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Unexplained/unjustified absence from work

An employee's right to absence from work is an important element of labor law. Furthermore, it is crucial for achieving work-life balance. Slovenian labor legislation recognizes various types of absences from work, such as annual leave (minimum of four weeks), paid absence due to personal circumstances, such as wedding, death of spouse/partner/parent/child, serious accident (of up to seven working days annually), paid absence on public holidays and on other statutory work-free days, paid absence from work due to health issues, absence from work due to performance of certain duties or functions under special regulations, absence from work due to education or training, parental leave and, in case of employment termination by employer, absence from work during the notice period aimed at finding new employment and/or participating in activities in accordance with labor market regulations. Specific regulations (such as parental rights regulations or disability regulations), industry, profession or company collective agreements may define employees' additional rights to absence from work (paid and unpaid).

Pursuant to the Slovenian Employment Relationship Act (*Zakon o delovnih razmerjih*, Official Gazette of the RS, no. 21/13 *et seq.*), an employee is **only entitled to salary compensation in cases, in amounts and for durations of absences from work which are prescribed by the regulations, or if an employee does not carry out his/her work due to reasons on the part of an employer** (e.g. when an employer cannot provide work to an employee due to customer cancellations, machinery failure, etc.). Moreover, an absence from work in the minimum duration of five consecutive days wherein an employee fails to inform an employer of the reasons in relation thereto (despite the employee's ability and obligation to inform) represents a valid reason for extraordinary termination of employment by the employer (i.e. termination of employment without any notice period).

In a recent case before the Supreme Court of the Republic of Slovenia, the Supreme Court adopted a decision clearly stating that an employer is not obliged to pay salary compensation to an employee whose absence from work is not justifiable. The employee who was granted a status of a disabled worker with the right to part-time employment (5 hours daily) by the decision of the Pension and Disability Insurance Institute of Slovenia did not turn up for work for more than two years and failed to inform the employer of the reasons for such absence from work. The employer did not terminate the employee's contract and kept on calculating and paying social contributions and taxes, but abstained from paying the employee her salary. After the employee was granted a status of a disabled worker with the right to retirement on grounds of disability, the employer de-registered the employee from social and pension insurances, and her employment with the employer was terminated. The employee later filed a lawsuit claiming that she is entitled to salary compensation for the whole duration of absence from work due to the existence of an employment relationship between her and the employer who did not terminate her employment. The labor court of first instance and the labor and social court of appeals both adopted the decision that the employer is obliged to pay salary compensation as the employer's essential obligation arising out of the employment relationship. Both courts held that the employer had the right to either take disciplinary sanctions against the employee or to terminate her employment agreement, but could not legally

withhold the payment of her salary or abstain from paying her salary compensation. The Supreme Court of the Republic of Slovenia annulled the decisions stating that the payment of salary is not an automatic consequence of an existing employment relationship between the parties, but in fact represents a consideration for the carried-out work¹. Only in exceptional cases prescribed by law or agreed on between the social partners is an employee entitled to salary compensation even if he/she does not carry out any work for an employer. However, the Supreme Court of the Republic of Slovenia did outline that an employee is not entitled to salary compensation only in cases when he/she does not turn up for work due to unjustified reasons. **The mere fact that an employee failed to inform an employer of the reasons for his/her absence from work** (e.g. an employee was absent from work due to health issues, but failed to inform an employer thereof) **does not entitle the employer to abstain from paying the employee the adequate salary compensation**. It should also be noted that such failure of the employee to inform the employer of the reasons for his/her absence from work could constitute a valid reason for extraordinary termination of employment, so the employer may nevertheless adopt adequate measures to prevent or to sanction unexplained absences from work since they undisputedly harm the working process.

In case of rising absenteeism from work and frequent lack of discipline among employees in relation to informing the employer of their absence from work and to delivering adequate supporting documents (such as medical certificates on sick leave), employers are advised to **carefully consider adopting adequate policies governing absence from workplace, procedures and deadlines for reporting reasons related thereto and sanctions for the most important breaches of such policies**.

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¹ It should be noted that the decision of the Supreme Court was adopted only in connection with the payment of net salary compensation, as the employer in the case at hand had paid all social contributions and taxes. If the employer had failed to pay those, the decision of the Supreme Court could be different since payment of social contributions and taxes is not necessarily a consideration for the work carried out.