




Ustavni sud odlučio u korist zaposlenih trudnica i majki

The Constitutional Court Decided in Favor of Employed Pregnant Women and Mothers

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Dana 14.02.2024. godine objavljena je Odluka Ustavnog suda Republike Srbije broj IUz-60/2021, kojom je utvrđeno da odredba člana 13. stav 1. Zakona o finansijskoj podršci porodici sa decom („Službeni glasnik RS”, br. 113/17, 50/18, 46/21 – Odluka US, 51/21 – Odluka US, 53/21 – Odluka US, 66/21, 130/21, 43/23 – Odluka US i 62/23), nije u saglasnosti sa Ustavom Republike Srbije, u delu koji glasi:

„odsustva zbog komplikacija u vezi sa održavanjem trudnoće, ili” i „ukoliko nije korišćeno odsustvo zbog komplikacija u vezi sa održavanjem trudnoće.”

On 14 February 2024 the Decision of the Constitutional Court of the Republic of Serbia no. IUz-60/2021 was published, which determines that the provision of Article 13, Paragraph 1 of the Law on Financial Support for Families with Children (“Off. Gazette of the RS”, no. 113/17, 50/18, 46/21 – Decision of the CC, 51/21 – Decision of the CC, 53/21 – Decision of the CC, 66/21, 130/21, 43/23 – Decision of the CC and 62/23), is not in accordance with the Constitution of the Republic of Serbia in the part that reads:

“absence due to complications related to pregnancy maintenance, or” and “if leave due to complications related to pregnancy maintenance was not used.”

U svom obrazloženju, Ustavni sud je utvrdio da različito računanje relevantnog perioda za utvrđivanje prava na naknadu zarade za vreme porodiljskog odsustva i odsustva sa rada radi nege deteta neopravdano stavlja žene koje su pre porodiljskog odsustva bile sprečene za rad zbog komplikacija u vezi sa održavanjem trudnoće u nepovoljniji položaj u odnosu na žene čija je trudnoća protekla bez komplikacija.

Naime, prema spornoj odredbi, ženi koja je otpočela odsustvo zbog komplikacija u vezi sa održavanjem trudnoće, osnovica naknade zarade utvrđuje se na osnovu zbira mesečnih osnovica na koji su plaćeni doprinosi na primanja koja imaju karakter zarade za poslednjih 18 meseci koji prethode prvom mesecu otpočinjanja odsustva. Sa druge strane, u slučaju zaposlene koja nije imala komplikacije u vezi sa održavanjem trudnoće, period relevantan za obračun je poslednjih 18 meseci koji prethode prvom mesecu otpočinjanja porodiljskog odsustva.

In its explanation, the Constitutional Court found that the different calculation of the relevant period for determining the right to remuneration during maternity leave and child care leave unjustifiably places women who were prevented from working due to complications related to maintaining a pregnancy in less favorable position compared to women whose pregnancy passed without complications.

Namely, according to the contested provision, for a woman who has started leave due to complications related to pregnancy maintenance, the salary compensation base is determined on the basis of the sum of the monthly bases on which the contributions to earnings that have the character of salary have been paid for the last 18 months preceding the first month of starting the leave. On the other hand, in the case of an employee who did not have complications related to the pregnancy maintenance, the period relevant for the calculation is the last 18 months preceding the first month of maternity leave.

Prema oceni Ustavnog suda, to dalje znači da se ženama koje su imale komplikacije u vezi sa održavanjem trudnoće obračun naknade zarade vrši prema primanjima koja imaju karakter zarade ostvarenim u značajno ranijem periodu u odnosu na trenutak otpočinjanja porodiljskog odsustva, nego ženama čija trudnoća je protekla bez komplikacija.

Prema spornoj odredbi, pri obračunu naknade zarade za vreme porodiljskog odsustva i odsustva sa rada radi nege deteta se ne uračunava period u kome je zaposlena žena bila privremeno sprečena za rad zbog komplikacija u vezi sa održavanjem trudnoće i za koji je, u skladu sa važećim Zakonom o zdravstvenom osiguranju („Sl. glasnik RS“, br. 25/2019 i 92/2023), je ostvarila pravo na naknadu zarade u visini 100% od osnova za naknadu, po osnovu koje su plaćeni doprinosi.

According to the opinion of the Constitutional Court, this further means that for women who had complications related to the maintenance of their pregnancy, the compensation of salary is calculated according to earnings that have the character of salary earned in a significantly earlier period compared to the moment when maternity leave began, than for women whose pregnancy went without complications.

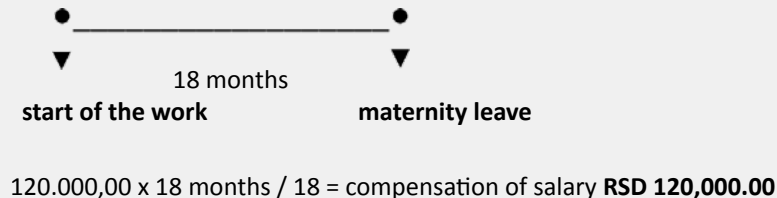
The contested provision stipulates that, when calculating the compensation of salary during maternity leave and child care leave, the period in which the employed woman was temporarily prevented from working due to complications related to maintaining the pregnancy and for which, in accordance with the valid Law on Health Insurance, she achieved the right to compensation of salary in the amount of 100% of the basis for compensation, on the basis of which the contributions were paid.

Practically, a woman who uses the so-called “pregnancy sick leave” and who has a working experience of less than 18 months before the start of the leave, as a result, receives a significantly lower compensation of salary during maternity leave and leave of absence for nursing a child compared to a woman without pregnancy complications. The difference can be shown schematically in the following simplified example:

A: Employee with pregnancy complications



B: Employee without pregnancy complications salary 120.000,00 RSD



Na kraju, u skladu sa važećim Zakonom o Ustavnom sudu, kao i pozivom Sekretarijata za socijalnu zaštitu grada Beograda, žene koje se nalaze u oštećenoj kategoriji, a kojima je pravnosnažno rešenje o pravu na naknadu zarade za vreme porodiljskog odsustva i odsustva sa rada radi nege deteta, doneto počev od 19.04.2019. godine, mogu podneti zahtev za izmenu tog rešenja.

Zahtev za izmenu rešenja, korisnice sa prebivalištem na teritoriji grada Beograda podnose Sekretarijatu za socijalnu zaštitu, ulica 27. marta, broj 43–45, Beograd, najkasnije do 14.08.2024. godine. Uz uredno popunjen i potpisan obrazac zahteva neophodno je priložiti očitano ličnu kartu i fotokopiju kartice tekućeg računa.

Rešenja koja nisu još uvek postala konačna će biti izmenjena po službenoj dužnosti.

Finally, in accordance with the current Law on the Constitutional Court, as well as the invitation of the Secretariat for Social Protection of the City of Belgrade, women who belong in the damaged category, and who have a final decision on the right to compensation of salary during maternity leave and child care leave, adopted starting from 19 April 2019, may submit a request to amend the existing decision.

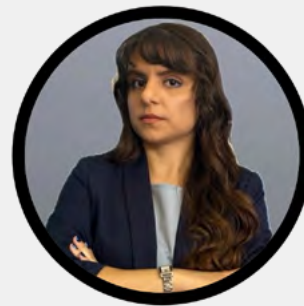
The request for amendment of decisions by users residing in the territory of the city of Belgrade can be submitted to the Secretariat for Social Protection, 27 Marta Street, no. 43-45, Belgrade, no later than 14 August 2024. Along with the duly completed and signed request form, it is necessary to attach a scanned ID card and a photocopy of the bank account card.

Decisions that have not yet become final will be changed ex officio.

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