

Employees

Salaries

**RIGHT OF THE EMPLOYEE ON SEVERANCE PAY
GROSS 1 OR NET AMOUNT?**

EMPLOYMENT OFFER
that you have been offered the position
of employment are following:

810	28 926	36	1 210
820	29 289	36	1 220
830	29 652	36	1 230
840	30 015	36	1 240
850	30 379	36	1 250
860	30 743	36	1 260
870	31 106	36	1 270
880	31 470	36	1 280
890	31 833	36	1 290
900	32 197	36	1 300
910	32 560	36	1 310
920	32 924	36	1 320
930	33 287	36	1 330
940	33 651	36	340
950	34 014	36	350



JANKOVIĆ POPOVIĆ MITIĆ

RIGHT OF THE EMPLOYEE ON SEVERANCE PAY – GROSS 1 OR NET AMOUNT?

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Autors: Jelena Nikolić, Partner

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RIGHT OF THE EMPLOYEE ON SEVERANCE PAY – GROSS 1 OR NET AMOUNT?

The law of the Republic of Serbia is based on Constitution, laws and other legislation, as well as accepted international rules and international treaties. However, even though the law of the Republic of Serbia is not a case law, court decisions have impact on the law enforcement and interpretation of the legal provisions.

Aside from the courts, competent Ministry of labour, employment, veteran and social issues also provide interpretation of the labour related legislation that affects the way in which employers conduct their business activities.

Due to the abovementioned practice, it happens very often that the official stands of the highest courts in the country and the official opinions of the competent ministry change, as well as for them to sometimes be completely different, that leads to legal insecurities.

One of the recent cases of such discrepancy refers to the manner of calculating the severance pay in case of employment termination due to redundancy.

Salaries

Although it seemed that the manner of determining severance pay and its payment was undisputed, recent court decisions led to the question whether the employee has the right to severance pay in the gross 1 amount (including taxes and contributions for social insurance paid at the expense of the employee) or to net amount.

Supreme court of the Republic of Serbia took a stand that the severance pay should be paid in the net amount.

Having in mind the provisions of the Labour law, as well as tax legislations, it is our opinion that there are reasons for potential revision of such stand.

SEVERANCE PAY

Pursuant to the provisions of the Labour law, the employer is obliged to perform payment of the severance pay to the employee prior to employment termination based on redundancy.

The amount of severance pay is determined by general act or employment agreement and it cannot be lower than the 1/3 of the employee's monthly salary for each full year of employment spent at the employer, related legal entities with the employer and previous employer in case of status change.

The law also stipulates that the severance pay is determined based on the average salary of the employee paid in the period of three months prior to the month of payment of severance pay.

Therefore, it is undisputed that the average salary of the employee is being used to determine the amount of severance pay employee is entitled to.

Labour law defines salary as the salary that consists of taxes and contributions for social insurance paid at the expense of the employee, i.e. "from salary". Therefore, the term "salary" refers to gross 1 amount, i.e. it stipulates the net amount of salary + taxes and contributions for social insurance paid from salary.

Regardless of the aforementioned, the Supreme court of the Republic of Serbia took a stand that the severance pay is calculated and paid in net amount based on the interpretation of the Article 105, point 3 of the Labour law that stipulates receivables that are not considered to be "salary", including severance pay.

However, it is our opinion that the purpose of the subject Article was to define receivables that are not used for calculation of compensation of salary and it cannot be interpreted as the basis for calculation of severance pay in net amount. In addition, the term "salary" should be taken as a reference value for determining the amount of severance pay to which the employee is entitled.

TAX ASPECT

In terms of tax legislation, salary of the employee represents gross 1 amount that entirely belongs to the employee. The employee is liable to pay taxes and contributions on the agreed amount of salary, while the payment itself is being made by the employer.

Tax legislation stipulates certain tax exemptions, as in the case of severance pay. Namely, pursuant to the Law on personal income tax, there is no obligation to pay taxes on the severance pay up to the amount stipulated by the Labour law.

Since gross 1 amount of salary entirely belongs to the employee, subject exemption means that the taxpayer (employee) is not obliged to pay the corresponding taxes (i.e. the employer in his name and for his account). Otherwise, in case of payment of net amount of severance pay, the employer is the one that keeps the non-taxed amount to himself.

TAX ASPECT

In addition, Law on contributions for mandatory social insurance stipulates that salary and compensation of salary determined in line with the Labour law, general act, employment agreement and decree of competent authority represent basis for calculation and payment of contributions for social insurance. Since severance pay is not considered to be salary in terms of Labour law, that means that neither employer nor employee are obliged to pay contributions for social insurance on the determined amount of severance pay.

The fact that the employment agreements stipulate gross 1 salary of the employee instead of net amount, also proves that the gross 1 salary represents the actual income of the employee from which taxes and contributions for social insurance are being paid. If there is no obligation to pay taxes and contributions for social insurance on the severance pay, that means that the employee is entitled to “keep” the entire gross 1 amount to himself/herself.

In case of different interpretation, the purpose of tax exemptions and other reliefs could be questioned.



JPM Jankovic Popovic Mitic

6 Vladimira Popovića,
NBGP Apartments
11070 Belgrade, Serbia
T:+ 381/11/207-6850
E: office@jpm.rs

www.jpm.rs