

MONTENEGRO

New General Collective Agreement concluded in Montenegro

Montenegro has recently obtained a new General Collective Agreement (GCA), after almost 18 months of a hiatus. The GCA came into force on 30 March 2014, as a result of bargaining among the representatives of the Government, representative trade unions and the Employers' Union of Montenegro. The GCA is initially valid for 2 years, and applies to all employers in Montenegro.

The GCA seals the legal gaps which have existed since October 2012, when the previous general collective agreement expired. Specifically, the Montenegrin Labour Law provides for a high-level regulation of a number of entitlements (such as the length of paid leave, amount of salary compensation and salary increase, conducting of disciplinary proceeding, criteria for increase of annual leave, etc.), leaving the detailed regulation to collective agreements (general collective agreement, branch collective agreements, and/or individual collective agreement at the employer's level) and/or employment agreements. As a result, employers operating in industries which are not covered by a branch collective agreement (e.g. trade) have been facing a number of legal gaps in the past period, since the mentioned entitlements are rarely regulated in individual employment agreements.

We shall outline below the most important provisions of the GCA:

Leaves – Employers are obliged to increase the statutory minimum annual leave (20 working days) for one to five working days, depending on the total length of the employee's service (one working day for employees with 5-15 years of service, two working days for employees with 15-25 years of service, three working days for employees with 25-35 years of service, and five working days for employees who have generated over 35 years of employment). Employees with disabilities and parents whose children have development difficulties are entitled to additional three working days, in addition to the general extension granted by the GCA. A single parent of a child not older than 15 years of age is entitled to additional two days of annual leave. The GCA also extends the reasons for paid leave given in the Labour Law, defining the length of paid leave in each case, and introduces grounds for unpaid leave, which may last up to 30 days within a calendar year.

Salary, compensation of salary, and other earnings - The GCA defines job coefficients according to the level of employee's education. Basic salary may not be lower than the amount obtained by multiplying the relevant job coefficient

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and the prescribed benchmark. The benchmark is determined by a separate agreement concluded among the signatories of the GCA. It currently amounts to EUR 90 gross.

Hourly wage is increased for at least: 40% for work in a night shift, 40% for overtime work, and 150% for work on a state or a religious holiday. If more than one of these grounds cumulatively applies (for example, the employee works overtime on a public holiday), percentages of increase shall be added up starting 1 May 2015. In the meantime, until 30 April 2015 cummulation is possible until the 150% maximum threshold is reached.

Salary is regularly increased for each commenced year of employment, as follows: 0.5% per each year of employment service if the employee has up to 10 years of service, 0.75% per year of service for employees with 10-20 years of service, and 1% per year of service for employees with over 20 years of service.

Employers have a new obligation – to pay at least two minimal net salaries to the employee, in case of death of his/her immediate family member, or to the employee's immediate family member, in case of the employee's death.

The GCA defines the amount of salary compensation in cases set by the Labour Law. Employee is entitled to 100% of his/her (proportionate) salary while not working because of state or religious holidays, annual leave, paid leave, professional training pursued upon employer's request, participation in an employer's body, trade union organ or state body or non-compliance by the employer with mandatory work place safeguards. Suspension of work without employee's fault (so-called forced leave) may last for up to 6 months in a calendar year, during which period the employee is entitled to a salary compensation in the amount of 70% of his/her average salary in the previous six-month period, but no less than the minimum salary.

The GCA also mandates a retirement severance package, in the amount of three minimal net salaries at the time of payment.

Per diem for domestic business trips is set at 20% of the coefficient benchmark used for the purpose of determining salaries (see above), while per diems for business trip abroad are payable in line with a separate regulation. Use of employee's private vehicle for business purposes (with the employer's consent) is to be compensated in the amount equal to 25% of the price of one litre of gasoline per kilometre.

Disciplinary proceeding and termination of employment - The GCA contains a catalogue of minor breaches of work duty (which represent a ground for monetary fine) and major breaches (which represent a ground for dismissal). Additional breaches may be prescribed in a branch collective agreement, individual collective agreement, and/or employment agreement. Disciplinary proceedings for determination of employee's liability for breach of work duty are regulated in detail.

Mandatory funding of trade unions - Employer is obliged to transfer 0.2 % of each salary payment made to a member of a representative trade union in Montenegro, into to a special fund of the relevant union. This money is supposed to be used for employees' recreational activities and prevention of occupational disability. Employers bound by a branch collective agreement which impose a similar payment obligation for the benefit of an industry-specific trade union are exempted from the obligation to pay the same type of charge under the GCA.

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Zaključen novi Opšti kolektivni ugovor u Crnoj Gori

Nakon skoro 18 meseci pauze, Crna Gora je ponovo dobila Opšti kolektivni ugovor (OKU). OKU, zaključen između predstavnika Vlade Crne Gore, reprezentativnih sindikata i Unije poslodavaca Crne Gore a stupa na snagu 30. marta 2014. godine. OKU važi 2 godine i primenjuje se na sve poslodavce i zaposlene u Crnoj Gori.

Zaključenjem OKU otklonjene su pravne praznine koje su nastale nakon što je u oktobru 2012. godine prestao da važi prethodni opšti kolektivni ugovor. Naime, Zakon o radu veliki broj instituta reguliše samo načelno, dok bliže regulisanje ovih prava (npr. dužine plaćenog odsustva, visine naknade zarade, uvećane zarade, način vođenja disciplinskog postupka, kriterijume za uvećanje godišnjeg odmora, i dr.), prepušta kolektivnim ugovorima (opštem kolektivnom ugovoru, granskom kolektivnom ugovorom, i kolektivnim ugovorom kod poslodavca) i/ili ugovoru o radu. Kako nisu sve delatnosti pokrivene granskim kolektivnim ugovorom (na pr. trgovina) a poslodavci vrlo retko ova pitanja adresiraju u pojedinačnim ugovorima o radu, u prethodnom periodu tokom koga nije postojao OKU sva ta pitanja su bila neregulisana.

U nastavku navodimo najvažnije odredbe OKU:

Odmori i odsustva - OKU propisuje obavezno uvećanje minimalnog trajanja godišnjeg odmora (20 radnih dana) za jedan do pet radnih dana, u zavisnosti od dužine radnog staža (jedan radni dan ako zaposleni ima 5-15 godina radnog staža, dva radna dana ako zaposleni ima 15-25 godina radnog staža, tri radna dana ako zaposleni ima 25-35 godina radnog staža, i pet ranih dana ako zaposleni ima preko 35 godina radnog staža). Osim toga, licu sa invaliditetom i roditelju deteta koje ima smetnje u razvoju sledi uvećanje od dodatna tri dana, a samohranom roditelju deteta do 15 godina života od dodatna dva dana. OKU proširuje spisak osnova za plaćeno odsustvo iz Zakona o radu, i definiše dužinu trajanje plaćenog odsustva po svakom od osnova, te uvodi slučajeve u kojima zaposleni ima pravo na neplaćeno odsustvo do 30 dana u kalendarskoj godini.

Zarada, naknada zarade i ostala primanja - OKU definiše koeficijente složenosti poslova uzimajući u obzir nivo obrazovanja. Najniža osnovna zarada zaposlenog ne može biti niža od iznosa dobijenog množenjem koeficijenta složenosti posla i obračunske vrednosti koeficijenta. Obračunska vrednost koeficijenta utvrđuje se posebnim sporazumom između potpisnika OKU, a trenutno iznosi 90 Evra bruto.

Zarada zaposlenog po času uvećava se za najmanje: 40% za rad noću, 40% za prekovremeni rad, i 150% za rad na dan državnog ili verskog praznika. U slučaju da se ispune uslovi za uvećanje zarade po više navedenih osnova (npr. zaposleni radi prekovremeno na dan državnog praznika), procenti povećanja će se sabirati počevši od 1. maja 2015. godine. U međuvremenu, u periodu od dana stupanja na snagu OKU pa do 30. aprila 2015. godine, zarada po času se može uvećati samo do iznosa uvećanja utvrđenog za rad na dan državnog ili verskog praznika (150%).

Zarada zaposlenog se redovno uvećava za svaku započetu godinu radnog staža, i to za 0,5% po godini radnog staža za zaposlene koji imaju do 10 godina radnog staža, 0,75% za zaposlene koji imaju 10-20 godina radnog staža, i 1% za zaposlene sa preko 20 godina radnog staža.

Novina je obavezna isplata pomoći zaposlenom u slučaju smrti člana njegove uže porodice, kao i članu uže porodice zaposlenog u slučaju smrti zaposlenog, u iznosu od najmanje dve minimalne neto zarade.

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OKU propisuje visinu naknade zarade na koju zaposleni ima pravo u slučajevima određenim Zakonom o radu. Tako zaposlenom pripada naknada zarade u visini od 100% njegove zarade za vreme odsustvovanja na dane državnih i verskih praznika, korišćenja godišnjeg odmora kao i plaćenog odsustva, za vreme stručnog usavršavanja i osposobljavanja na zahtev poslodavca, za dane odsustvovanja sa rada po osnovu učešća u radu organa poslodavca, organa sindikata, državnih i drugih organa, kao i za vreme tokom koga je zaposleni odbio da radi ukoliko nisu sprovedene propisane mere zaštite na radu. Za vreme prekida rada koji je nastao bez krivice zaposlenog, a koji može trajati najduže šest meseci u toku kalendarske godine (tzv. prinudni odmor), zaposlenom pripada naknada zarade u iznosu od 70% njegove prosečne zarade ostvarene u prethodnom polugodištu, a u svakom slučaju ne manje od propisane minimalne zarade.

OKU takođe propisuje iznos otpremnine prilikom odlaska u penziju u visini od tri minimalne neto zarade u trenutku isplate.

Pored toga, OKU definiše i obavezu isplate dnevnice za službeno putovanje u zemlji u visini 20% od obračunske vrednosti koeficijenta, dnevnice za službeno putovanje u inostranstvo u skladu sa posebnim propisom, te obavezu isplate naknade troškova korišćenja privatnog automobila u službene svrhe, uz saglasnost poslodavca, u visini od 25% cene litra benzina po pređenom kilometru.

Disciplinski postupak i otkaz ugovora o radu - OKU sadrži bazični katalog povreda radnih obaveza, razvrstanih u lakše (koje mogu biti osnov za izricanje novčane kazne), i teže (koje mogu biti osnov za otkaz ugovora o radu), s tim što se granskim kolektivnim ugovorom, pojedinačnim kolektivnim ugovorom kod poslodavca i/ili ugovorom o radu mogu predvideti dodatne lakše i teže povrede radne obaveze. Takođe, OKU detaljno razrađuje pokretanje i vođenje disciplinskog postupka u kome se određuje odgovornost zaposlenog za povredu radne obaveze.

Uplate na račun sindikalnog fonda - Poslodavac je dužan da, prilikom isplate zarade, na račun posebnog fonda reprezentativnog sindikata na nivou Crne Gore uplati iznos od 0,2% na zaradu zaposlenog koji je član tog sindikata, radi prevencije radne invalidnosti i rekreativnog odmora. Poslodavci na koje se primenjuje granski kolektivni ugovor koji predviđa obavezu uplate sredstava u navedene svrhe na račun sindikata koji je potpisnik tog granskog kolektivnog ugovora, nisu dužni da vrše dodatnu uplatu sredstava po osnovu OKU.

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