

THE COMPONENTS OF THE SALARY

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Abstract

The salary is an essential element of the labor agreement, a part of the obligations assumed by the employer and of the judicial cause of the employed person, it constitutes the totality of the monetary rights proper for performed labour.

Being considered an essential element of the labour agreement next to the kind of labour and workplace, the monthly base salary is usually established through collective and/or individual negotiations without being pre-established.

In the content of the present article there will be approached specific aspects regarding the components of the salary, indemnities and additions.

Likewise, there will be brought into discussion the existent specific rapport between the rated and the real salary as well as the existence of some measures in the domain of applying some programmes regarding a minimum vital salary, referring to the minimum country salary.

Keywords: basic salary, indemnities, additions, salary categories, minimum national salary

The basic salary

Labor is an essential feature of the human activity, man being the only being that consciously makes an effort to obtain benefits. Simultaneously, labour is a life condition because without performing labor the goods necessary for life cannot be obtained.

Along with the labor type and the work place, the salary is an essential element of the labor agreement, a part of the obligations taken by the employer and of the judicial cause of the hired person, it constitutes the totality of the financial rights appropriate for the performed labor.

In modern economy there are some modern mechanisms for establishing the salary, for differentiating them according to branches, jobs, professions and as well as for adapting them to the economic situation.

The components of the salary system are the components of the salary itself, namely the basic salary, increases and additions to the basic salary.[1]

The practical side of the salary system also includes the elements that compose the salary, salary types, ways of payment, as well as the measures of social salary protection for example the indexation – compensation and the minimum salary.

There are legal provisions about this in every country, from the most economically developed, such as: The United Kingdom, The United States, France, Japan, Germany, to those that are still developing such as: Hungary, Poland and Romania.

While the basic salary is considered a fixed part of the salary, increases and additions can be considered a varying part of it.

The basic salary is the main part of the total salary that is appropriate to every employee, usually taking into account the study level, professional training and qualification, the importance of the job, the characteristics of the duties and the professional competences. It not only constitutes the fixed and main part of the salary but also a reference element according to which the other rights of the employee are calculated such as different indemnities, increases, etc.[2]

In the public sector the personell paid from public funds can receive salary, monthly payment or monthly indemnity of inclusion for the performed labor.

Law number 284/2010 provides that the gross salary, the gross monthly payment include the basic salary, the payment of the basic function/ salary of the basic function, increases, indemnities, compensations, as well as the other elements of the salary system appropriate to every personell cathegory of the budgetary sector.

The basic salaries, function payments/salaries and monthly indemnities of inclusion are differentiated by function according to the importance, responsibility, the complexity of the activity and the necessary study level for performing the activity. [3]

The making of the basic salary, payments of the basic functions/ salaries of the basic functions and of the monthly indemnities of inclusion hierarchy both in the sphere of activity and in the same sphere, is based on the evaluation of the posts, the differentiation being made according to the following criteria:

- knowledge and experience;
- the complexity, creativity and diversity of the activities;
- the judgment and impact of the decisions;
- influence, coordination and supervision;

- contacts and communication;
- Incompatibilities and special treatment.

Within every function, to ensure the possibility to differentiate the basic individual salaries according to the level of professional training of every person and to the person's work experience, the basic salaries are differentiated by:

- levels in the case of superior studies and short term superior studies;
- Professional stages in the case of secondary studies or professional levels for public servants.

Usually there are used 2 or 3 levels and 2 or 3 professional stages.

Within every level or every professional stage the differentiation of the basic salaries is usually made on a number of 5 gradations according to the 5 stages of seniority:

- from 3 to 5 years;
- from 5 to 10 years;
- from 10 to 15 years;
- from 15 to 20 years;
- Over 20 years.[4]

The differentiation of the basic salaries, function payments/salaries and of the monthly indemnities of inclusion is made by multiplying the hierarchy coefficients provided by every function (from 1.00 for the function with the least responsibility to 15.00 for the function with the greatest state responsibility) by the value of the coefficient 1.00.

The value for the hierarchy coefficient 1.00 from 2010 to 2015 is:

- 705 lei in 2010;
- 765 lei in 2011;
- 845 lei in 2012;
- 935 lei in 2013;
- 1015 lei in 2014;
- 1100 lei in 2015.[5]

For the management personnel the differentiation of the basic salaries is made according to the same criteria two levels of salary for the levels are usually used that contain increase for seniority to the maximum value. Within the basic salary of the management functions the management indemnity is included.

Usually, for trading companies, autonomous administrations and other private judicial people the basic salary is established by the collective labor agreement and the individual labor agreement and for the budgetary institutions by law or other legislative acts.

Being considered an essential element of the labor agreement alongside the work type and work place, the basic monthly salary is usually established through collective and/or individual negotiations without being pre – established. According to the legislative acts the basic salary cannot be lower than the minimum gross salary of the country established by governmental decisions.

The basic salary has a great importance to the salary system and salary politics of all states because it is not only the fixed and main part of the salary but also a standard of reference. According to this the other rights of the employees are calculated, namely the indemnities, increases, right to pension, unemployment benefit, rents, scholarships, as well as many of the employee's obligations such as taxes, contributions to the unemployment fund and to the social insurances one.

The salary is paid in cash at least once a month. The payment in kind of a part of the salary is possible if it is expressly provided by the applicable collective labor agreement or by the individual labor agreement and in this case the appropriate sum in cash cannot be lower than the minimum gross salary of the country. The salaries are paid before any other financial obligations of the employers.[6]

Usually, for the same function/post the basic salary is constant on a certain period of time according to the legislation in force.

Indemnities

Indemnities are sums paid to the workers over the basic salary having the purpose of compensating the expenses that they have to make in order to fulfill some labor duties or in other work conditions. Indemnities can be: for fulfilling a management function, for delegation, detachment, settlement, permanent missions abroad, etc. The allowances granted with this purpose must not be mistaken for the indemnities appropriate to people that perform labor based on other categories of judicial relations than the individual labor agreement, when it has a perfect correspondence with the salary.

The monthly indemnity for people that have functions of public dignity is, as a rule, the only type of remuneration for the certain function activity and represents the basis of the calculation for establishing the rights and obligations that are determined according to the salary.[7]

Indemnities are, like increases and additions, a variable and accessory part of the salary, are usually encountered in the salary system of the personell from the public institutions and represent a financial right for some cathegories of the management personell.

The indemnity is regulated as an obligation of the employer in the following conditions: temporary interruption of the activity if the employees are at the employer's disposal, the indemnity being of minimum 75% of the basic salary appropriate to the occupied work place; participation to courses or professional training stages initiated by the employer, if the participations requires complete removal from activity; the effectuation of the rest leave that represents the sum that the employees receive during the rest leave, that is calculated as an average of the salary rights of the past 3 months prior to the leave and cannot be lower than the total value of the salary rights appropriate for that period.

The delegation or detachment is the sum appropriate for covering the personal expenses of the detached or delegated employees. The delegated employees of the units in the country or abroad will benefit of the reimbursement of the transportation, ensurance and accommodation expenses accoding to the conditions established by the collective labor agreements for the other levels; travelling allowance, the amount of which is established by negociation at branch, goups of units or unit level. The minimum level of that allowance is the one established through the legislative acts applicable to the public institutions.

The dettached employees of the units benefit from delegation rights. If the dettachment exceeds 30 consecutive days instead of the daily allowance an indemnity equal to 50% of the daily basic salary is paid. The detached employees mentain all the rights they had on the dettachment day aside from the ones regarding hygiene and work safety, even if at the work place where the employees have been detached to these cannot be found. If at the dettachment places the equivalent rights have greater

levels other rights are granted as well, the detached people benefit from them, including all the rights regarding hygiene and work safety of the new work place.

In case of bancruptcy or judicial liquidation, the employees have the status of privileged creditors and their monetary rights form privileged claims that will be paid in full, before the other creditors will revendicate their share. The employers will keep records where the performed activity will be mentioned based on the individual labor agreement and the rights of the employees and they will release proof about that. The employees who retire because of the age limit will recieve an indemnity equal to at least two basic salaries had in the month of the retirement. Apart from the help provided by law, to which they are entitled, the employees will benefit from the following : in case of the employee's death, the family will recieve at least two medium salaries per unit, if the death occured due to a work accident, a work related accident or a professional illness, the amount given to the family will be of at least three medium salaries per unit; a medium wage per unit, given to the mother for the birth of every child, if the mother is not employed, her husband benefits from the payment of one medium salary per unit and a medium salary per unit paid by the unit on the death of the husband, wife or a first degree relative that is dependent on the employee.[8]

The monthly indemnities provided by law ar in a goss sum and are taxed according to the legal dispositions in force.

The differentiation of the indemnities and basic salaries of the officials and other budgetary employees is the free option of the legislator, considering the importance and complexity of different functions. The legislator is also entitled to establish certain increases to the indemnities and basic salaries, periodic prizes and other incentives that he can differentiate depending on the personell cathegories, he can modify them during different periods of time, he can suspend or even cancel them. The equal rights and non-discrimination principle is applied only to equal or similar cases and the differentiated judicial treatment, established considering different objective situations, has neither privileges nor disciminations.

Increases

The increases arealso a variable part of the salary to which the employee has the right if he performs the activity in certain conditions or if he meets certain special

requirements. The increases are established as a percentage that is applied to the basic salary when the conditions provided by law are met or, as appropriate, the collective or individual labor agreement.

Regarding the increases, namely the variable and accessory elements of the salary, The Supreme Court of Cassation and Justice states that : “the increases are only granted in the work places where they are not part of the basic salary, being provided by the Labor Code, laws and ordinances, by the collective labor agreement at the national level and the collective labor agreements at branch, groups of units and units level.

In the present legal system the increases are not rewards or gratifications, they mainly constitute a compensatory factor for certain work conditions or for fulfilling some special requirements (professional or of seniority) that gives increased efficacy to the performed labor.

The increases to the basic salary are granted if the following conditions are met:

- the employee must have a post in a specialization that gives him the right to a certain increase;
- The employee must effectively work according to the conditions provided by law, the collective labor agreement or, as appropriate, the individual labor agreement.

In other words, regardless of the study level, the importance, complexity and work duties, function (post), performed profession, quantity, quality and work value, the branch, sphere or level of activity and the amount of the basic salary (indemnity) of an employee, he has to be given a certain increase if he works effectively according to the conditions provided by law for granting that certain increase.

There is no legitimate, objective and reasonable justification that, if two employees that do not find themselves in the same or similar judicial situation, in terms of occupied posts, job attributions, responsibilities etc, but both work with title, for example, in the same special working conditions, hard, dangerous or harmful, just one of them to receive the appropriate increase, and the second to not receive it because the law or the ordinance under which the latter employee is remunerated does not provide this increase.

The Labor legislation provides the following increases categories:

Increases for extra hours are only granted if the performed labor over the normal labor programme could not be compensated with the appropriate free time during the following 30 calendar days. From the conjunction of the dispositions of article 40, align (3), letter © of the collective labor agreement on a national level and article 120, align (2), of the Labor Code, an increase of 100% of the basic salary is granted for extra hours for the first 120 hours of a calendar year and of 75% for the extra hours performed over this limit.

Employees can be summoned to perform extra hours only with their consent but for preventing or removing some natural disasters or other cases of major force employees have the obligation to perform the additional labor requested by the employer.

These amounts of increases for extra hours are also provided for the budgetary units.

The increase for the work performed during the weekly repose. When labor is performed during the weekly repose the employees benefit from an increase that is negotiated between parts and that is, according to the collective labor agreement on a national level, of 100% of the basic salary for the first 120 hours of a calendar year and of 50% for the hours performed over this limit.

If the weekly repose is cumulatively granted after a period of continuous activity of maximum 15 calendar days, the employees have the right to an increase of 150% for the work performed during the weekly repose.

Employees whose weekly repose was suspended according to the provisions of the Labor Code have the right to an increase of 150% for the work performed in these conditions.

The increase for working during the legal holidays is granted only if the work performed during these days could not be compensated by the appropriate free time during the following 30 calendar days. The granted increase cannot be lower than 100% of the basic salary.

The increase for seniority. According to the collective labor agreement on a national level this increase is of at least 5% for 3 years seniority and maximum 25% for over 20

years seniority, of the basic salary. The seniority stages and the amount of the afferent increase of every stage is negotiated by every employer.

The increase for working at night is granted if the work time is within the hours of 22:00 – 6:00 and the duration of this work is of at least 3 hours. The increase is granted only if the employer does not have the possibility to reduce the work programme with an hour. The amount of this increase established by the collective labor agreement on a national level is of 25 % of the basic salary appropriate to every worked hour during the mentioned period of time. The employees that work in special conditions where the work time is under 8 hours a day also benefit from this increase.

The increase for also exercising another function is, according to the collective labor agreement on a national level of up to 50% of the basic salary regarding the replaced function.

The increase for special, tough, dangerous or uncomfortable conditions of labor is, according to the collective labor agreement on a national level of 10% of the basic salary.

The increase for tough labor conditions is granted when the physical effort necessary for performing the tasks is much higher than normal or if the labor is performed in difficult conditions such as travelling on rough terrain, uncomfortable work position, outdoor labour with great temperature variations.

The increase for uncomfortable work conditions. In the budgetary sector an increase of up to 30% of the basic salary is used from which only the sanitation and canalization workers benefit.

The increase for harmful work conditions is, according to the collective labor agreement on a national level, of 10% of the minimum salary negotiated on a unit level. This increase is utilized when on the premises where the employee works there are emitted, during the production process, certain harmful substances, either powder (asbestos, silicon, coal, certain metals) vapors or gas (acids, thinners, Sulphur dioxide, ammonia, other harmful substances); at the workplace there are registered powerful noises or vibrations.[9]

SALARY CATEGORIES

Nominal and real salary

The salary thus varies according to countries, domains, companies and people. On a long term, the amount of the salary has a general tendency to grow. This happens because of the productivity growth that entitle employees to ask for a bigger salary.

The nominal salary is the sum that the employee receives from the unit he works or performs labor at. The nominal salary in which the taxes are included is the nominal gross salary. The nominal salary is the negotiated one, taking into account the evolution of prices and charges. If the prices have the tendency to inflationary grow, the negotiation of the nominal salary will take into account this phenomenon, imprinting a tendency of growth.

The net salary is the one that the employee receives as an income from which there have been subtracted taxes and other deductions provided by law (for example for the unemployment fund).

The nominal salary is a dynamic measure, varying according to the emphasized factors. Both the amount of the salary and the differences between the salaries must be established so that to permanently keep the work motivation and aspiration for training evolution, as essential for obtaining a bigger salary.

The nominal salary is the sum that the employee receives for the performed services, including bonuses for seniority and activity period.[10]

The objective base of this salary is represented by the value of the work force. Compared to the price of the actual merchandise, the one of the work force is usually undervalued. This is a consequence of the supply and demand rapport of the labor market, the supply generally being bigger than the demand. As a consequence, there is a pressure on the nominal salaries or, more precise, a decrease under the value of the work force. Therefore, in order to counter the diminution of the salaries under a certain level considered obligatory either as a minimum of existence or as life standard, the state interferes through certain levers, one of them, amongst the most important and efficient being the establishment of a minimum guaranteed salary.

The real salary consists of the quantity of goods and services that the individuals can obtain with the nominal salary.

Naturally, the rapport between the nominal and real salary must be the same, meaning that on different periods with the same sum received for the performed labor it is possible to obtain the same quantity of goods and services. But, there are numerous situations in which with the same nominal salary or even with a higher one there are obtained less goods than in a previous period.

When the nominal salary grows but the cost of the food, clothing and other necessary goods grows as well, actually, the real salary diminishes which, obviously, affects the standard of living of the employees and their families. This is what happens since 1990 in our country. The nominal salaries have spectacularly grown but the prices have grown even more.[11]

The field studies have shown that the higher earnings have been registered in the air transports field, financial and banking institutions, tobacco industry and in the extraction of shale gas and petroleum. On the other side, the lowest salaries have been registered in the activities of insurance of the House of Pensions, sanitation and similar activities, leather and footwear industry, wood processing.

Likewise, the salary can be also differentiated between gross and net. The gross salary is the nominal salary to which both sides usually commit. The net salary is the sum received by the employee after the salary taxes have been subtracted from the gross salary.

Apart from the individual salary, there have also been constituted the collective and social salaries to stimulate the employees. The collective salary is granted to all the employees of a company for participating to its results, to the making of the profit. It is only granted from the profit and it can be differentiated according to the employees' participation to the profit making. The social salary is a sum that the society, in its whole, grants to increase the incomes of certain categories of employees or unemployed. The social salary is granted from the budget to all that have the right to receive it, equally. While the collective salary leads to the improvement of the employees' standard of living, the social salary only ensures the minimum level of existence.

The size and dynamics of the salary are also influenced by numerous indirect factors such as the level of organisation into unions and their capacity to obtain victories for the employees' claims, the employees' capacity to organise and dialogue with the

economic unit, patronal organisations and with the specialised organs of the state, international migration of the work force, Legislation regarding the strike and claim movement of every country.[12]

The minimum national salary

The International Organisation of Labor has militate ever since its foundation, in 1919, for guaranteeing a salary to ensure convenient living conditions for all workers. With the occasion of the Conference of Philadelphia of 1944 there has been provided the obligation of these organisations to help all countries of the world to elaborate and apply certain programmes regarding a minimum vital salary.

What is understood by minimum salary has been established by the Report of the experts reunion summoned by the the International Labour Organization, with the occasion of its 168 session (Geneva, february – march 1967) : “ the level of remuneration below which no salary can be either by law or factually, regardless of its calculation manner; is a salary that has the power of the law in every country and that is applicable under the punishment of criminal sanctions or other specific sanctions. The minimum salary is the salary considered sufficient for satisfying vital needs of food, clothing, education, etc. Of the employees, considering the economic and cultural development of every country¹⁵.”

In the definition that is given to the minimum growth salary, the french Labor Code is referring to the needs of the employees, indicating that this salary ensures those with a lower remuneration the guarantee of the purchase power as well as the participation to the economic development of the nation.

According to the International Labor Organisation, the determination of the minimum salaries must take into account, as much as possible, the following criteria:

- the needs of the employees and of their families;
- the general level of the national salaries;
- the life cost and its fluctuations;

¹⁵ In their legislation, the countries use different terms to describe the concept of minimum rates of pay: vital minimum wage (Argentina); salary minimum share (Luxembourg); minimum income (Chile); interprofessional minimum wage increase (France) etc

- social security performances;
- the standard of living of other social groups;
- The economic factors, including the demands of the economic development, productivity and interest of reaching and maintaining a high level of occupying the work force;

In our country a reference to the minimum salary has been made by the Labor Code of 1972 according to which: “there is established by law, according to the planned development of the economy, the minimum national salary, considering the level of the work productivity, the national income, pursuing the satisfaction of the permanently increasing needs of the employees and their family members.

By the Governmental Decision number 133/1991 there has been established for the first time in our country, on february 25, 1991, a minimum national gross salary of 3.150 lei for a complete work programme of 170 hours per month which represents 15.55 lei/hour. In the same period there has been institutionalised the notion of “minimum national salary”.

Considering that the labor legislation has the value of a minimal regulation and the contractual clauses mentioned are more favorable to the employees it is certain that the socialpartnerscan negotiate and establish minimum salaries superior to those provided by the Government. Ofcourse that in the case of public servants and other personell that is not under the incidence of the collective labor agreements the minimum salaries are those provided by the applied legislative acts and not by such an agreement.

The austerity measures introduced by the Government in 2010 have determined a diminuation of the minimum salary.As a result, by the Governmental Decision 1193/2010 there has been established for the year 2011 a salary of 670 lei.[13]

The Labor Code, in article 159, provides that the basic minimum national gross salary guaranteed in payment according to the normal working programme is established by Governmental Decision offer consulting the unions and patronages. If the normal working programme is, accordin to law, under 8 hours a day the hourly basic minimum gross salary iscalculating by rapping the basic minimum national gross

salary to the number of hours per month according to the legal working programme approved.

The employer cannot negotiate an establish basic salaries through the individual labor agreement under the hourly basic minimum national gross salary. He is obligated to guarantee the payment of a gross monthly salary at least equal to the basic minimum national gross salary. The disposition is also applied if the employee is at work, within the programme, but cannot perform his activity due to reasons that cannot be attributed to him, with the exception of strike.

This final text requires some explanations, thus, under its incidence there are not only active employees that perform labor but also those whose activity is interrupted for reasons not attributed to them, for example, for economic, technological, structural, etc. The interruption of activity can be total, all employees being affected, or partial, only some of the employees being affected. But, in order to benefit from a gross salary equal to the minimum national gross salary the employees must be at work within the established programme. The participants to strike are not under the incidence of the law, regardless if it is legal or illegal.

Therefore, the employer is not obliged to guarantee them the mentioned salary.

The solution is correct since the interruption of the activity is their own will and does not have a cause that cannot be attributed to them.

The basic minimum national gross salary guaranteed in payment must be brought to the attention of the employees by the employer that will chose the modality or modalities of advertisement (posters, information). [14]

For ensuring a decent living in the establishment of the minimum salary there must be taken into account both the products and services necessary for an employee to lead a modest life and the minimum quantities of products and services necessary on a given time, according to which to be determined the monthly average and the establishment of the prices for the established products and services, the average number of family members, the average number of employees per family.

We can state that in the present situation the salary represents the main stimulation of the employees therefore it is essential that the meaning and content of the notion of salary to be regarded both from the point of view of the one who pays the

salary, the employer, and from the point of view of the one who receives it, the employee, who is the beneficiary of the salary incomes.

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