GUIDELINES

ON THE PRACTICAL APPLICATION OF THE GENERAL AGREEMENT IN THE CONSTRUCTION SECTOR

31 March 2021

Contents

About the guidelines

In order to facilitate and explain the implementation and practical application of THE GENERAL AGREEMENT IN THE CONSTRUCTION SECTOR (hereinafter – General Agreement), the Committee of the Parties to the General Agreement (hereinafter – Committee) developed these guidelines in November 2019. The guidelines summarise the legal framework of the General Agreement, providing explanations and practical examples for its application.

The General Agreement has been in force for less than a year and a half. During this time, employer and worker organisations belonging to the Committee have individually and collectively answered many questions about the practical application of the General Agreement.

In March 2021, the Committee supplemented the guidelines with answers to the most frequently asked questions, as well as initial observations and feedback on the impact of the General Arrangement.

The guidelines are a "living tool", and the Committee intends to continue supplementing them with new examples and explanations.

1. What is a General Agreement

1.1. General provisions

A General Agreement is a collective agreement between employer organisations and employee trade unions – an agreement on basic rules in the sector. The country cannot regulate all issues in detail in each sector. Similarly, it is not useful to have the same rules and standards for all sectors, since the sectors vary radically in terms of wages, productivity, technology, workforce availability and aspects of skill requirements. Without waiting for a national legal framework, the General Agreement is therefore an excellent opportunity for the social partners to set up sector-specific and acceptable rules for themselves. It is an essential tool for regulating the economic activity in the sector. This allows two economic players – employers and employees – to agree on key aspects in their sector – wages, the legal framework for labour, working hours, manufacturing processes, employee qualifications, training, etc.

The right to negotiate a collective agreement (General Agreement) is an internationally recognised basic right. All such rights are set out in the conventions adopted by the International Labour Organization (ILO): No. 87 Freedom of Association and Protection of the Right to Organise Convention; No. 98 Right to Organise and Collective Bargaining Convention; No. 154 Collective Bargaining Convention; No. 135 Workers' Representatives Convention; and ILO recommendations: No. 91 Collective Agreements Recommendation; No. 163 Collective Bargaining Recommendation.

The right to collective bargaining is also included in Article 11 of the European Convention on Human Rights, Article 6 of the European Social Charter and Article 28 of the Charter of Fundamental Rights of the European Union.[1]

1.2. National regulation

On the national level, on 15 February 1922, the Constitutional Assembly of Latvia established the right to a collective agreement by enshrining it in Article 108 of the Constitution of the Republic of Latvia: "Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions." The content of collective agreements, the contracting parties, the procedure for concluding and amending agreements, etc. shall be regulated by the Labour Law of the Republic of Latvia.

Article 18 of the Labour Law of the Republic of Latvia provides for two types of General Agreements – one that is binding only on their signatories and another that is generally binding on all employers in the sector or region. Article 18, Paragraph four of the Labour Law provides for a General Agreement that can be concluded by employers of the sector, or an organisation of employers with the sector trade union.

[1] The right to collective bargaining in the findings of the International Labour Organization and the European Court of Human Rights. Mickeviča (Preisa) N, LBAS 2014.

In order for the General Agreement or sectoral collective agreement (by which the minimum wage in the construction sector is set) to become binding on all employers in the sector, both parties must meet certain criteria.

The trade union party concluding the General Agreement must be a trade union association which unites the largest number of workers in the country, or a trade union that is part of an association that brings together the largest number of workers in the country.

The Free Trade Union Confederation of Latvia (LBAS) is the largest trade union in the country, while the Latvian Building Sector Trade Union (LBNA) is its member organisation.

The employer party, namely the employers, employer group, organisation or association of employer organisations concluding the General Agreement, must meet one of two criteria:

- they must employ more than 50 per cent of the workers in the sector, or
- their turnover of goods or services must represent more than 50 per cent of the turnover of goods or services in the sector.

This General Agreement was signed by 313 construction companies representing more than 50 per cent of the industry's turnover. Respectively, the total turnover in 2016 was EUR 727,560,276 or 51.02 per cent of turnover in the sector, but in 2017 it amounted to EUR 974,351,587 or 56.13 per cent of sector turnover.

The parties who have signed the General Agreement meet the criteria mentioned above, and therefore it is binding on all employers in the sector.

Benefits for construction workers:

- increase of the minimum wage to EUR 780 per month, which, according to estimates in 2019, has had a positive impact on more than 30,000 workers in the sector;
- an extra monthly payment for education in the amount of 5 per cent (EUR 39), if the acquired education corresponds to the work to be performed;
- increased social guarantees in situations of disability, retirement and similar situations, taking into account the increased wage;

Benefits for entrepreneurs in the construction sector:

- fair competition in the construction sector, taking into account the minimum wage applicable to all employers;
- improvement of competitiveness;
- the ability to retain skilled workers and attract new ones with higher wages;
- a reference period of aggregated working hours of 6 months;
- an extra payment in the amount of 50 per cent of the hourly rate for employee overtime.

1.3. The first year of the General Agreement

The General Agreement has been in force for less than a year and a half, and there are already positive trends in wage growth.

Due to information provided by the State Revenue Service on jobs in the construction sector (NACE Rev. 2 codes 41, 42 and 43), the Committee has assessed employees corresponding to Annex 1 of the General Agreement and concludes that there is a positive tendency in wage growth, particularly among those employed in the 9th occupational classification.

For example, comparing the average salary of employees in the 9th occupational classification in construction, there is a difference at the national level between the first 10 months of 2019 (before the General Agreement came into force) compared to the last 2 months in 2019 of 4 per cent, and of 7 per cent in Latgale. Comparing the last 2 months of 2019 with the first 9 months of 2020, the national increase is 10 per cent, but 18 per cent in Latgale.

The Committee's aim of raising wages in the construction sector, especially in underpaid occupations, has been achieved, potentially reducing the shadow economy, raising taxes and contributions, increasing public social support for employees and ensuring a fairer and more competitive environment for employers.

2. Duration of the General Agreement

By signing the General Agreement, the parties determined that it would enter into force within 6 months after the publication of the General Agreement in the official publication "Latvijas Vēstnesis". The General Agreement was published on 3 May 2019 in the official publication "Latvijas Vēstnesis" (https://www.vestnesis.lv/op/2019/88.DA1). In addition, amendments to the General Agreement in the construction industry were published in the official publication "Latvijas Vēstnesis" on 3 July 2019 (https://www.vestnesis.lv/op/2019/133.DA1), and amendments to the General Agreement in the construction industry were published in the official publication "Latvijas Vēstnesis" on 2 August 2019 (https://www.vestnesis.lv/op/2019/156.DA1).

The General Agreement and its amendments entered into force on 3 November 2019.

The General Agreement provided for a transitional period of 6 months from the date when the General Agreement entered into force. Employers had the right to pay a minimum wage of no less than EUR 650 per month, corresponding to the minimum hourly rate of EUR 3.89, 6 months from the date when the General Agreement entered into force. It is important to note that when the reduced hourly rate was applied, the reference period for aggregated working hours was 3 months.

The terms of the General Agreements provide for its validity from 3 November 2019 to 31 December 2025.

If either party has not notified its termination no later than 3 (three) months before that deadline, the General Agreement shall be extended for another six years.

The General Agreement also provides that it cannot be terminated unilaterally and only on the basis of a mutual agreement between the parties.

If the amount of the minimum wage or hourly rate specified within the framework of the General Agreement does not comply with the criterion referred to in Article 68, Paragraph three of the Labour Law, the relevant amendments shall be made thereto in order to meet this criterion. If the General Agreement is not amended, it shall cease to be valid one year after the date when it became non-compliant.

3. Which employers are subject to the General Agreement

3.1. General provisions

After entering into force, the General Agreement shall be binding on all employers in the construction sector, whether the merchant has signed the General Agreement or not.

The General Agreement applies to merchants carrying out economic activities in the construction sector (whether or not the employer has registered construction as a type of economic activity) and employing at least one employee on the basis of an employment contract. Economic activities in the construction sector include activities included in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006, establishing the statistical classification of economic activities NACE Rev. 2, and amending Council Regulation (EEC) No 3037/90 and certain EC Regulations on specific statistical domains in Section F, chapter 41, 42 and 43. Respectively, it applies to the following activities:

41 Building Construction

41.1 Development of construction projects

41.10 Development of construction projects

41.2 Construction of residential and non-residential buildings

41.20 Construction of residential and non-residential buildings

42 Civil engineering

42.1 Construction of roads and railways

42.11 Construction of roads and main roads

42.12 Construction of railways and subways

42.13 Construction of bridges and tunnels

42.2 Construction of urban infrastructure facilities

42.21 Construction of water supply systems

42.22 Construction of electricity supply and telecommunications systems

42.9 Other civil engineering construction

42.91 Construction of hydrotechnical objects

42.99 Civil engineering not classified elsewhere

43 Specialised construction works

43.1 Demolition of buildings and preparation of a construction site

43.11 Demolition of buildings

43.12 Preparation of a construction site

43.13 Exploratory drilling

43.2 Electrical installation, pipeline installation and other similar activities

43.21 Electrical installation

43.22 Installation of pipelines, heating and air-conditioning facilities

43.29 Installation of other engineering systems

43.3 Completion of construction work

43.31 Plastering

43.32 Joinery installation

43.33 Floor and wall covering

43.34 Painting and glazing

43.39 Completion of other construction work operations

43.9 Other specialised construction work

43.91 Roof construction

43.99 Specialised construction work not classified elsewhere

For example, when installing telecommunication cables, fire alarms and burglar alarm systems, the employer carries out economic activity in the construction sector, as the description of these activities corresponds to the type of economic activity according to NACE F 43.21 Electrical installation.

For example, when the employer performs repair or finishing works, glazing, plastering, painting, floor and wall tiling work, or coating work with other materials, such as parquet, carpets, wallpapers, etc. as well as floor polishing, carpentry

finishing work, sound insulation, facade cleaning, etc. – the employer carries out economic activity in the construction sector, as the description of these activities corresponds to the type of economic activity according to NACE F 43 Specialised construction activities.

3.1. Employers who send employees to Latvia

The General Agreement is also binding on foreign employers who send employees to work in Latvia to provide services in the construction sector. Foreign employers must ensure that while the assigned employee works in Latvia, the employee receives at least the salary specified in the General Agreement, including the extra payment for overtime work, as well as the extra payment for education.

For example, Latvian construction company LV concludes a service agreement with Bulgarian construction company BG on the performance of an electrical installation at the construction site, in which LV is the main contractor. In order to perform the work specified in the service agreement, BG sends 5 employees to Latvia for 2 months. BG is responsible for ensuring that during the 2 months that BG employees are employed in Latvia, they receive, in addition to the requirements of Article 141, Paragraph one of the Labour Law:

[1] a minimum wage of EUR 780 x 2 months = EUR 1,560;

[2] an extra payment for any overtime work;

[3] an extra payment for education of 5 per cent x 2 months = EUR 78.

If the salary of BG employees in Bulgaria is higher than the minimum wage set by the General Agreement, the most beneficial rate for the employees must be applied, and BG employees must receive the higher salary, i.e. the salary specified in their employment contract.

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4. Which employees are subject to the General Agreement

The General Agreement provides for **two compulsory** criteria in applying the General Agreement to employees.

1. Workers should be employed by an employer who "performs economic activity in the construction sector" in the territory of Latvia.

2. Workers should be employed to perform work related to the construction industry (NACE F). This means that the workers' employment must demonstrate at least one of the following characteristics:

- *the employee is employed in one of the construction sector occupations listed in Annex 1 to the General Agreement;*
- *the employee performs work on the construction site for the performance of the construction contract, except if the employee's duties are not directly related to the performance of construction work (e.g. guards, cleaners janitors, accountants);*
- *the employee performs work on a construction site for the performance of a construction contract for the benefit and under the management of the recipient of the labour supply service, except if the employee's duties are not directly related to the performance of construction work (e.g. guards, cleaners, janitors, accountants);*

The purpose of the General Agreement is also to include those employees who work on the construction site, but whose profession is not included in Annex 1 of the General Agreement.

It may be that the employer's economic activity is connected to two or more sectors, e.g. construction and energy or telecommunications. In this case, the salary provided for in the General Agreement applies only to the time actually worked by the employee in carrying out economic activity in the field of construction.

For example, the employer (who among other activities has registered activities in construction according to NACE – meets criterion 1) has an employee listed in Annex 1 of the General Agreement, but he is employed in other areas which are neither directly nor indirectly related to construction (e.g. a truck driver who transports domestic waste water), so in that case the General Agreement does not have to be applied because the worker does not meet criterion 2.

On the other hand, if the same employee transports sand for a few hours on the construction site as part of work required by the construction contract that corresponds to criterion 2, then the employee receives a wage according to the General Agreement for the time during which he carries out the work related to construction. It is important to note that the employer must be able to prove that the employee did not work in the areas referred to in point 1.2. in the event of a control or individual dispute of rights.

In cases where the occupation of the employee is not included in the list of professions listed in Annex 1 of the General Agreement, but the employee carries out works on the construction site, it is important to assess whether the employee carries out the work directly for the performance of the construction contract. For example, it is important to distinguish between suppliers who only transport materials, goods, etc. to the construction site but do not install them, and those who transport construction products and also install or assemble them at the construction site. When assessing each situation, it should be evaluated whether the work is carried out at the construction site and whether the work is directly related to the performance of the construction work. Therefore, janitors, accountants and security guards are listed in the General Agreement as examples of individuals who may be present at the construction site but are not directly involved in the performance of construction work. These professions are only examples and each case must be assessed individually, taking into account the mentioned criteria and characteristics.

For example, during a period when a labour protection SPECIALIST (a profession that is not included in the list in Annex 1) performs work on a construction site, assessing the risks of the work environment, providing instructions, etc. he or she performs work for the performance of the construction contract. In this case, the labour protection specialist is within the scope of the General Agreement, as he is the main person hired by the performer of the works or the initiator of the construction work, or the person contracted for the performance of the construction contract.

For example, if an employee only delivers windows to the construction site, he or she shall not be regarded as a person employed on the construction site. On the other hand, if the contract provides for both supply and window assembly, the employee carrying out window assembly shall be regarded as a person employed on the construction site and is included in the General Agreement.

For example, if an employee performs manual cleaning or cleaning with cleaning equipment, washes floors, windows and frames (most likely as a cleaner), he shall not be regarded as a person employed on the construction site. On the other hand, if the same employee performs cleaning of the site by removing construction debris (most likely as a CONSTRUCTION worker or a REPAIRER), he shall be regarded as a person employed on the construction site and is within the scope of the General Agreement.

5. Wage provided for in the General Agreement

5.1. Minimum wage within standard working hours

The General Agreement provides for a minimum wage solution for part-time and standard working hours. In the case of part-time hours, no less than the minimum hourly rate of EUR 4.67 must be paid, while standard working hours should be remunerated at no less than the minimum monthly salary of EUR 780.00.

According to the Labour Law, normal working hours of the employee must not exceed eight hours and the standard working week should not exceed 40 hours. Consequently, the minimum wage to be paid to a construction worker within standard working hours is EUR 780.

For example, if a worker has standard working hours and a salary of EUR 780 per month as stated in the employment contract, he will receive the same salary in April 2021, when, as part of his standard working time, he must work 158 hours and also in September 2021, when, as part of his standard working time, he must work 176 hours.

During a month in which the number of working hours is less than the average annual number of working hours per month, for employees who have a time wage system with the minimum hourly rate and who have worked all the monthly working hours, the salary is set at the minimum monthly salary, increasing the calculated salary by the difference between the calculated salary and the minimum monthly salary.

For example, in April 2021, there are 158 standard working hours. The employment contract determines the standard working hours and records not the monthly salary (EUR 780) but the hourly rate of EUR 4.67. If all working hours have been worked in the month (158 hrs x EUR 4.67/hr = EUR 737.86), the salary is then set at the amount of the minimum monthly salary (EUR 780), increasing the calculated salary by the difference (780-737.86 = EUR 42.14) between the calculated salary (EUR 737.86) and the minimum monthly salary.

By agreeing on the standard working hours in the employment contract, the employer considers that the employee will perform work under his management and during all the specified normal working hours per month, while the construction worker expects to receive the agreed monthly salary at the end of the month.

There are objective situations, for example, when the employment relationship is initiated or terminated in the middle of the month and the construction worker cannot work all the standard monthly working hours.

In such situations, the construction worker is paid in proportion to the time worked in during that month according to the calculated hourly wage rate. In 2021, there are five months in which, by dividing the minimum monthly salary for construction work as part of standard working hours (EUR 780) by the actual number of hours worked during the month concerned, the calculated hourly wage rate may be less than EUR 4.67/hr.

For example, on 5 October 2021, the employer hires a construction worker, setting the standard working hours in the employment contract for a salary of EUR 780 per month. At the end of the month, the construction worker has worked 152 hours out of the standard 168 working hours. In this case, the construction worker could not work 168 hours for objective reasons, which is why the fixed monthly salary should be paid proportionally (780/168 = EUR 4.64/hr) for hours worked (4.64 x 152 = EUR 705).

5.2. Minimum wage within part-time working hours

The General Agreement provides for a minimum wage solution for part-time and standard working hours. In the case of part-time hours, no less than the minimum hourly rate of EUR 4.67 must be paid, while standard working hours should be remunerated at no less than the minimum monthly salary of EUR 780.00.

The procedure for calculating the employee's salary should not change and, in accordance with the provisions of the Labour Law, if the employee works part-time, the work salary should be calculated in proportion to the number of hours worked, taking into account the minimum hourly rate set in the General Agreement.

For example, if an employee has a part-time contract of 80 hours per month and an hourly rate is EUR 4.67, his minimum salary for 80 hours worked will be EUR 373.60 in April and September 2021.

For example, in April 2021, there are 158 hours of standard working hours. Part-time work of 80 hours per month and an hourly rate of EUR 4.67 is set in the employment contract. If the employer and the employee have agreed in writing on longer working hours and this working time amounts to the standard number of working hours per month (158 hrs), the salary shall not be less than the minimum monthly salary for standard working hours (EUR 780). The calculated salary should be increased by the difference (780-737.86 = EUR 42.14) between the calculated salary (EUR 737.86) and the minimum monthly salary.

5.3. Minimum wage for students

According to the point 2.6 of the General Agreement, a coefficient of 0.7 may be applied to the worker's salary who is acquiring a profession (trainee) for 6 months from the conclusion of the employment contract.

Point 2.6 of the General Agreement focuses on staff recruited during the training process, such as trainees. The purpose of this provision is to support the involvement of students in the labour market, while at the same time enabling the employer to pay a reduced minimum wage during the initial period until the student becomes a more full-fledged, productive employee. At the same time, the point does not minimise the employer's right to pay a higher salary to the student employee. It provides for the

company's right, not the obligation, to apply such a coefficient, and each company has the possibility to introduce an employee motivation programme at its own discretion.

It should be noted that, when applying the rate set out in point 2.6 of the General Agreement, the extra payment should be paid at 100 per cent of the fixed salary.

5.4. Minimum wage for persons under 18

The General Agreement does not change the requirements of the Labour Law and other regulatory enactments regarding the employment of persons under 18. If, according to the regulations already in force, an adolescent is employed in the performance of works related to the construction sector (see point 3 of these guidelines) he/she is employed in construction and is subject to a minimum hourly rate of EUR 4.67/hr and a minimum monthly salary of EUR 780 if working 35 hours per week.

It should be recalled that, before starting the employment relationship, the employer must verify compliance with Section 37 (4) of the Labour Law and the related Cabinet Regulation No. 206 "Regulations regarding Work in which Employment of Adolescents is prohibited and Exceptions when Employment in such Work is Permitted in Connection with Vocational Training of the Adolescent". The works listed in Annex 1 to Cabinet Regulation No. 206 for which it is prohibited to employ adolescents include examples such as:

- Work directly related to continuous carrying or moving of heavy loads that exceed 10 kg (for boys) and 4 kg (for girls).
- Work directly related to the demolition of various objects and structures.
- Work directly related to the assembly of various constructions (for example, for the assembly of metal, reinforced concrete structures).
- Work directly related to wood treatment with circular saws or band-saws and cutters, except when the adolescent has the appropriate speciality and qualification.
- Work directly related to stone working.
- Work during the performance of which the person performing the work may fall from a height of more than one and a half metres.

5.5. Extra pay for overtime

After the entry into force of the General Agreement, in accordance with point 2.3., the employer shall determine an extra payment of no less than 50 per cent of the specified salary for overtime work, but, if a piecework salary has been agreed, a rate of no less than 50 per cent of the rate for piecework performed shall be paid.

According to Section 68 (3) of the Labour Law, *"The general agreement, which has been entered into in conformity with Section 18, Paragraph four of this Law, provides for a substantial increase in the minimum salary or hourly salary rate specified by the State in the sector in the amount of at least 50 per cent above the minimum salary or*

hourly salary rate specified by the State. The amount of the supplement for overtime work may be less than that specified in Paragraph one of this Section but no less than 50 per cent of the hourly rate specified for the employee. Moreover, where a piecework salary has been agreed upon, a supplement of no less than 50 per cent of the specified piecework rate should be paid for the amount of work carried out".

For example, in April 2021, with 158 hours of standard working hours, a truck driver transports sand at a construction site for a total of 166 hours, which includes 8 hours of overtime worked in April for which an extra payment of no less than 50 per cent of the salary must be paid.

If the State determines a minimum wage or hourly rate to the extent that the amount of the minimum wage or hourly rate specified within the framework of the General Agreement no longer complies with the criterion referred to in Section 68 (3) of the Labour Law i.e. the amount of the minimum salary or hourly salary rate of at least 50 per cent above the minimum salary or hourly rate specified by the State; and the amendments are not made, the General Agreement shall cease to be valid one year after the date of the occurrence of the non-compliance.

For example, if the national minimum wage is EUR 600 in 2023, it will be necessary to review and amend the minimum wage defined by the General Agreement, or the General Agreement will expire one year after the occurrence of the non-compliance.

5.6. Extra payment for education

Point 2.4. of the General Agreement provides for an extra payment of 5 per cent for an employee according to the applicable minimum monthly salary in the sector, if he or she has obtained an education corresponding to the profession to be carried out, attested by an educational document issued by a vocational or higher education institution.

The purpose of the extra payment covered by the General Agreement is to motivate employees to obtain the necessary education for the performance of their duties. This applies in particular to those employees who do not have an official qualification in the construction sector.

The General Agreement obliges the employer to pay a minimum wage of EUR 819 to qualified employees.

It is important that the amount of the extra payment is not calculated based on the salary of the particular employee, but from the minimum monthly salary (EUR 780) or hourly rate (EUR 4.67) set by the General Agreement. The amount of the supplement is EUR

39 per month or EUR 0.23/hr.

It is important to distinguish between the education needed to carry out a particular job and education that is not directly linked to job performance. There is currently no comprehensive national register that determines which education acquired corresponds to a particular profession, so the employer, on the basis of a job description and the work to be carried out, assesses whether the educational documents submitted by the employee and the education obtained correspond to the work to be performed. The employer must be able to justify a refusal to grant an extra payment where such a request has been submitted by the employee.

For example, an electrician who performs electrical installation work on a construction site and who has the relevant qualifications or the relevant higher education in electronics and telecommunications engineering, must receive an extra payment of 5 per cent of the minimum wage.

For example, if an employee employed as an electrician has an educational document in welding issued by a vocational or higher education institution, he or she shall not receive an extra payment of 5 per cent because the welder's education is not directly related to the performance of an electrician's duties.

For example, a truck driver has a driving licence that he needs in order to do the job, but it is not an educational document issued by a vocational or higher education institution, and in this case he or she shall not receive an extra payment of 5 per cent.

The employee shall receive a supplement for the acquired education if the employee has submitted to the employer an educational document issued by a vocational or higher education institution which corresponds to the profession to be performed. If the employee submits such documents to the employer, the employer has an obligation to pay the employee a supplement the month following the submission of such documents.

The employer may agree with the employee not to apply the abovementioned extra payment if – a) the employment contract with the employee is concluded by 3 November 2019, b) the employee's salary is at least EUR 819, and c) the employer can prove that the financial assessment of skills and education corresponding to the extra payment referred to in the General Agreement is already included in the salary fixed for the employee.

6. Aggregated working hours

6.1. Aggregated part-time working hours

The essence of aggregated working hours is to regulate the relationship between the employer and the employee in cases when the employee is required to work more hours than the daily or weekly working hours specified in the Labour Law for the relevant reporting period[2]. Consequently, aggregated working hours are incompatible with part-time work. If such a situation has occurred and in order to comply with the Labour Law, we suggest correcting it by agreeing with the construction worker on part-time or aggregated standard working hours.

6.2. Reference period of aggregated working hours

The General Agreement provides that the reference period for aggregated working hours for construction employees is 6 months. According to Section 140 (3) of the Labour Law, it is no longer necessary for each individual employer to have a company-level collective agreement on the length of the aggregated reporting period up to 6 months, as the General Agreement has already done so.

At the same time, the employer and employee trade union or the authorised representatives of the employees (if the employees have not joined the trade union) may additionally agree on longer aggregated working time through a company-level collective agreement whose reference period is no more than 12 months. Within a company-level collective agreement or an employment contract with a construction worker, a shorter reporting period of aggregated working time might also be agreed upon, for example, from 1 to 5 months, as the employer may apply a more favourable, i.e. shorter reporting period to the employee.

In point 1.5 of the General Agreement, it is expressly stated that "This General Agreement shall not affect the application of the most favourable provisions for the construction worker laid down in the employment contract, other collective agreements or the general agreement."

Consequently, if the employer has agreed to a 3-month total working time reference period when concluding an employment contract with a construction employee, the employer cannot unilaterally change the terms of the employment contract, potentially diminishing the legal position of the employee, by extending or shortening the reporting period.

Within the framework of an existing employment contract, if, due to the nature of the work, the employer considers it necessary to change the reference period of the aggregated working time and the construction worker agrees to such changes, amendments to the existing employment contract may be made.

[2] Judgement of the Department of Civil Cases of the Supreme Court of the Republic of Latvia of 27 May 2014 in Case No. C29688412 and Judgement of the Department of Civil Cases of the Supreme Court of the Republic of Latvia of 4 December 2015 in Case No. C28490012

With respect to potential changes to the employment contract or when concluding a new employment contract in order to ensure the transparency and predictability of the employment terms and in order to comply with the requirements of Section 140 of the Labour Law regarding informing in writing, it is necessary to indicate a reference period of the working time which is no longer than six months in conformity with the General Agreement in the Construction industry, which is published in the official publication of Latvijas Vēstnesis No.: 2019/88.DA1.

For example, in the employment contract, the employer and the construction worker have agreed on a reference period of 3 months of aggregated working time. After assessing economic conditions, the employer wants to extend the reference period of the aggregated working hours to 4 months. The reference period of 6 months of the aggregated working time specified in the General Agreement gives him such an opportunity, but the General Agreement does not cancel the most favourable agreement for the construction worker with the employer, which is stipulated in the employment contract. In order to extend the reference period of aggregated working hours, the employer must offer employment contract changes to the construction worker by determining the reference period of 4 months aggregated working time. If the construction worker agrees to the employment contract changes, it is recommended to refer to the General Agreement as a justification in accordance with the requirement of Section 97 of the Labour Law.

6.3. Minimum wage within aggregated working hours

Within the normal aggregated working time, with a reference period of 6 months, and according to the shift schedule, a person may have to work more than the standard working hours during a given month, but during another month a person may be required to work less, receiving a higher or lower salary, respectively.

At the end of the report, taking into account, for example, that six months have been worked, the employee must receive a total of at least six minimum salaries for this period within standard working hours. If the amount of the calculated salaries at the end of the reporting period does not reach six minimum salaries, an extra payment must be made at the end of the reference period to the extent that the minimum monthly salary requirement is reached.

For example:

Six-month reference period	Number of hours within standard working hours	Hours actually worked	Monthly salary at the minimum hourly rate of EUR 4.67
January 2021	160	126	588.42
February 2021	160	134	625.78
March 2021	184	180	840.60
April 2021	158	180	840.60
May 2021	159	180	840.60
June 2021	159	180	840.60
Total:	980	980	4,576.60

Minimum monthly salary within normal working hours (EUR 780) multiplied by the number of months in the reference period (6 months)	4,680.00
Difference to be paid at the end of the reference period in order to reach the minimum monthly salary	103.40

7. Application of the General Agreement to different tax regime payments

7.1. Micro-enterprises

The General Agreement applies to all employers in the construction sector (point 3), including micro-enterprises who employ at least one employee on the basis of an employment contract. The general legal framework does not change for employees of micro-enterprises who are employed in construction, but, in addition, the minimum wage, the supplement for qualification and other requirements set by the General Agreement must be respected.

7.2. Self-employment

The General Agreement applies to all employers, including the self-employed who employ at least one employee in construction on the basis of an employment contract. The legal framework does not change for the self-employed who are employed in construction, but, in addition, the minimum wage, the supplement for qualification and other requirements set by the General Agreement must be respected.

We draw your attention to the fact that the State Revenue Service has developed material – guidelines for construction workers on the application of tax legislation titled "Taxes in the contractual relationship of employment and services", which explain tax application issues in detail.
Available at: https://www.vid.gov.lv/sites/default/files/nodokli_nodarbinatibas_un_pakalpojumu_ligumiskajaas_attiecibas_30_06_2021.pdf

8. How compliance with the General Agreement will be monitored

The State has set a legal framework for social partners for determining the universal minimum wage in the construction sector, which, in the case of non-payment, incurs a penalty for non-payment of the State minimum wage in accordance with Section 159 of the Labour Law. Failure to ensure the minimum monthly salary specified by the State if the person is employed for a regular working time, or failure to ensure the minimum hourly salary rate incurs a fine from 86 to 114 units to be imposed on the employer in the case of a natural person and from 170 to 1,420 units in the case of a legal entity.

Monitoring and supervision of compliance with the General Agreement is the responsibility of the national authorities. The implementation of State supervision and monitoring in the field of employment legal relations and labour protection is the competence of the State Labour Inspectorate, while prevention and detection of criminal offences in the field of State taxes, duties and with respect to other mandatory payments set by the State and related to customs are within the competence of the State Revenue Service. The listed national authorities do not exclude the possibility that monitoring and supervision of compliance with certain issues of the General Agreement may also fall within the competence of other national authorities.

Contact information

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