each year of employment with the employer, provided that the worker had been employed with such employer for more than ten years and up to 20 years;
- 1/3 of the basis under the previous paragraph for each year of employment with the employer, provided that the worker had been employed with such employer for more than 20 years.

Working for an employer also includes working for the employer's legal predecessors. The amount of severance pay may not exceed ten times the basis under the first paragraph of this Article, unless an industry-level collective agreement provides otherwise.

An employer must pay the worker severance pay upon termination of the employment contract, unless industry-level collective agreement provides otherwise.

Tax treatment of severance pay is regulated in item 9 of Article 44(1) of the ZDoh-2. Severance pay due to withdrawal from an employment contract, which is established as a right under an employment relationship and paid out under the conditions provided in the ZDR-1, is not included in the tax base of the income under an employment relationship up to the amount of severance pay, which the employer is bound to pay under Article 108 of the ZDR-1, but up to no more than the amount of 10 average monthly salaries of employees in Slovenia.

If severance pay exceeds this threshold, withheld income tax and social security contributions must be paid on the amount exceeding the threshold.

Under Article 144 of the ZPIZ-2, the basis for the payment of contributions is established as the amount of income on which withheld income tax is paid under the law regulating such tax. This usually means that social security contributions, which must be paid based on severance pay due to withdrawal from an employment contract for business reasons or reasons of incompetence, are calculated and paid on the part of the severance pay that exceeds the amount provided in Article 108 of the ZDR-1, or the amount that exceed 10 average monthly salaries of employees in Slovenia.

Example of calculation:

Gross 1 salary April	1,530.00
Gross 1 salary May	1,510.00
Gross 1 salary June	1,540.00
Average	1,526.67
Ratio 1/5	20.00%
Ratio 1/4	25.00%
Ratio 1/3	33.33%

Calculation	Number of years	Severance pay
Years of service	8.00	2,442.67
Years of service	16.00	6,106.67
Years of service	26.00	13,229.79

*Control: ten times the amount	15,266.67
Control: ten times the amount (FURS, data for June 2020)	18,127.20

Calculation	Number of years	Severance pay
Years of service	30.00	15,266.67
Years of service	38.00	19,337.78
Excess severance pay		1,210.58
Contributions I		267.54
Tax allowances		0
Additional tax allowances		0
Tax base		943.04
Withheld income tax		174.35
Pure net		768.69
Contributions II		194.90

4.2.2. Severance pay upon termination of an employment contract concluded for a fixed term

A worker whose **fixed-term employment contract terminates** is entitled to severance pay. A worker is **not entitled** to severance pay upon termination of fixed-term employment contract, if they are substituting a temporary absent worker, or if termination concerns a fixed-term employment contract for seasonal work, which lasts less than three months in a calendar year, or if termination concerns a fixed-term employment contract for the performance of work under a public unemployment programme (*javna dela*) or a proactive employment policy under the law. If, after one fixed-term employment contract ends, a worker directly **continues working for the same employer under another fixed-term employment contract**, severance pay is paid upon termination of the last fixed-term employment contract for the entire period of fixed-term employment with the same employer. In such cases, the limitation under Article 55(5) of this Act does not apply. A worker is not entitled to severance pay if during the term of the fixed-term employment contract or after its termination the worker and employer conclude an employment contract for an indefinite term.

The **basis** for the calculation of severance pay is the **worker's average monthly salary** for a full-time work in the **last three months** or in the period prior to the termination of the fixed-term employment contract. Upon termination of a fixed-term employment contract concluded for one year or less, a worker is entitled to severance pay **in the amount of 1/5 of the basis**. If a fixed-term employment contract is concluded for more than one year, a worker is entitled to severance pay upon its termination in a proportionally increased amount for each additional completed month of work.

With regard to tax treatment, under item 11 of Article 44(1) of the ZDoh-2, the tax base of income under an employment relationship does not include severance pay due to termination of a fixed-term employment contract, which is established as a right under an employment relationship and paid under the conditions of the ZDR-1, in the amount of severance pay that an employer must pay based on the ZDR-1, but up to the amount of three average monthly salaries of employees in Slovenia. Severance pay due to termination of each subsequent fixed-term employment contract with the same employer or a person affiliated with such employer, or severance pay paid out to a worker who is affiliated with the employer, is not considered a severance pay for which special tax treatment applies. This means that each subsequent severance pay, paid due to termination of a fixed-term employment contract with the same employer or a person affiliated with such employer is included in the tax base of income under an employment relationship in its entirety.

Severance pay paid due to termination of a fixed-term employment contract is not included in a tax base of income under an employment relationship up to the amount and under the conditions provided in Article 79 of the ZDR-1, but up to no more than the amount of three average monthly salaries of employees in Slovenia[5]. If severance pay is paid out in an amount exceeding the aforementioned, withheld income tax and social security contributions must be paid on the amount exceeding the threshold (Explanations of the Financial Administration of the Republic of Slovenia: https://www.fu.gov.si/davki_in_druge_dajatve/podrocja/dohodnina/dohodnina_dohodek_iz_zaposlitve/#c4620).

5 *Data for June 2020: EUR 1,812.72 x 3 = EUR 5,438.16.*

Example of calculation:

Gross 1 salary April	1,530.00
Gross 1 salary May	1,510.00
Gross 1 salary June	1,540.00
Average	1,526.67
Ratio 1/5	20.00%
Amount of severance pay up to 12 months	305.33
Amount of severance pay up to 16 months	407.11
Amount of severance pay up to 20 months	508.89
Amount of severance pay up to 24 months	610.67

Additional amount per month	
Average	1,526.67
Ratio 1/5	20.00%
Amount of severance pay up to 12 months	305.33
Proportional amount for a month over one year 25.44	25,44

4.2.3. Severance pay upon retirement

Article 132 of the ZDR-1 provides that unless an industry-level collective agreement provides otherwise, upon termination of employment contract an employer must pay a worker, who has been employed with them for at least five years and retires, a severance pay in the amount of two average monthly salaries in the Republic of Slovenia in the past three months, or in the amount of two average monthly salaries of the worker in the past three months if this is more favourable to the worker.

The law also regulates special cases of a right to proportional severance pay and the right to severance pay upon re-employment after retirement.

A worker is not entitled to severance pay upon retirement if they are entitled to severance pay under Article 108 of this Act and the employer financed the top-up of their years of pensionable service. A worker is, however, entitled to be paid the balance between these two amounts.

With regard to tax treatment, severance pay upon retirement is not included in the tax base of income under employment relationship up to the amount provided in the Decree on the tax treatment of reimbursement of costs and other income from employment (*Uredba davčni obravnavi povračil stroškov in drugih dohodkov iz delovnega razmerja*, i.e. EUR 4,063.00). If severance pay exceeds this threshold, withheld income tax and social security contributions must be paid on the amount exceeding the threshold.

However, for tax purposes, severance pay upon retirement, even if the worker does not satisfy the minimum conditions with regard to years of service with an employer (5 years), is still considered severance pay upon retirement for which the Decree on the tax treatment of reimbursement of costs and other income from employment (Uradni list RS, Nos. 140/06 and 76/08; hereinafter: the Decree) applies.

If an employer pays severance pay upon retirement in the amount exceeding EUR 4,063, the amount of severance pay exceeding the threshold provided in a government decree is included in the tax base of income under an employment relationship. If a worker retires only partly and concludes a new part-time employment contract with the same employer, the worker is entitled to proportional severance pay. (FURS explanation: https://www.fu.gov.si/davki_in_druge_dajatve/podrocja/dohodnina/dohodnina_dohodek_iz_zaposlitve/#c4620).

PLEASE NOTE: Please note the basic principle in tax treatment of severance pay: Severance pay is exempted from taxes and contributions only if calculated and paid strictly in accordance with Articles 79, 108 and 132 of the ZDR-1. Any derogation from the provisions of the ZDR-1 in calculating severance pay incurs an obligation to pay taxes and contributions in their entirety.

Example of calculation:

Trimonthly average in the Republic of Slovenia (June 2020)	1,878.05
2 X	2
Amount of severance pay	3,756.10

Worker's salary	
Gross 1 salary January	2,820.00
Gross 1 salary February	2,850.00
Gross 1 salary March	2,860.00
Average	2,843.33
2X	2
Amount of severance pay	5,686.67
FURS control	4,063.00

Calculation	Severance pay
Excess severance pay	1,623.67
Contributions I	358.83
Tax allowances	0.00
Additional tax allowances	0.00
Tax base	1,264.84
Withheld income tax	258.02
Pure net	1,006.82
Contributions II	261.41

4.3. Long-service bonus

A worker's right to a long-service bonus is established only in collective agreements.

Examples of regulation in industry-level collective agreements:

	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector*
For 10 years	40% AMSRS3**	EUR 428.50	Top amount under the Decree
For 20 years	60% AMSRS3**	EUR 642.75	Top amount under the Decree
For 30 years	80% AMSRS3**	EUR 857.00	Top amount under the Decree
For 40 years	-	EUR 857.00	Top amount under the Decree

* Years of service with the last employer

** AMSRS3 = average monthly salary in the Republic of Slovenia for the last three months

The Decree provides that long-service bonus is not included in the tax base of income under employment relationship up to:

- EUR 460 for 10 years of service,
- EUR 689 for 20 years of service,
- EUR 919 for 30 years of service,
- EUR 919 for 40 years of service.

If the long-service bonus exceeds the amount provided in the decree, employers must include any such surplus in the tax base. Withheld income tax is calculated based on the appropriate scale.

If a worker has already received a long-service bonus for their total years of service, any long-service bonuses subsequently paid by the same employer for the total years of service with the last employer are included in the tax base. If a worker received a long-service bonus for their total years of service with the last employer, any long-service bonuses subsequently paid by the same employer for the total years of service are included in the tax base.

4.4. Solidarity assistance

Solidarity assistance is also a type of income under an employment relationship, which is only provided in collective agreements.

Examples of regulation in industry-level collective agreements:

	Collective agreement for the small economy	Collective agreement for the paper and paper-processing industry	Collective agreement for the trade sector
Death of a worker	1 AMSRS3**	EUR 2,000	Min EUR 700 and max the amount under the Decree
Death of a close relative	1/2 AMSRS3**	Employer's decision, at the suggestion of a trade union	Min EUR 350 and max the amount under the Decree
Severe disability	Trade union's suggestion + 1 AMSRS3**	Employer's decision, at the suggestion of a trade union	Employer's decision, at the suggestion of a trade union
Continuous illness	If it lasts six months or more, one worker's average salary, as paid in the last three months, but no more than the average salary of an employee in the RS in the last three months	Employer's decision, at the suggestion of a trade union	Employer's decision, at the suggestion of a trade union
Natural disaster suffered by a worker	One worker's average salary, as paid in the last three months, but no more than the average salary of an employee in the RS in the last three months	Employer's decision, at the suggestion of a trade union	Employer's decision, at the suggestion of a trade union

** AMSRS3 = average monthly salary in the Republic of Slovenia for the last three months

The Decree provides that solidarity assistance is not included in the tax base in the following cases:

- • death of a worker or their close family member, up to EUR 3,443;
- • severe disability or prolonged illness of the worker, and natural disaster or fire suffered by the worker, up to EUR 1,252.

5. Conclusions

Work-related remuneration is regulated very broadly, in statutory acts, collective agreements, employment contracts and tax regulations. Just as every income received is important to the worker, overview of and control over costs of tax obligations concerning labour are important to the company as the employer.

Annex
Bonuses, February 2020

(pages 40-41)

*Collective agreement for the trade sector: For work on official holidays and other days considered public holidays under the law

**Collective Agreement for the Wood Industry: For the 4th shift

PKP = company-level collective agreement

SA = general act of an employer

R = extended validity of an industry-level collective agreement

- The right to a bonus granted under the law

- The right to a bonus and its amount granted under an industry-level collective agreement

		1	2	3	4	5
	Extended validity	For the afternoon and night shift, when work is performed in two shifts	For split shifts – every time a break in shift lasts more than 1 or 2 hours	For being on call	For the night shift	For overtime work
Road passenger transport	R	10%	15%		30%	30%
Road management activities		10%			50%	30%
Newspaper, publishing and bookselling sector		10%	15%	20%	60%	60%
Small economy	R-PARTIALLY	10%	15%	0%	30%	50%
Electricity industry		10%			40%	40%/50%
Electrical industry	R	10%	15%		50%	40%/50%
Hospitality and tourism industries	R-PARTIALLY	10%	20%		50%	30%
Construction industry		10%	10%	0%	40%	30%
Graphics sector		10%	10%	20%	50%	40%/50%
Chemicals and rubber industry	R	10%/14%	15%/20%	20%	50%	30%
Agriculture and food processing industry		10%	10%		50%	30%
Public utility services		10%			50%	30%
Metal sector	R	10%	10%		50%	45%
Metal products and foundry industry	R	10%	10%		50%	45%
Wood industry		15%**	10%		30%	30%
Non-metallic minerals	R	10%	15%		50%	40%
Real-estate	R-PARTIALLY	10%	10%		30%	40%
Craft and business sector	R				30%	30%
Paper and paper-processing industry	R	10%			55%	50%
Postal and courier services	R	10%	15%	20%	40%	40%
Textile, clothing and leather industry	R	10%	15%		30%	30%
Trade sector		10%	20%		75%	30%
Private security	R				30%	30%
Insurance		10%	15%	20%	30%	30%

6	7	8	9	10	11
Sunday work and work on public holidays	Stand-by	Difficult working conditions	Exposure to danger	Bonus for working on a distant construction site	Seniority bonus
50%	10%				0,5%
50%/150%	20%				0,5%
60%/100%	10%				0,5%
50%/100%	20%	10%	0%		0,5%
50%	20 %/30 % days off	10%-50%	10%-50%		0.5% for each full year of service in the electricity industry
50%	10%	SA	SA		0.50% total years of service up until 30 June 2006/ 0.60% as of 1 July 2006 with the last employer
50%/150%/150% - New Year's Eve					0,5%
50%/100% = 1 Jan, 1 May	10%	PKP, SA min 3%/ condition	PKP, SA min 3%/ condition	30km = 1€, 40km = 2€, 50km = 3€, 1€/10km	total years of service = 0.5% - 0.1% = 2020; 2021 = 0%; years of service with the current employer = 0.5%; limit 1 Jan 2016
50%/110%	10%	PKP, SA	PKP, SA		0.5% total years of service until Kpd became applicable / 0.5% years of service with the current employer after Kpd became applicable
50%	10%	3%			0,5%
50%	10%	SA	SA		0,5%
50%	15%	PKP,SA	PKP, SA		0.5%/+continuity bonus PKP
50%	5%	SA	SA		0.6% with the current employer
50%/100%	5%	SA	SA		0.6% with the current employer
50%	10%	min 1 %	min 1 %		0,5%
50%	10%	2%/SA			0,5%
50%	10%	PKP,SA	PKP,SA		current workers = before KPd became applicable 0.5%/after KPd became applicable 0.5% with the current employer; new workers = 0.5% with the current employer + years of experience
50%/50% - New Year's Eve	10%				0.5%
60%/150%	15%	SA	SA		before KPd became applicable 0.5%/after KPd became applicable 0.5% or 0.3% with the current employer
50%	10%	SA	SA		0.4%
50%/100%	10%	PKP,SA	PKP, SA		0.5%
100%; 6,05 €/h / 250%*	10%	2%, PKP,SA	2%, PKP,SA		before KPd became applicable 0.5%/after KPd became applicable 0.5% with the current employer
50%					
50%	10%				0,5%

III. Derogation from minimum standards – analysis of industry-level collective agreements[1]

1. General

Autonomous regulation of employment relationships by social partners is one of the fundamental principles of labour law. This is expressed in collective bargaining between trade unions and employer organisations in order to conclude a collective agreement as an autonomous source of labour law. In addition to the Employment Relationships Act, collective agreements are the second most important national source of labour law. The right to collective bargaining is a fundamental right recognised in all top documents in the field of human rights: At the level of UN, in Article 23 of the Universal Declaration of Human Rights, Article 22 of the ICCPR, and Article 8 of the ICESCR; at the level of ILO, explicitly or indirectly in numerous conventions and recommendations, especially in Conventions Nos. 87, 98 and 154; and at the level of the Council of Europe, in Articles 5 and 6 of the European Social Charter, and in Article 11 of the ECHR.

The system of concluding collective agreements is free and voluntary. The autonomy is double:

a. **the autonomy of process**, which means the independence of contracting parties and the non-mandatory character of collective bargaining process. Contracting parties are free to decide on the following:
   - whether they would negotiate or not;
   - with whom they would negotiate;
   - whether they would conclude a collective agreement;
   - whether a collective agreement remains valid and for how long;

b. **the autonomy of subject matter**, which means the free choice of subject matter of a collective agreement. Contracting parties are, therefore, free to decide on the following (within the statutory limits):
   - the subject matter to be regulated in a collective agreement;
   - and the scope of rights.

1 *Author: Urška Sojč*

These fundamental principles were also the basis for the adoption of the Slovenian Collective Agreements Act (*Zakon o kolektivnih pogodbah,* ZKolP), which does not prescribe mandatory conclusion of collective agreements, nor their mandatory elements. Only a definition of a collective agreement is included in Article 3 of the ZKolP. This means that contracting parties are free to decide on how to regulate their mutual labour relationships. However, with regard to autonomy of subject matter, there are certain limitations due to the specific nature of labour law and the protection of workers as the weaker party.

2. Limitations on the autonomy of subject matter

Parties to a collective agreement must abide by the following **limitations to the autonomy of subject matter** when concluding a collective agreement:

- A collective agreement may only include rights that are more favourable to a worker than the ones provided by the law (known as the principle *in favorem laboratoris*).
- The subject matter may be less favourable to a worker (*in peius*) only if a law or a broader level collective agreement expressly so provides.

2.1. The principle of "in favour of the worker" (*in favorem laboratoris*)

The principle of "in favour of the worker" (*in favorem laboratoris*) is a fundamental principle of labour law. In accordance with it, collective agreements may only provide rights that are more favourable to a worker than the statutory rights or rights provided in a higher level collective agreement. Worker's rights are provided as minimum standards.

The principle *in favorem* is included in the Slovenian legislation in Articles 4[2] and 5[3] of the Collective Agreements Act (ZKolP), and in Article 9(2) of the Employment Relationships Act (ZDR-1).[4]

2 *A collective agreement may only include provisions, which are more favourable to the worker than the statutory provisions, unless the Employment Relationships Act (Uradni list RS, No. 42/02) provides otherwise.*

3 *When employers bound by a collective agreement are concluding lower level collective agreements, they may agree on rights and working conditions that are more favourable to the worker.*

4 *An employment contract or a collective agreement may include rights that are more favourable to the worker than those included in this Act.*

The purpose of this principle is to ensure the worker's position as a weaker party is as equal to the employer's as possible. Since the principle *in favorem* is an exception to the rule, it may not be broadly interpreted.

2.2. Less favourable regime (in peius)

The less favourable regime (*in peius*) or derogation is an exception to one of the fundamental rules of labour law, i.e. the principle of "in favour of the worker". The law permits the following exceptions to the principle *in favorem*:

In explicitly provided cases, the ZDR-1 permits the rights and working conditions to be regulated less favourably in collective agreements than in the law (Article 9(3))[5].

In accordance with Article 5 of the ZKolP, derogations from minimum standards may be agreed, if a broader level collective agreement so permits.[6]

2.2.1. Less favourable regime in accordance with the ZDR-1

In explicitly provided cases, the ZDR-1 permits the rights to be regulated differently in a collective agreement (meaning, even less favourable to the worker). Such cases are provided in Article 9(3). The ZDR-1 also provides which level collective agreement may provide a less favourable regime concerning a particular question. If the ZDR-1 provides that a certain topic may be regulated less favourably in an industry-level collective agreement, then a company-level collective agreement may not provide a less favourable regime, unless an industry-level collective agreement so permits. This is the so called transfer of the weight of collective bargaining from higher to lower levels, or decentralisation.

The following Articles of the ZDR-1 may be regulated less favourably in an industry-level collective agreement:

- 54(1): Fixed-term employment contract – additional cases;
- 54(2): Fixed-term employment contract – exception for smaller employers;
- 55: Fixed-term employment contract concluded for project work;
- 59(3): Agency workers' quota;

5 *Regardless of the provision from the previous paragraph, in cases as per Articles 33, 54, 59, 94, 120, 132, 144, 158, 172 and 222 of this Act a collective agreement may also provide otherwise.*

6 *Regardless of the provision from the previous paragraph, a higher level collective agreement may provide conditions under which a lower level collective agreement may regulate rights and working conditions differently or less favourably to the worker.*

- 85(1): Validity of notice prior to withdrawal from employment contract;
- 94(3): Notice period in the event of withdrawal from an employment contract due to a business reason or a reason of incompetence;
- 108(6): Deadline for the payment of severance pay;
- 120 and 122: Traineeship;
- 131(3): Vacation pay;
- 132(1): Severance pay upon retirement;
- 135: Type of reimbursement of costs and other remuneration;
- 144(1): Additional possibilities of requiring overtime work;
- 158: Establishment of reference periods, daily norm of a night worker, daily and weekly rest, full-time;
- 172: Additional disciplinary sanctions;
- 222: Pay increment based on seniority.

Less favourable regime provided in a collective agreement of any level is possible in the following cases:

- 33: Requiring the performance of other work;
- 94(1): Notice period in the event a worker withdraws from an employment contract;
- 143(2): Reference period for overtime work;
- 180: Flat-rate compensation.

A detailed analysis of derogations from the principle *in favorem* based on the ZDR-1 concerning each statutorily permitted case is described in the publication *Kolektivna pogajanja - priročnik za prakso* (Handbook on collective bargaining).

In 2018, the Labour Institute at the Faculty of Law in Ljubljana conducted an expert analysis of the contents of industry-level collective agreements in the real sector then in effect, with regard to whether they contain provisions that derogate from the minimum statutory standards, and provisions that permit derogation from minimum standards, as agreed in industry-level collective agreements, at the lower levels of collective bargaining. The research confirmed that collective agreements contribute to the increase in the flexibility of the labour market to a significant degree. **Practically all industry-level collective agreements in the real sector, which were concluded or renewed after the labour market reform in 2013, have used the majority of possibilities where the law permits derogation**

or regulation of rights in a less favourable manner to the worker (in peius) **than the statutory regime, in order to achieve greater flexibility.**

Less favourable regime in accordance with the ZKolP

Under the ZKolP, **based on the conditions established in a collective agreement at a higher level, a collective agreement at a lower level may establish rights and working conditions that are different or less favourable to a worker.** In specialised literature, this process is called transfer of the weight of collective bargaining from higher to lower levels, or decentralisation. The ZKolP, therefore, limits the autonomy of contracting parties based on the hierarchy of collective agreements.

Under Article 5(2) of the ZKolP, some collective agreements include a special instrument called "**derogation from minimum standards**", which explicitly permits derogation from minimum standards established by a collective agreement when the employer's business activities are at risk, or if there is another justified reason. This is usually agreed between a company-level trade union or a work council, and an employer (or even by a national-level trade union). Derogation from minimum standards is usually time-barred. The subject matter, scope and term of derogation from minimum standards is often provided in a collective agreement or a written agreement concluded between social partners. In extraordinary circumstances, this provision permits an agreement to derogate from the rule *in favorem* for a limited time period, in order to save jobs. Derogation from unified minimum standards can only apply to standards agreed in a collective agreement, and not to those provided by law (parties need a special statutory authorisation for derogation from statutory rights). The purpose of this provision is to overcome potential problems in difficult times and it is important that it is available in practice.

3. Analysis of "derogation from minimum standards" in industry-level collective agreements

The aim of this chapter is to establish in which cases and in what manner may industry-level collective agreements apply derogation from minimum standards, and to establish the degree of derogation and decentralisation in collective agreements in the real sector under the Slovenian legal order. The aim of this analysis is also to study the instrument of derogation from minimum standards: How many collective agreements apply it, under what conditions is such derogation possible, in what scope and for what term, and to draft an assessment of usefulness of this instrument.

3.1. Current state of affairs

At the moment, there are 23 industry-level collective agreements currently in force in the real sector in the Republic of Slovenia. The analysis also includes three industry-level collective agreements, which are currently not in force, but are usually concluded. They are included, because negotiations have been taking place in this or the previous year for the conclusion of new collective agreements for such industries. They are marked by a different colour in the table.

3.2. Analysis

Results of the analysis show that in 18 industry-level collective agreements social partners have agreed on a general provision that enables derogation from minimum standards to be agreed in a lower level collective agreement. However, the subject matters of such clauses differ.

Conditions

Under the ZKolP, a collective agreement must provide the conditions or cases in which derogation is permitted. All collective agreements, except the Collective Agreement for Forestry (which refers to the regime agreed in a company-level collective agreement or a general act) and the Collective Agreement for Slovenia's Electrical Industry, provide conditions or reasons, however, some do so only broadly and in general, which hinders their transparency and usefulness in practice. The most common conditions are a material decline in business operations, which could endanger the survival of the employer or jobs, liquidity problems, and recession in the industry. Conditions are usually also accompanied by the purpose of derogation from minimum standards, i.e. to prevent layoffs.

Scope of derogation

With two exceptions, collective agreements do not actually provide which rights can be derogated (neither exhaustively nor by example) and they do not provide the bottom limit of derogation, which means that derogation of all enacting terms is possible. Collective Agreement for the Newspaper, Publishing and Bookselling Sector provides that derogation from minimum standards is possible with regard to vacation pay and basic salaries, while Collective Agreement for the Textile, Clothing and Leather Industry permits such derogation only with regard to the minimum basic salary. Other collective agreements mostly refer to the regime concluded in an agreement.

Procedure

Derogation from minimum standards is usually agreed between an employer and a company-level trade union. In certain cases, industry-level trade union also has

a certain role, either by providing consent or even as a party to such agreement. Unusual in this regard is the Collective Agreement for the Electricity Industry, which envisages a conclusion of a written agreement between the contracting parties of this collective agreement (i.e. the association as a representative of employers and the industry-level trade union as a representative of the workers). There is doubt about the legal nature of an agreement under which rights and working conditions are agreed less favourably to a worker at the company level than in a collective agreement at the industry level. The ZKolP refers to regulation in a lower level collective agreement, which is why the issue of how effective such agreements are remains open.

Temporal validity

In most cases, derogation is not time-barred, as only a few exceptions provide the maximum period of e.g. 6 months, which means that this aspect is left entirely to the autonomy of parties at company level. The majority of collective agreements that include a general provision on a derogation being time-barred, do not provide a more concrete maximum time period, which is why in such cases – in spite of the mentioned time limit – the autonomy of contracting parties is still practically unlimited.

4. Conclusion

The principle *in favorem* is the basis for a general rule of labour law that workers' rights are usually provided as minimum standards, which may be agreed in a collective agreement (or an employment contract) in at least such scope or broader, i.e. provide more rights. Any derogation from the statutory level of rights is only possible in exhaustively listed cases. This is called **derogation** of statutory regime in collective agreements. Industry-level collective agreements in a real sector mostly make use of this option. Such derogation in effect provides flexibility of labour law or employment (performance of other work, conclusion of fixed-term contracts, traineeship regime, longer reference periods concerning allocation of working time, etc.).

On the other hand, **decentralisation** means transfer of the weight of collective bargaining from higher levels (such as national and industry-level collective bargaining) to lower levels (such as collective bargaining at the level of a company). This is possible under the Collective Agreements Act, and it can be achieved, among other, through the instrument of derogation from minimum standards. The analysis of how this instrument is regulated in industry-level collective agreements in the real sector shows that the majority of collective agreements apply this instrument. Although social partners at industry level have anticipated the

possibility of derogation from unified minimum standards, the actual regime of such derogation still differs greatly among collective agreements. Most cases refer to a more detailed regulation in an agreement at company level. Such regulation enables more flexibility of agreements at company level, however, in some cases the lack of definite provisions or clarity of structure increases the risk and diminishes the usefulness of the instrument in practice. Companies are forced to use this instrument at times of significantly worse business conditions, when other business risks are already high. A clearer structure of derogation from minimum standards (conditions, procedure, scope and term) could help them during negotiations of concrete agreements.

Both processes are a characteristic of flexible collective bargaining, which also constitutes its quality with regard to statutory labour law.

Sources:

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Kresal Šoltes Katarina, Odstopanje od minimalnih standardov v kolektivnih pogodbah dejavnosti (Derogation from minimum standards in industry-level collective agreements), Delavci in Delodajalci, No. 4, 2018, p. 659.

Annex
Derogation from minimum standards in industry-level collective agreements – overview of 25 October 2020

(Pages 52–59)

	Collective agreement	Regulates or not	Derogation from minimum standards – the provision
1	Banking sector	Regulated	Derogation from minimum standards provided under this collective agreement is permitted only based on a written agreement between a trade union and an employer in the event of extraordinary worsening of the business situation in the previous year, which endangers the employer's positive result, especially their operative activities, provided that such measure contributes to saving jobs with the employer. With the proposal to conclude an agreement, an employer must also submit to the trade union a written justification of reasons for the conclusion of such agreement. The agreement must include the term and type of measures and any compensation, if due to such measures the workers are temporarily hindered in exercising their rights.
2	Paper and paper-processing industry	Regulated	Derogation from minimum standards is permitted based on a written agreement between a representative trade union and employer, upon consent of a representative industry-level trade union, which the company-level trade union must obtain, especially in cases of significant worsening of the business situation, which could endanger the employer's existence or jobs or in similar justified cases, for a limited time period.
3	Road passenger transport in Slovenia for 2018 (no longer valid)	Regulated	An agreement on derogation from minimum standards is permitted if concluded in writing between an employer and a trade union, in all serious business crises where such measure could prevent further damage and save jobs.
4	Newspaper, Publishing and Bookselling Sector	Regulated	Temporary derogation from minimum standards agreed in this collective agreement is permitted based on a company-level collective agreement or a written agreement between an employer and a company-level trade union, if no company-level collective agreement exists or if a company-level collective agreement so provides, namely with regard to basic salaries and vacation pay. Temporary derogation from minimum standards as per the previous paragraph is permitted especially in the case of significant worsening of the business situation or liquidity problems, which could endanger jobs and cause a greater number of workers to become redundant. Temporary derogation from minimum standards is possible for a limited time period, namely concerning vacation pay for a maximum of one calendar year, and concerning other minimum standards for a maximum of six months, with a possibility of extension for no more than three additional months. If an employer, with whom temporary derogation from minimum standards has already been agreed for a total maximum time period as per the previous indent (continuously or non-continuously), again suggests a temporary derogation from minimum standards as per the first paragraph of this Article within 15 months of expiration of the previous derogation period, such new derogation is only valid with a consent of a representative industry-level trade union. If a representative industry-level trade union fails to express their opinion on such consent within five working days of receiving a written request, the consent is deemed to have been given. A company-level collective agreement or (if there is no concluded) a written agreement between an employer and a company-level trade union shall establish the maximum permitted derogation from minimum standards, the longest time period of temporary derogation, if such is agreed shorter than under this collective agreement, and the manner of regular written notification to a company-level trade union on the company's business situation and on the execution of measures to remedy the causes for the worsening of the business situation or for liquidity problems. Under a collective agreement or a written agreement as per the previous sentence, the employer and the trade union may also agree on potential limitations with regard to withdrawals from employment contracts due to business reasons, with regard to potential limitations concerning payments of performance bonuses to management and members of supervisory bodies (in money, shares or other forms), and on any potential other issues.

Conditions for derogation	Scope of derogation (which rights)	Procedure	Term of measure
In the event of extraordinary worsening of the business situation in the previous year, which endangers the employer's positive result, especially their operative activities, provided that such measure contributes to saving jobs with the employer.	Not provided	Conclusion of a written agreement between a trade union and an employer.	To be provided in the agreement.
In the event of a significant worsening of the business situation, which could endanger the employer's existence or jobs or in similar justified cases.	Not provided	Based on a written agreement between a representative trade union and an employer, with the consent of a representative industry-level trade union.	Limited time period, actual term not provided.
In all serious business crises where such measure could prevent further damage and save jobs.	Not provided	Written agreement between the employer and the trade union.	Measure is not time-barred.
In the event of a significant worsening of the business situation or liquidity problems, which could endanger jobs and cause a greater number of workers to become redundant.	Vacation pay and basic salaries.	Permitted based on a company-level collective agreement or a written agreement between an employer and a company-level trade union, if no company-level collective agreement exists or if a company-level collective agreement so provides. If an employer, with whom temporary derogation from minimum standards has already been agreed for a total maximum time period as per the previous indent (continuously or non-continuously), again suggests a temporary derogation from minimum standards as per the first paragraph of this Article within 15 months of expiration of the previous derogation period, such new derogation is only valid with a consent of a representative industry-level trade union.	Concerning vacation pay for a maximum of one calendar year, and concerning derogation from other minimum standards for a maximum of six months, with a possibility of extension for no more than three additional months.

	Collective agreement	Regulates or not	Derogation from minimum standards – the provision
5	Collective Agreement Between Workers And Companies In The Small Business Sector	Not regulated	/
6	Electricity Industry	Regulated	Derogation from unified minimum standards is permitted based on a special written agreement between the contracting parties of this collective agreement, especially in cases of significant worsening of the business situation in the preceding year, which could endanger the existence of an employer bound by this collective agreement or the existence of jobs or in similar justified cases.
7	Electrical Industry	Regulated	Derogation from a minimum standard is permitted based on the law and a special written agreement between an employer and a representative company-level trade union, in cases and under conditions as provided in this collective agreement.
8	Hospitality and Tourism Industries	Regulated	Derogation from minimum standards is permitted based on an agreement between a representative company-level trade union and an employer, if necessary to save jobs.
9	Forestry	Regulated	Employers and trade unions must conclude an annex to a company-level collective agreement or a written agreement and agree on: (a) the reasons due to which an employer is unable to provide minimum standards to the workers, as provided in a collective agreement for the forestry industry of Slovenia and a company-level collective agreement; (b) which rights and working conditions are to be derogated from and for how much; (c) the term of derogation from minimum standards. Employers and trade unions may agree on the extension of agreed measures. The rights and working conditions as per the previous paragraph may not fall below the level of rights provided in the legislation. Employers, where no trade union is established, may regulate such derogation with a general act. Prior to adopting such act, they must notify the workers directly. Notification may be performed in the following manners: by serving the text of the proposed general act to each worker individually, by publishing it in a company newsletter or on a company bulletin board or employer's website, or in another manner regularly used by the employer.
10	Construction industry	Regulated	Derogation from minimum standards provided under this collective agreement is permitted in cases when the employer's business operations are at risk or if there is another justified reason, provided that the company-level trade union or a work council and employer agree on such derogation. The subject matter, scope and term of derogation from minimum standards shall be provided in a written agreement. An employer must inform the signatories to this collective agreement that an agreement under the previous paragraph is planned to be concluded. The measure may last for a maximum of six months and can be extended for no more than additional six months.

Conditions for derogation	Scope of derogation (which rights)	Procedure	Term of measure
/	/	/	/
In the event of a significant worsening of the business situation in the previous year, which could endanger the employer's existence or jobs or in similar justified cases.	Not provided	A written agreement between an association and an industry-level trade union.	Measure is not time-barred.
No conditions provided.	Not provided	In writing between a representative company-level trade union and an employer.	Measure is not time-barred.
If necessary to save jobs.	Not provided	Agreement between a representative company-level trade union and employer.	Measure is not time-barred.
No conditions provided; referral to regulation in a company-level collective agreement or employer's general act.	Not provided; referral to regulation in a company-level collective agreement or employer's general act.	Not described.	Measure is not time-barred; referral to regulation in a company-level collective agreement or employer's general act.
If employer's business operation is at risk or if there is another justified reason.	Not provided	This is agreed between the company-level trade union or a work council and the employer. The subject matter, scope and term of derogation from minimum standards is to be provided in a written agreement. An employer must inform the signatories to this collective agreement that an agreement is planned to be concluded.	A maximum of six months, with a possibility of extension for no more than additional six months.

	Collective agreement	Regulates or not	Derogation from minimum standards – the provision
11	Graphics Sector	Regulated	Derogation from minimum standards is permitted based on a special written agreement between an employer and a representative company-level trade union, if employer's business operations or jobs are at risk or for other justified reasons. An agreement may be concluded for a limited time period of six months, with the possibility of extension for another six months. If within 18 months of when an agreement on derogation from minimum standards as per the previous paragraph ceases to apply there is again the need to conclude such an agreement, the new agreement must be concluded between the employer and a representative company-level trade union, upon consent of a representative industry-level trade union. Such consent must be obtained by the company-level trade union prior to signing such agreement. The representative industry-level trade union must provide their consent to the representative company-level trade union within 14 days. If a representative industry-level trade union fails to provide their opinion within the aforementioned deadline, the consent is deemed to have been given.
12	Chemical and Rubber Industry of Slovenia (this collective agreement is no longer valid)	Not regulated	/
13	Agriculture and Food Processing Industry	Regulated	Derogation from a minimum standard is permitted based on a special written agreement between a representative company-level trade union and an employer. A representative state-level trade union must give consent to such written agreement. An agreement on derogation from minimum standards is permitted in all serious business crises where such measure could prevent further damage and save jobs. The measure is time-barred.
14	Public utility services	Not regulated	/
15	Metal products and foundry industry	Regulated	Derogation from minimum standards can be agreed for a limited time period of no more than six months in a special agreement between an employer and a representative company-level trade union, especially in cases of significant worsening of the business situation, recession in the industry or in similar cases. The representative company-level trade union must notify the corresponding industry-level trade union in writing that a bargaining procedure has commenced. If there is no representative company-level trade union, an agreement on derogation from minimum standards cannot be concluded.
16	Metal sector	Regulated	Derogation from minimum standards can be agreed for a limited time period of no more than six months in a special agreement between an employer and a representative company-level trade union, especially in cases of significant worsening of the business situation, recession in the industry or in similar cases. The representative company-level trade union must notify the corresponding industry-level trade union in writing that a bargaining procedure has commenced. If there is no representative company-level trade union, an agreement on derogation from minimum standards cannot be concluded.

Conditions for derogation	Scope of derogation (which rights)	Procedure	Term of measure
When employer's business operations or jobs are at risk or for other justified reasons.	Not provided	A written agreement between a representative company-level trade union and an employer. If within 18 months of when an agreement on derogation from minimum standards as per the previous paragraph ceases to apply there is again the need to conclude such an agreement, the new agreement must be concluded between an employer and a representative company-level trade union, upon consent of a representative industry-level trade union.	Limited to six months with a possibility of extension for another six months.
/	/	/	/
In all serious business crises where such measure could prevent further damage and save jobs.	Not provided	Based on a special written agreement between a representative company-level trade union and an employer. A representative state-level trade union must give consent to such written agreement.	Limited time period, actual term not provided.
/	/	/	/
In the event of a significant worsening of the business situation, recession in the industry or in similar justified cases.	Not provided	By a written agreement between an employer and a representative company-level trade union. The representative company-level trade union must notify the corresponding industry-level trade union in writing that a bargaining procedure has commenced. If there is no representative company-level trade union, an agreement on derogation from minimum standards cannot be concluded.	No more than six months.
In the event of a significant worsening of the business situation, recession in the industry or in similar justified cases.	Not provided	By a written agreement between an employer and a representative company-level trade union. The representative company-level trade union must notify the corresponding industry-level trade union in writing that a bargaining procedure has commenced. If there is no representative company-level trade union, an agreement on derogation from minimum standards cannot be concluded.	No more than six months.

	Collective agreement	Regulates or not	Derogation from minimum standards – the provision
17	Wood Industry	Not regulated	/
18	Extraction and Processing of Non-Metallic Minerals Industry	Regulated	Derogation from a minimum standard is permitted based on a special written agreement between a representative company-level trade union, a representative industry-level trade union, and an employer, especially in the case of a significant worsening of the business situation within the previous year, recession in the industry and in similar justified cases.
19	Craft and Business Sector (collective agreement is no longer valid)	Not regulated	/
20	Real-Estate Business	Regulated	Derogation from minimum standards agreed in this collective agreement are permitted at the level of individual employer if a prior written agreement is concluded between an employer and a company-level trade union and upon consent of the trade union signatory to the collective agreement, in the case of a serious financial situation of the employer, which endangers their existence, and for the purpose of saving jobs. A written agreement may be concluded for no more than 6 months and must include an agreement on the manner and deadlines of repayment.
21	Postal and Courier Services	Regulated	Derogation from a minimum standard is permitted based on a special written agreement between a representative company-level trade union and an employer, especially in the case of a significant worsening of the business situation within the previous year due to objective reasons, recession in the industry and in similar justified cases, however not below the standard provided by the law for a particular right.
22	Textile, clothing and leather industry in Slovenia	Regulated	Derogation from minimum standards under this collective agreement is permitted with regard to the amount of minimum basic salaries, for the purpose of saving jobs. Derogation from minimum standards is permitted based on a special written agreement between a representative industry-level trade union and an employer, especially in the case of a significant worsening of the business situation within the previous year, recession in the industry and in similar justified cases. Based on a written agreement, derogation from minimum standards may be agreed for no more than six months, and the contracting parties may extend this period for a maximum of additional three months. Derogation from the minimum basic salary as determined in this tariff annex is not possible below the level of agreed minimum basic salaries in force until this collective agreement came into force. Contracting parties shall negotiate on any potential derogations from the minimum basic salaries, as established in the tariff annexes, during negotiations on increase of minimum basic salaries.
23	Trade sector	Not regulated	/
24	Insurance Sector	Not regulated	/
25	Private security sector	Not regulated	/

Conditions for derogation	Scope of derogation (which rights)	Procedure	Term of measure
/	/	/	/
In the event of a significant worsening of the business situation in the preceding year, recession in the industry or in similar justified cases.	Not provided	Trilateral written agreement between a representative company-level trade union, a representative industry-level trade union and employer.	Measure is not time-barred.
/	/	/	/
In the case of a serious financial situation of the employer, which endangers their existence, and for the purpose of saving jobs.	Not provided	A written agreement between an employer and a company-level trade union, upon consent of the industry-level trade union. An agreement must include a provision on the manner and deadlines of repayment.	No more than six months.
In the event of a significant worsening of the business situation in the preceding year due to objective reasons, recession in the industry or in similar justified cases.	Not provided	A written agreement between a representative company-level trade union and an employer.	Measure is not time-barred.
In the event of a significant worsening of the business situation in the preceding year, recession in the industry or in similar justified cases.	With regard to the amount of minimum basic salaries.	Based on a special written agreement between a representative industry-level trade union and an employer.	A maximum of six months, with a possibility of extension for no more than additional three months.
/	/	/	/
/	/	/	/
/	/	/	/

Project: Strengthening the Competences of Social Partners in a Collective Bargaining Process, 2017–2021

Negotiation skills for effective collective bargaining – compendium

Third bundle:

Work-related remuneration as an important aspect of a collective agreement

- Legal aspects of remuneration for work
- Remuneration under an employment relationship and their tax treatment
- Derogation from minimum standards with an overview of individual rules

Project: Strengthening the Competences of Social Partners in a Collective Bargaining Process, 2017–2021

The envisaged contents of the following bundles in the compendium **Negotiation skills for effective collective bargaining:**

- **The strength and importance of mediation as an out-of-court manner of dispute resolution**

Project participants:

Metka Penko Natlačen, Head of the Project

Cvetka Furlan, Expert Assistant

Urška Sojč, Expert Assistant

Aleš Bortek, Expert Assistant, PERGAM trade union confederation

Representatives of associations/chambers of industry:

Irma Butina, Chamber of Media

Petra Prebil Bašin, Association for the paper and paper-processing industry and Association for the textile, clothing and leather processing industry mag. Vida Kožar, Chamber of business and trade

Zdravko Kafol, Chamber of book publishers and booksellers

mag. Gregor Ficko, Chamber of construction and construction material industry

Boštjan Udovič, Chamber of real-estate

Information on the authors

Metka Penko Natlačen, univ. dipl. prav., has completed a university law degree and passed the state legal examination. She serves as a specialist in the fields of individual and collective labour law, and is a deputy director of the Legal Department of the Chamber of Commerce and Industry of Slovenia. She has professional experience on the market, in the judiciary and in the field of research. As part of her professional training in the field of collective labour law, she attended seminars in Dublin, Turin, Warsaw, Prague, Florence and Lyon; in 2012, she also attended seminars at the Labour Relations Commission in Ireland, and at the Advisory, Conciliation and Arbitration Service in the UK. Several times she served as a member of the Slovenian delegation to the meetings of the International Labour Organisation. She participated in individual projects as an international expert in out-of-court settlement of disputes, namely in 2013 in Montenegro, in 2015 in Kiev, Ukraine, and in 2017 in Lima, Peru. Holding a status of an approved authorised person for the prevention of mobbing at the workplace, she is also a certified NLP master coach, as well as mediator since 2009. For several years, she has actively provided direct expert support to the Chamber in the process of collective bargaining between social partners, and is the head of the Labour Coordination and a Secretary of the Strategic Council for Collective Bargaining at the Chamber.

She is a long-serving lay judge at the Labour and Social Court, a member of expert committees for the preparation of labour legislation and committees for interpretation of certain industry-level collective agreements. She is included in the list of conciliators and arbitrators kept under the Collective Agreements Act, and the list of arbitrators kept under the Worker Participation in Management Act (*Zakon o sodelovanju delavcev pri upravljanju*). She gives lectures and publishes, mostly in the fields of individual and collective labour law, non-conflict communication and mediation in the work environment.

Cvetka Furlan has a university degree in economics and is employed as an independent adviser to the Chamber's Legal Department. She is an expert in economic aspects of individual and collective labour relationships. She has extensive experiences in the metal processing and wood industries, where she worked at all levels, including the management. Her expertise concerns the fields of finance, accounting and controlling. She is an expert in organising and implementation

of programmes for improvement of competitiveness of companies. She is also a recipient of an award presented by the Manager Association.

She is a member of the Labour Coordination (*Delovnopravna koordinacija*) at the Chamber's Legal Department and is the editor of the PLAČNI KAŽIPOT website, which concerns work-related remuneration based on collective agreements in particular industries. She participates in the project *Strengthening the Competences of Social Partners in a Collective Bargaining Process* as an expert assistant for economic aspects.

Urška Sojč, univ. dipl. prav., graduated at the Faculty of Law in Ljubljana. Her thesis concerned the calculation of future damage. She completed two semesters abroad, at the Faculty of Law of the European University Viadrina in Frankfurt, and the Faculty of Law of the University in Montenegro. During her studies and after graduation, she worked in the chemical and rubber industry, and as an adviser. In 2016, she joined the Legal Department of the Chamber. As an independent adviser, her work mostly focuses on individual and collective labour law and labour migration. She is a member of the Labour Coordination (*Delovnopravna koordinacija*), and an expert assistant in the project *Strengthening the Competences of Social Partners in a Collective Bargaining Process*.

She is also a member of the European Economic and Social Committee (EESO) for the period 2020–2025, and a member of the national network committee for cooperation with the European Agency for Safety and Health at Work (EU-OSHA). She serves as a deputy member of the tribunal of the Association of Insurance Intermediaries of Slovenia (*Združenje zavarovalnih posrednikov Slovenije*), and as a lay judge at the Labour and Social Court in Celje. She has been appointed to the Council for Health and Safety at Work (*Svet za varnost in zdravje pri delu*) and is a representative of the Chamber in the drafting of Strategy of Economic Migrations (*Strategija ekonomskih migracij*) for the period 2020–2030.

She publishes expert pieces in the Chamber's newsletters, especially the Glas gospodarstva and the Pravna praksa. She also gives lectures at events organised by the Chamber, mostly on secondment of workers abroad and employment of foreigners.

About the Chamber of Commerce and Industry of Slovenia

The Chamber of Commerce and Industry of Slovenia as an effective business lobby and a renowned organisation of employers represents companies (its members) as business subjects and employers. It represents its members toward the State and the trade unions with regard to ensuring the design of working conditions and conduct of business, and with regard to ensuring the conditions for economic development. It ensures its members new opportunities for development, to achieve competitiveness and to penetrate foreign markets. As an organisation of employers it cooperates in designing 22 industry-level collective agreements concerning working conditions and employment. The Chamber also encompasses a Strategic Council for collective bargaining in the private sector (*Strateški svet za kolektivno dogovarjanje v gospodarstvu*), which participates in 25 industry-level collective agreements. The Chamber is striving to establish a model bilateral social dialogue at the level of individual industries.

The Chamber's Legal Department deals with commercial status law, contract law and employment law. It provides legal and economic support to negotiating teams bargaining on industry-level collective agreements and to the Strategic Council.

The Chamber's Legal Department is leading the project Strengthening the Competences of Social Partners in a Social Dialogue (2017–2021). The PERGAM Confederation of Trade Unions in Slovenia is also a partner in the project.

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