

# Nuances of job consolidation (extra work) 3/49/21



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Since the adoption of a minimum rate for mandatory national social insurance (NSI) contributions, certain industries have seen an increase in the number of functions being outsourced. Companies are also consolidating their jobs to replace any part-time workers that were not socially insured for at least the minimum monthly wage. This article looks at extra work in detail.

The adoption of the minimum NSI has caused employers to opt for the following ways of reducing their NSI burden:

- *Outsourcing.* The functions of part-time workers are outsourced to a self-employed person or another company. This solution is especially common in the area of occupational health and work safety.
- *Job consolidation/ Giving extra work to existing workers.* The job duties of part-timers are given to other workers. This solution is common in distributing the job duties of administrative functions (e.g. a clerk, secretary, or system administrator).

If work has been outsourced, the company should check from a tax perspective:

1. The supplier's registration as trader<sup>1</sup> to avoid having to withhold personal income tax (PIT) and NSI on payments made to a trader. If the individual is not on the State Revenue Service's database of traders, then PIT and NSI must be deducted in full at the rates applicable to wages and salaries.
2. For companies, the VAT identification number and other circumstances to help the company prove that it has taken sufficient steps to assess the supplier's reliability and transaction risk.

Before deciding to dismiss a worker and redistribute the functions, we suggest checking that the minimum NSI contributions are actually payable for him. Remember that [the NSI Act](#) prescribes a number of exclusions where no minimum NSI is due (see our [earlier articles](#) for a list of those).

## Extra pay for extra work

Under [section 56 of the Labour Code](#), an employer may in certain statutory cases issue orders to revise a worker's job duties as well as the employment manual and code of conduct, and to require the worker to do work that is not specified by their employment contract.

If someone leaves the company and their job duties do not essentially differ from a current worker's agreed basic duties, then asking that worker to do those is not considered extra work under [the Labour Code](#) because the worker's employment contract (and job description) already covers the work the leaver was doing. This is then a revision of job duties (which the employer is allowed to carry out by an oral or written order) and the employer is not required to pay the worker extra for doing extra work.

If, however, the employer wants the worker to do any work that is not specified or implied by their employment contract (or job description) the first thing we need is the worker's consent. If the extra work is meant for a stated period, then all it usually takes is the employer's order on extra work and extra pay for the worker, as well as the worker's written consent (e.g. approval on the order, or an email reply to the employer). However, where the leaver's job duties to be picked up by the worker are meant for a long time or permanently, the best solution is to amend the employment contract, and to revise the pay if necessary.

Finally, remember that if the job duties listed in the employment contract (and job description) do not include the leaver's job duties, then failure to meet the requirement that the employment contract be amended usually means that the worker has a right to refuse such extra work at any time (initially and later) because he never consented to it in writing. In such circumstances we should invoke [section 57 of the Labour Code](#), which states that the worker may be required to do work that is not specified by their employment contract only if the Labour Code's preconditions are met (e.g. in emergency circumstances or during the worker's idle time). And we must observe a time limit of one or two months a year. Also, the worker's pay must be no less than their previous average earnings.

## Extra pay levels and taxes

[Section 65 of the Labour Code](#) provides that extra pay for extra work must be adequate for the work done and must be specified by the employment contract or the collective agreement. If extra work is done outside normal working hours, then overtime must be recorded and paid.

The amount of extra pay for extra work must be agreed between the parties because the law does not govern this under the general procedure. So, in the case of job consolidation, the amount of pay for extra work must be stipulated separately. This may be the same as the pay for the basic work, or it may be different if the extra work involves performing a function with a higher or lower added value.

If a different hourly rate is set for the extra work, the hours worked must be recorded separately for the category of each job or work to be done. If the worker consents, the parties may agree in writing on a fixed monthly distribution of hours based on the parties' estimates. This agreement makes it easier to calculate the pay.

For payroll tax purposes, it is important to determine the pay accurately based on the agreed rate for the extra work and on the hours actually worked in each of the jobs unless a fixed ratio is set. Otherwise taxes apply under the same procedure as if no extra work were done.

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<sup>1</sup>Our comments refer to Latvian tax residents