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PRIORITETNI OSNOV OSIGURANJA PENZIONERA KOJI SU PRE 11. APRILA 2019. ZASNOVALI RADNI ODNOS

Novi Zakon o zdravstvenom osiguranju se odnosi na sve penzionere bez obzira na to kada su zasnovali radni odnos.

Ministarstvo zdravlja je u cilju pravilne primene pojedinih odredaba Zakona o zdravstvenom osiguranju u pogledu prioritetnog osnova osiguranja penzionera u mišljenju **br. 011-00-95/2019-05 od 14.5.2019. godine zauzelo sledeći stav:**

"U cilju pravilne primene pojedinih odredaba Zakona o zdravstvenom osiguranju ("Sl. glasnik RS", br. 25/2019 - dalje: Zakon) koji je stupio na snagu 11. aprila 2019. godine, obaveštavamo vas sledeće:

Članom 15. Zakona uređeno je pitanje prioritetnog osnova osiguranja u slučaju kad osiguranik iz člana 11. Zakona ispunjava uslove za sticanje svojstva osiguranika po više osnova osiguranja, kao i obaveze taksativno nabrojanih kategorija lica koja ispunjavaju uslov za sticanje svojstva osiguranika po više osnova, da izaberu jedan od osnova osiguranja po kome će biti osigurani. Navedenim članom 15. Zakona, penzioneri - osiguranici koji su zasnovali radni odnos nemaju više obavezu da izaberu osnov osiguranja po kome će biti osigurani, već u slučaju zasnivanja radnog odnosa moraju biti osigurani kao zaposleni.

Pravilna primena ove odredbe podrazumeva njenu primenu kako na penzionere koji su zasnovali radni odnos pre 11. aprila 2019. godine, a nesporno i na penzionere koji su zasnovali radni odnos od 11. aprila 2019. godine. Napominjemo da osiguranici penzioneri koji su u radnom odnosu, kao i članovi njihovih porodica koji su preko njih osigurani, pravilnom primenom ove odredbe nemaju prekid zdravstvenog osiguranja, već im se samo menja osnov osiguranja. U tom cilju, Republički fond za zdravstveno osiguranje, u saradnji sa Republičkim fondom za penzijsko i invalidsko osiguranje, treba da preduzme neophodne mere i aktivnosti kako bi svi penzioneri u radnom odnosu i članovi njihovih porodica koji su preko njih osigurani, nesmetano mogli i dalje da

PRIORITY BASIS OF INSURANCE OF PENSIONERS WHO STARTED THEIR EMPLOYMENT BEFORE 11 APRIL 2019

The new Law on Health Insurance applies to all pensioners, regardless of when they have been employed.

In order to apply certain provisions of the Law on Health Insurance correctly, the Ministry of Health took **the following standpoint regarding the insurance of pensioners in the opinion no. 011-00-95/2019-05 dated 14 May 2019:**

"In order to correctly apply certain provisions of the Law on Health Insurance ("Official Gazette of the Republic of Serbia", no. 25/2019 - hereinafter: the Law), which came into force on 11 April 2019, we inform you of the following:

Article 15 of the Law governs the issue of the priority basis of insurance in case when the insured person from Article 11 of the Law meets the conditions for acquiring the status of insured persons on several basis of insurance, as well as the obligations of the listed categories of persons who fulfil the condition for acquiring the characteristics of the insured person on a number of grounds, to choose one of the insurance bases for their insurance. According to Article 15 of the Law, pensioners - insured persons who have established employment are no longer obliged to choose the basis of insurance by which they will be insured, but in the case of employment, they must be insured as employees.

The correct application of this provision implies its application to pensioners who have established employment before 11 April 2019, and indisputably also to pensioners who have established their employment since 11 April 2019. Please note that insured pensioners who are employed, as well as members of their families who are insured through them, by the correct application of this provision do not have the termination of health insurance, but they only change the basis of insurance. To that end, the Health Insurance Fund, in cooperation with the Pension and Disability Insurance Fund, should take the necessary measures and activities so that all retired workers and members of their families who have been insured through them could continue to use rights from

koriste prava iz obaveznog zdravstvenog osiguranja, a u skladu sa Zakonom."

ODREĐIVANJE OSNOVA ZA OBRAČUN NAKNADE ZARADE, ODNOSNO PLATE ZA PRIVREMENU SPREČENOST ZA RAD KOJA SE ISPLAĆUJE NA TERET SREDSTAVA OBAVEZNOG ZDRAVSTVENOG OSIGURANJA U SLUČAJU KADA JE ZAPOSLENI U PRETHODNIH 12 MESECI BIO ODSUTAN SA RADA

Član 88 stav 3 Zakona o zdravstvenom osiguranju kaže :

Pod zaradom se smatraju sva primanja zaposlenog po osnovu privremene sprečenosti za rad, korišćenja godišnjeg odmora, plaćenog odsustva i sl.

"Članom 88. stav 3. Zakona o zdravstvenom osiguranju ("Sl. glasnik RS", br. 25/2019 - dalje: Zakon) propisano je da ako osiguranik koji ispunjava uslov u pogledu prethodnog osiguranja nije ostvario zaradu u 12 kalendarskih meseci koji prethode mesecu u kojem je nastupila privremena sprečenost za rad, osnov za naknadu zarade čini prosečan iznos zarade iz člana 87. stav 2. ovog zakona za vreme za koje je osiguranik ostvario zaradu, a za mesece za koje nije ostvario zaradu osnov čini minimalna zarada za te mesece, uz ograničenje najvišeg osnova za naknadu zarade iz stava 2. ovog člana. Stavom 2. navedenog člana Zakona propisano je da najviši osnov za naknadu zarade čini prosek najviših mesečnih osnovica na koji se plaća doprinos za mesece koji ulaze u prosečan iznos zarade.

S tim u vezi, ukazujemo da je članom 104. stav 1. Zakona o radu ("Sl. glasnik RS", br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - odluka US, 113/2017 i 95/2018 - autentično tumačenje) propisano da zaposleni ima pravo na odgovarajuću zaradu, koja se utvrđuje u skladu sa zakonom, opštim aktom i ugovorom o radu.

Članom 105. stav 1. i 2. pomenutog Zakona o radu propisano je da se zarada iz člana 104. stav 1. ovog

compulsory health insurance without disturbance, in accordance with the law."

DETERMINING THE BASIS FOR ACCOUNTING FOR SALARY COMPENSATIONS, I.E., SALARY FOR THE TEMPORARY INABILITY TO WORK PAYABLE AGAINST THE FUNDS OF THE MANDATORY HEALTH INSURANCE IN CASE THE EMPLOYEE WAS ABSENT FROM WORK IN THE PRIOR 12 MONTHS

Article 88 paragraph 3 of the Law on Health Insurance says:

Salary includes all employee benefits arising due to temporary inability to work, use of annual leave, paid leave, etc.

"Article 88 paragraph 3 of the Law on Health Insurance ("Official Gazette of the Republic of Serbia no. RS", no. 25/2019 - hereinafter: the Law) stipulates that if the insured person fulfilling the condition regarding the previous insurance did not earn a salary in the 12 calendar months preceding the month in which he/she was temporarily enable to work, the basis for the salary is the average amount of the salary from Article 87 paragraph 2 of this Law for the time the insured person realised the salary, and for the months he/she did not realise the salary the basis is the minimum wage for these months, with the limitation of the highest basis for the salary compensations from paragraph 2 of this Article. Pursuant to Article 2 of the above mentioned Law, it was prescribed that the highest basis for the salary compensation is the average of the highest monthly bases on which contributions for months entering in the average amount of the salary.

In this regard, we note that Article 104 paragraph 1 of the Labour Law ("Official Gazette of RS", no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – decision of the Constitutional Court, 113/2017 and 95/2018 - authentic interpretation) stipulates that an employee has the right adequate earnings, which is determined in accordance with the law, the general act and the employment contract.

Article 105 paragraphs 1 and 2 of the above mentioned Labour Law stipulates that the salary referred to in

zakona sastoji od zarade za obavljeni rad i vreme provedeno na radu, zarade po osnovu doprinosa zaposlenog poslovnom uspehu poslodavca (nagrade, bonusi i sl.) i drugih primanja po osnovu radnog odnosa, u skladu sa opštim aktom i ugovorom o radu, odnosno da se pod zaradom smatra zarada koja sadrži porez i doprinose koji se plaćaju iz zarade.

Stavom 3. istog člana 105. navedenog Zakona o radu propisano je da se pod zaradom u smislu stava 1. ovog člana smatraju sva primanja iz radnog odnosa, osim primanja iz člana 14. (dobit ostvarena u poslovnoj godini), člana 42. stav 3. tač. 4) i 5) (primanja koja se odnose na naknadu troškova za upotrebu sredstava za rad zaposlenog, odnosno drugih troškova rada kada je u pitanju radni odnos za obavljanje poslova van prostorija poslodavca), člana 118. tač. 1-4) (primanja za dolazak i odlazak sa rada, za vreme provedeno na službenom putu u zemlji i inostranstvu, za smeštaj i ishranu za rad i boravak na terenu, za ishranu u toku rada i za regres za korišćenje godišnjeg odmora), člana 119. (otpremnina, naknada troškova pogrebnih usluga i naknada štete zbog povrede na radu ili profesionalnog oboljenja, kao i primanja po osnovu poklona deci zaposlenog za Božić i Novu godinu, ako ih poslodavac obezbeđuje), člana 120. tačka 1) (jubilarna nagrada i solidarna pomoć) i člana 158. ovog zakona (isplaćena otpremnina u slučaju proglašenja tehnološkim viškom zaposlenog).

Dakle, iz citiranih zakonskih odredbi nedvosmisleno se vidi koja primanja se ne smatraju zaradom zaposlenih, a u koja nisu nabrojana primanja po osnovu privremene sprečenosti za rad, korišćenja godišnjeg odmora, plaćenog odsustva i sl., na osnovu čega se zaključuje da se pod zaradom smatraju i sva primanja zaposlenog po osnovu privremene sprečenosti za rad, korišćenja godišnjeg odmora, plaćenog odsustva i sl."

(Mišljenje Ministarstva zdravlja, br: 011-00-00072/2019-05(1) od 15.4.2019. godine)

Article 104 paragraph 1 of this law consists of the salary for the work performed and time spent working, salaries based on contributions of the employee to the business success of the employer (prizes, bonuses, etc.) and other employment benefits, in accordance with the general act and employment contract, i.e., that salary means earnings with payroll taxes and contributions.

Paragraph 3 of the same Article 105 of the above mentioned Labour Law stipulates that for the purposes of paragraph 1 of this Article all earnings deriving from labour relations are considered salary, except for the earnings from Article 14 (profit realised in the business year), Article 42 paragraph 3 items 4) and 5) (allowances relating to the reimbursement of expenses for the use of funds for the employees work, i.e., other costs of work when labour relations for performing jobs outside the employers premises), Article 118 items 1-4) (commuting allowances, for the time spent on business trips in the country and abroad, accommodation and food allowances and field work, food allowance during work and holiday allowances), Article 119 (severance pay, reimbursement of funeral expenses and damages due to injury at work or professional illness, as well as allowances for children's New Year's and Christmas gifts, if provided by the Employer), Article 120 item 1) (jubilee award and solidarity assistance) and Article 158 of this law (severance pay for capacity-based dismissal).

Therefore, from the legal provisions quoted, it is unquestionable which benefits are not considered to be employee salaries, in which benefits arising from the temporary inability to work, holiday allowances, paid leaves etc., based on which it is concluded that salaries include all employee benefits arising from the temporary inability to work, holiday allowances, paid leaves, etc."

(Opinion of the Ministry of Health, no: 011-00-00072/2019-05(1) dated 15 April 2019)

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