



Downtime compensation

Information on the new regulatory framework entering into force on 26 March 2020

The outbreak of Covid-19 has significantly worsened the global financial situation and has adversely affected the daily work of companies, resulting in sudden and rapid changes in the labour market. Eversheds Sutherland Bitāns team is closely monitoring the legislative changes in Latvia to offer appropriate solutions aimed to overcome this emergency situation.

A detailed overview of Regulation of the Cabinet of Ministers of the Republic of Latvia No 151 of 24 March 2020, "Regulations on sectors where the financial situation has significantly deteriorated due to the prevalence of the Covid-19" and Regulation of the Cabinet of Ministers of the Republic of Latvia No 152, "Regulations regarding downtime compensation for employees affected by the Covid-19".

What is the downtime compensation?

The downtime compensation is a unique **support mechanism** established by the State of Latvia for employers aiming to prevent the economic consequences of the Covid-19 and to compensate expenditures due to the idle of employees. It is planned to disburse approximately 50 - 200 million euros in downtime compensation.

What will be the amount of downtime compensation?

Article 74 of the Labour Law of the Republic of Latvia (Labour Law) stipulates that the employer must pay the employee the remuneration for the downtime. In accordance with Article 74(3), of the Labour Law, if the employee has a time salary, in the case of downtime, the employee shall be paid the specified remuneration. In

contrast, if the employee has a piecework salary, the average earnings shall be paid to the employee. According to the law "On national risk and prevention and management measures in relation to the spread of Covid-19" in case of receipt of the downtime compensation the employer may not apply Article 74 of the Labour Law.

Downtime compensation will be determined based on the data submitted by the employer regarding the employee to the State Revenue Service (SRS) within the last 6 months prior to the announcement of the emergency situation, compensating up to **75% of the average gross remuneration amount of the previous 6 months or according to the data actually declared about the employee in the last 6 months, but not exceeding 700 euros** per calendar month.

Importantly:

If after the granting of the downtime compensation, the employer submits to the SRS specified data on the employee's employment income during the period that is used to calculate the amount of the downtime compensation, the downtime compensation will not be re-calculated!

Who can apply?

The following employers can apply:

- | those who carry out the main **economic activity** in the Covid-19 affected sectors, **and**
- | whose revenue from the economic activity in March 2020 has decreased by at least **50%**, compared to March 2019, as a result of the outbreak of Covid-19,
- | who do not employ an employee due to the Covid-19 crisis, **or**
- | fails to carry out the necessary activities to accept the fulfilment of employee's obligations due to the Covid-19 crisis.

Sectors affected by Covid-19 in which the financial situation of employers has deteriorated significantly due to the spread of Covid-19:

- | Passenger air transport
- | Passenger rail transport
- | Other passenger land transport
- | Hotels and similar accommodation
- | Holiday and other short-stay accommodation
- | Camping grounds, recreational vehicle parks and trailer parks
- | Other accommodation
- | Restaurants and mobile food service activities
- | Other food service activities
- | Beverage serving activities
- | Motion picture, video and television programme production activities
- | Actions after motion picture, video and television programme production activities
- | Motion picture, video and television programme post-production activities
- | Motion picture projection activities
- | Sound recording publishing activities
- | Professional scientific and technical services n.e.c.
- | Automobile Rental and leasing of cars and light motor vehicles
- | Renting and leasing of recreational and sports goods
- | Renting and leasing of other machinery, equipment and tangible goods, which are not classified elsewhere
- | Travel agency activities
- | Tour operator activities
- | Other reservation service and related activities
- | Organisation of conventions and trade shows
- | Pre-primary education
- | Sports and recreation education
- | Cultural education
- | Educational support activities
- | Child day-care activities
- | Performing arts
- | Support activities to performing arts
- | Artistic creation
- | Operation of arts facilities
- | Museums activities
- | Operation of historical sites and buildings and similar visitor attractions
- | Operation of sports facilities
- | Operation of sports clubs
- | Fitness facilities
- | Other sports activities
- | Activities of amusement parks and theme parks
- | Other amusement and recreation activities

(!) In the coming days, it is planned **to update the list of sectors affected by Covid-19**. Additional support mechanisms for other companies at the downtime, according to other criteria, regardless of the industry will be set up.

Which employers will not be supported?

We draw your attention that the downtime compensation is not planned to be granted to **members of the Management Board and Supervisory Board** of the employers operating in the sectors affected by the Covid-19, as well as to the employees who are simultaneously employed in a State or local government institution or capital company of a public person or **who receive an old-age, service or disability pension or carry out economic activity**.

The downtime compensation is not intended to be paid to employees who are employed by such employers of the sectors affected by the Covid-19 crisis:

- | who have not submitted all tax returns and annual reports to SRS for the last 12 months prior to the emergency situation
- | to whom the tax debt on 7 March 2020 was more than 150 euros and to whom no extension of payments has been granted or no agreements have been entered into regarding voluntary tax payment
- | who in the previous 6 months prior to the announcement of the emergency situation have calculated the taxes administrated by SRS on average less than 200 euros per month
- | who are excluded or have been excluded during the last 2 years from the SRS value added tax payers register or whose economic activity is or has been suspended
- | who has ongoing insolvency proceedings on the date of the decision
- | whose type of the main economic activity (according to the NACE Rev. 2 classification), as of 1 March 2020 does not correspond to the type of core activity at the disposal of SRS (notified)
- | who have not specified in the application to SRS regards downtime compensation the justification regarding the occurrence of employees downtime due to the circumstances caused by the employer as a result of the Covid-19
- | for which SRS, when assessing the application for downtime compensation, finds that the occurrence of the employee's downtime period is not related to the circumstances caused by the Covid-19
- | who commence employment relationships with the employee after 1 March 2020
- | who are institutions financed by the State and local government budget or a merchant controlled by them
- | whose staff have been leased to another taxpayer
- | those, in respect to whom, during the previous 3 years and at the time of the assessment of the application for downtime compensation, the tax audit (audit) or data compliance has resulted in an additional amount to be paid in the State budget, or reduced the amount of the unduly increased tax to be repaid from the State budget, including late payment charges and fines, the total amount of which exceeds 3% of the employer's tax revenues administered by SRS in the relevant year (minus the overpayments paid by the tax authorities from the contributions made by employers), but at the time of the assessment – 3% of the employer's tax revenues administered by SRS in the previous year (minus the overpayments paid by the tax authorities from the contributions made by employers)
- | who, or whose member of the Management board has been punished in the previous year and at the time of the evaluation of the application for an infringement relating to the employer's tax obligations, infringements in the customs field, or a violation of the regulatory enactments regulating the legal

employment relationship, except where a warning or a fine not exceeding 151 euros has been applied for an individual violation and during a year of penalties the total amount does not exceed 500 euros

Benefits of the in-depth cooperation programme

To the employers operating in the sectors affected by Covid-19, who are included in the in-depth cooperation programme pursuant to Regulation of the Cabinet of Ministers of the Republic of Latvia No 748 of 27 November 2018, "Regulations for the operation of the in-depth cooperation programme", does not apply the following restrictions on the granting of downtime compensation:

- the employer of the sector affected by Covid-19 has not submitted to the SRS all tax returns and annual accounts for the last 12 months prior to the emergency situation
- the employer of the sector affected by Covid-19 on 7 March 2020, has a tax debt of more than 150 euros and has not been granted an extension or no agreement on voluntary taxation has been concluded

What period will be covered?

The downtime compensation will be granted and paid in accordance with the downtime period indicated in the submission by the employer affected by Covid-19, for a period of up to 2 months - from 14 March 2020 to 14 May 2020, but not longer than until the end of the period of validity of the Cabinet of Ministers decision regarding emergency situation.

Employees will not receive any downtime compensation for the calendar days for which sickness benefit has been granted.

When and how to apply?

The application for downtime compensation for the downtime period from 14 March to 31 March will be open until 25 April 2020. For further periods of downtime the employers will have to submit new applications by the 25th date of each month.

The employer will have to fill in the form of submission in SRS electronic declaration system (EDS), indicating:

- name of the employer
- tax payer's registration number
- downtime period
- type of the main activity of the employer (according to the NACE Rev. 2 classification) on 14 March 2020
- justification for the occurrence of employee downtime in relation to conditions created to the employer by the occurrence of Covid-19
- name and surname of the employee in the downtime
- personal number of the employee
- employee's account opened in a credit institution or at the payment service provider in Latvia
- downtime period
- a proof that an employee to whom downtime compensation is requested is not in the period of incapacity for work and, within one month of the date of submission, the dismissal of the employee upon the initiative of the employer will not be performed.

Procedures for Evaluation and Notification of Submission

The employer's application submitted to the EDS regarding the downtime compensation will be reviewed by SRS within 5 working days.

If an employee is employed by a number of employers, the downtime compensation shall be granted taking into account which of the employer of the sector affected by Covid-19 is the primary source of income (tax book submitted). If the tax book has not been submitted to any employer, the downtime compensation shall be paid, taking into account which of the employers has applied for the downtime compensation first.

The list of employers whose employees have received downtime compensation will be published on SRS website.

When and how it will be paid?

The SRS will pay the downtime compensation to the employee's bank account or to payment service providers in Latvia specified in the employer's application within 5 working days from receipt of the application for downtime compensation.

The SRS will inform the employer about the cost of downtime compensation on EDS. Thus, the employer will have to inform the employee about the downtime compensation.

Tax

The downtime compensation will not be subject to personal income tax and mandatory national social security contributions. The SRS will inform the State Social Insurance Agency about persons who have been granted downtime compensation.

Reimbursement of downtime compensation

The payment of the downtime compensation will be terminated and the employer will be obliged to voluntarily repay all of the downtime compensation granted if:

- at the time of receipt of the downtime compensation, the employer will hire new employees
- downtime compensation has been requested or received unduly
- the employer interrupts downtime due to restoration of activities

If there is no voluntary repayment of the downtime compensation SRS will recover the granted downtime compensation by applying the provisions of the Law on Taxes and Duties.

For more information please contact:



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