

## THE ENTITLEMENTS OF EMPLOYEES DURING THE FIRST PERIOD OF THEIR TEMPORARY SICK LEAVE

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**Abstract:** *The article focuses on the financial security of employees in the first 14 calendar days of a temporary sick leave caused by sickness, injury or another specified social situation. The financial security is generally ensured by public system of sickness insurance in the form of sickness benefits. However, the sickness benefit is provided only from the 15th calendar day of a temporary sick leave and the sickness benefits are paid by a bearer of the insurance, i. e. a district social security administration, which is a state authority. In the period of the first 14 calendar days a sick pay is provided by an employer instead of sickness benefits. When determining the amount of this compensation, principles similar to determining sickness benefits are applied. Sickness benefits are calculated based on only a part of an income. Ensuring financial security during a temporary sick leave is thus regulated both by private law in the Labour Code as well as by public law in the Act on Sickness Insurance.*

**Keywords:** *Temporary sick leave, Sick pay in the first 14 days of temporary sick leave, Sickness benefits, Labour Code, Act on Sickness Insurance*

This paper, submitted for the international conference “The Private and the Public Aspects in Contemporary Law”, deals with the entitlements of employees during the first period of their sick leave and demonstrates the overlaps and synergies between public and private law.

In the area of sickness insurance, the most pertinent social situation is temporary sick leave. The financial entitlements during that time are governed by a number of laws. Under Act No. 187/2006 Sb., on Sickness Insurance, an insured person who has been declared temporarily unable to work is entitled to sickness benefits provided that the sick leave has lasted for a particular period of time. In the initial period of temporary sick leave or quarantine which is not covered by sickness benefits, the (employed) insured person is entitled to sick pay from his/her employer under the Labour Code (Act No. 262/2006 Sb.).

Since the Sickness Insurance Act became effective, replacing as of 1 January 2009 Act No. 54/1956 Sb., on the Sickness Insurance of Employees, the financial entitlements of employees during their temporary sick leave have been governed by both private law (the Labour Code) and public law (the Sickness Insurance Act). The borderline is the first fourteen calendar days of the temporary sick leave (from 2011 to 2013 the period was extended to 21 calendar days, due to austerity measures). Subsequent to the adjustment of these financial entitlements and in order to compensate for the costs incurred by employers, the contribution rate paid by employers has been reduced (from 3.3% to the current 2.3% from the assessment base).

Thus the sickness benefit is paid from the fifteenth calendar day of temporary sick leave, amounting to 60% of the reduced daily assessment base. During the first fourteen calendar

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days employees are not entitled to sickness benefits, but they are entitled to a stipulated sick pay from their employers. The rules governing sick pay under the Labour Code reflect certain elements of the sickness insurance.

Under s. 192 of the Labour Code, only employees who have participated in the sickness insurance scheme are eligible for sick pay from their employers, amounting to 60% of the average pay which is, for these purposes, adjusted (reduced) in the same way as the daily assessment base. The specific method of calculation of the average pay is set out in s. 192 (2) of the Labour Code. The employer has the right to check whether the employee complies with the rules for temporary sick leave determined by the doctor, and where there is a breach, the employer may reduce the amount or not provide the sick pay at all. The disputes over the sick pay will be decided by district courts in civil proceedings, while the disputes over the entitlement to and the amount of sickness benefits will be resolved by the sickness insurance bodies with a possibility of appeal under administrative proceedings.

With respect to sick pay, a waiting period applies (although the original text of the Labour Code did not provide for a waiting period because during the first three days the sick pay was paid out in a reduced amount, the waiting period was included in the Code by virtue of Act No. 261/2007 Sb. and progressively came to be regulated by other laws, e.g., Act No. 305/2008 Sb.), because the sick pay (provided for working days while the sickness benefit is provided for calendar days) is not available during the first three days (but not more than the first 24 hours off work in a shift system, taking into account the uneven distribution of working hours). These rules draw on the previous regulation under Act No. 54/1956 Sb. (as last amended), according to which during the first three calendar days of temporary sick leave the lowest amount of the sickness benefit was provided, i.e., only amounting to 25% of the daily assessment base. In 2008 (from 1 January), a three-day waiting period was introduced in Act No. 261/2007 Sb., only to be repealed as of 30 June 2008 by the Constitutional Court's decision No. 166/2008, declaring the waiting period inconsistent with Article 30 (1) of the Charter of Fundamental Rights and Freedoms, specifically the right to adequate material security, with regard to the fact that the duty of employees to pay contributions for their sickness insurance remained unaffected.

The reasons for introducing a waiting period are set out in the explanatory memorandum (see the document of the Chamber of Deputies No. 1006, the fourth term of office, 2005): "During a temporary sick leave and quarantine, employers will contribute to the financial security of employees. Good practice from other countries involves moving part of the responsibility for the financial system onto employers, requiring them to bear a part of the costs. This facilitates decentralisation and substantially increases the effectiveness of societal control against abuse. Therefore, during the first two weeks of the temporary sick leave (quarantine), employers will provide employees with sick pay in lieu of sickness benefits. At the same time, the rate of sickness insurance contributions to be paid by the employer has been reduced, so that for an employer whose employees have a morbidity under 11% (approximately double the average), the sickness pay is covered from the contributions that the employer did not have to pay due to the rate reduction."

In 2012, the Constitutional Court revisited the issue of a waiting period, this time as provided for in the Labour Code, and on this occasion the waiting period was not abolished: see the decision published under No. 186/2012 Sb. In this decision the Constitu-

tional Court considered the fact that employees no longer contributed to their sickness insurance, that a waiting period existed in other countries as well, that the legal provisions in question did not affect the substance of the right to material security during sick leave, and that these provisions pursued a legitimate objective, i.e., preventing the abuse of sickness benefits.

It should be noted that a waiting period is consistent with fundamental international documents, e.g., the European Code of Social Security (under Article 18 the benefit need not be paid for the first three days of suspension of earnings), the ILO Social Security (Minimum Standards) Convention No. 102 (Article 18 (1)), and the ILO Medical Care and Sickness Benefits Convention No. 130 (Article 26 (3)).

Yet there have been attempts to remove the waiting period from the Labour Code (as this is a largely political issue); for the current term of office see for example the documents of the Chamber of Deputies No. 393 (dismissed in 2016) and No. 744.

Certain issues that had been associated with public law (primarily the waiting period) have been effectively moved to private law (see the explanatory memorandum quoted above). However, the entitlements of employees during the initial stage of their temporary sick leave go beyond the scope of relations between employees and employers concerning the rules on dependent work, and the Labour Code thus regulates (see s. 1 (e)) other issues as well (see s. 52 (h) and s. 301a) which go beyond employment relations and respond to or reflect public rules.

The entitlements of employees during their temporary sick leave thus demonstrate the *overlaps and synergies between private and public rules*, with the private rules displaying conspicuous public features because they enshrine certain principles of the sickness insurance scheme: in particular, the granting of sick pay only to those employees who have contributed to the sickness insurance; the determination of the amount of sick pay (reduction of the average pay); the right of the employer to undertake checks; and the cooperation between the employer and the sickness insurance bodies (i.e., the District Social Security Administration) to ensure that the sick person complies with the stipulated rules.