

February 7, 2019

Compensation of the statutory transition payment

In certain circumstances, employers are eligible for compensation of the legal transition payment paid to a former employee whose employment contract was terminated due to long-term incapacity for work. This has been laid down in an amendment to a statute published on July 20, 2018. The submission procedure and mode of payment need to be worked out in more detail. The government's aim is to make this compensation possible by April 1, 2020. Employers who are eligible for it will then be able to claim it retrospectively to July 1, 2015.

An employer may be entitled to such compensation if an employee's employment contract has ended due to long-term incapacity for work, irrespective of how that contract was terminated. This means that it may also be claimed after termination by mutual consent. The employee's sick leave records should in that case show that the employee is incapacitated for work and the settlement agreement should state that long-term incapacity for work is the reason for termination. An employer is also entitled to compensation of the transition payment if a fixed-term employment contract with an employee who is incapacitated for work in the long term ends by operation of law.

This entitlement to compensation is subject to a couple of limitations:

- an employer will not receive compensation exceeding the statutory transition payment to which the employee would have been entitled on the date that the obligation to continue paying salary ended. In general, this is 104 weeks after the first day of incapacity for work;
- the amount compensated will not exceed the total gross salary paid to the employee during his or her period of incapacity for work. The fact is that this compensation serves to prevent the transition payment from accumulating and to save costs for the employer while an employee is incapacitated for work.

Employers will be able to claim compensation of the transition payment using a digital application form starting on April 1, 2020. This form is not yet available. This compensation will save employers from having to continue employment contracts in order to avoid the obligation to pay the transition payment to employees suffering from long-term incapacity for work ("slapend dienstverband"). In that case there would always be the risk of the employee wanting to resume work at some point, with the transition payments still continuing to accumulate. This means that it is advisable for employers to terminate such employment contracts and to claim compensation of the transition payment. We are happy to assist with applications for compensation and/or termination of employment contracts in cases of long-term incapacity for work.

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