

National Social Insurance Act to be amended

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Proposals for amending the National Social Insurance (NSI) Act were sent to the Ministry of Finance and the Ministry of Justice for approval on 10 November 2022. This article explores some of the proposed changes.

Basically the changes can be split into three groups:

- Changes to align pieces of legislation
- Amendments to resolve legal questions arising in practice
- Changes to the NSI Act affecting several administration measures

1. Legislative alignment

1.1. Parent benefit (section 6 of the NSI Act)

Issues: Under the NSI Act a childcare benefit and a parent benefit are awarded to persons looking after a child that is less than 12 or 18 months old.

Proposed changes: Amendments of 15 September 2022 to the Maternity and Sickness Insurance Act are coming into force on 1 January 2023. Each of the parents will be able to receive the non-transferable portion of a parent benefit for two months before the child is eight years old. So the parent benefit period is split into two stages:

1. Either parent receives the basic portion of a parent benefit before the child is 12 or 18 months old.
2. The non-transferable portion is made available to the parents at a convenient time before the child is eight years old. To receive this benefit, the parent must be on childcare leave or unpaid leave.

For the sake of legal clarity, the NSI Act should state that persons having elected to receive the other portion of a parent benefit before the child is eight years old are socially insurable persons.

2. Amendments to the NSI Act

2.1. Full or partial performance of contractual obligations (section 20.5 of the NSI Act)

A key amendment relates to the employer's responsibility for full or partial performance of contractual obligations in the construction sector. Some other less comprehensive amendments are omitted from the article.

Issues: Historically, there were practical obstacles, as construction employees were unable to file complaints about overdue pay if the company had gone missing or been declared insolvent. The general contractor did not take responsibility on the pretext of having no control over how his subcontractors carry out obligations to their employees. To resolve this issue, amendments of 9 June 2016 to the Employment

Act (section 75.2) require the general contractor to fulfil employer functions if:

1. Full or partial performance of contractual obligations associated with posting employees for the construction of buildings or specialised construction work has been assigned to the employer as subcontractor.
2. The subcontractor has defaulted on the obligation to pay wages to an employee (posted to or employed in Latvia) within the time limits set in the employment contract.

In this case the employee has the right to claim unpaid wages from the general contractor. As a result, the shadow economy's share in the Latvian construction sector dropped to 31.2% in 2021 (SSE Riga, 2021). Yet there are still questions about the obligation to pay labour taxes.

Proposed changes: If the subcontractor pays wages regularly then he is also responsible for labour tax costs. However, if the subcontractor is unable to pay wages, the Employment Act requires the general contractor to pay wages and make labour tax contributions. So the onus of accounting for labour taxes is on the employer paying wages.

3. Changes to the NSI Act

3.1. Computing minimum mandatory contributions (section 20.4 of the NSI Act)

Issues: The NSI Act requires the National Social Insurance Agency (NSIA) to compute quarterly minimum mandatory contributions within three months after the end of the quarter and to recalculate those within three months after the end of the calendar year. Issues arise in the fourth quarter, when NSIA has to do a recalculation for the year while the employer and self-employed minimum mandatory contributions are being challenged.

Proposed changes: To ensure NSIA recalculates minimum mandatory contributions for the year correctly, there are proposals to extend the period for the employer and the self-employed to pay minimum mandatory contributions for the previous calendar year (on or before the 23rd day of the third month) and to extend the time limit for NSIA to do the recalculation (within seven months after the end of the calendar year).

An additional amendment should be made to require NSIA to provide the State Revenue Service (SRS) with details of contributions the employer and the self-employed have overpaid and underpaid. If the recalculation does not exceed EUR 5 (for overpay and underpay), NSIA will not notify the SRS for the sake of more efficient administration.