

Is athlete employee? (1)

Increasingly more Latvian athletes are achieving great results and recognition that makes Latvia famous around the world. They might have entered into contracts with their clubs in Latvia as self-employed persons, but this raises some questions. Is the athlete a self-employed person or an employee? What form does the legal relationship take? This article explores the form and its legal and tax implications.

Athletes and professional athletes

Under the Sports Act, an athlete is an individual who goes in for sports and takes part in sports competitions,¹ while a professional athlete is an individual who gets ready for and takes part in sports competitions for an agreed fee under an employment contract.²

Essential elements of an employment contract

To identify the form of a legal relationship, we should first look at the rules of the Civil Code governing employment contracts. Article 2178 provides that one party to an employment contract undertakes to work for the other party in exchange for consideration. So the employment contract has two preconditions: 1) agreement on specified work and 2) agreement on consideration. However, the case law recognises as the essential elements of an employment contract –

- the employee's obligation to follow the employer's internal rules and instructions,
- the employer's obligation to provide appropriate working conditions, and
- written form of the contract.³

Once the employee and employer have agreed on all the essential elements, the employment contract is considered to be finally concluded. And under article 39 of the Labour Code, the employment contract is considered to be concluded from the date the employee and employer agreed on the work and pay, and on the employee's future compliance with the employer's internal rules and instructions.

So if the athlete and the employer prove their agreement on all the requirements laid down by article 39 of the Labour Code, they can show that the contract is an employment contract and not a contract for services. If this is an employment contract, the legal relationship between the athlete and the employer are governed by the Labour Code, and the athlete has all the rights and obligations prescribed by the Labour Code (annual leave, employment termination etc). In the case of a dispute, only the courts may determine whether the contract is an employment contract and whether the athlete has the rights prescribed by the Labour Code.

Taxes

If a contract has all the essential elements of, and is recognised as, an employment contract, the employer has to make all tax payments for the employee under applicable law. To determine whether a legal relationship may be treated as employment for tax purposes in unclear cases, we should look at the preconditions and the State Revenue Service's practice. To identify tax advantages, we should look at taxes paid by a self-employed person and those paid by an employee.

Employee taxes

Under applicable law, mandatory national social insurance (NSI) contributions and personal income tax are payable on the employee's salary in 2018.

Under the NSI Act, a professional athlete is an employee,⁴ may voluntarily join a pension insurance scheme,⁵ and NSI contributions are due on two minimum monthly wages.⁶ If the calculated amount is less, the employer has to pay the difference⁷ computed under article 20(1-4) of the NSI Act.

(to be completed)

¹ Article 1(9) of the Sports Act

² Article 19 of the Sports Act

³ Group of authors under general scientific editing of prof. K.Torgans. Comments on the Civil Code. Law of obligations (pp.1401-2400). Second, supplemented edition. Riga, 2000, *Mans Īpašums*, p.503

⁴ Article 1(1)(s) of the NSI Act

⁵ Ibid. article 5(3.3)

⁶ Ibid. article 14(20)

⁷ Ibid. article 14(21)