



Salary indexation: what employers should consider?

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📌 EMPLOYMENT AND PENSIONS, RUSSIA

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Article 130 of the Russian Labour Code provides that measures ensuring increase of salary level are included in the primary state guarantees as regards salary payment. In turn, increase of salary level entails salary indexation due to the increase of consumer prices for goods and services (Art. 134 of the Russian Labour code).

Article 134 of the Russian Labour Code also determines that organizations financed from state budget perform salary indexation as provided by the legislation, whereas other employers (including commercial organizations) perform salary indexation as provided by the collective bargaining agreement, internal policies. In this Article we will focus on salary indexation in commercial organizations only.

The definition of indexation is stipulated by the Fundamental principles of

legislation of the Soviet Union on indexation for the incomes of population dated 25 June 1991 No. 2266-1 (old legal act that is still in force). In this document indexation is determined as a mechanism for increase of incomes that allows either partially or entirely to reimburse consumer prices increase for goods and services. In the same legal act it is determined that indexation may be replaced by one-time revision of the amount of monthly salary and other means of regulation or be applied with each other. Based on the formal interpretation of the law, salary indexation is regarded as one of the options for ensuring increase of salary level. Therefore, other options are theoretically possible.

Existing court practice confirms that salary indexation is an exclusive competence of the employer. The following conclusions can be figured out:



- the Russian Labour Code does not contain any mechanism for salary indexation, its amount and time period;
- the courts do not have any authority to force employers to adopt internal policies concerning order for salary indexation;
- the courts are not entitled to force employers to perform salary indexation in case of absence of the relevant internal policies;
- the courts are not empowered to annul/declare illegal the internal policies.

Based on the position of the Russian Ministry of Justice, the Russian Labour Code does not establish the requirements towards the mechanism of salary indexation. At the same time, this does not mean that employers are exempted from the obligation of salary indexation. Such obligation of the employer is at the same time not unconditional and depends on different reasons, including also economic factors. Rather often in practice employers use this uncertainty and act not in good faith. As a result, formal fulfillment of obligation depends on the sole discretion of the employer.

The Higher court of the Russian Federation also does not clarify the issue concerning the mechanism of salary increase (including indexation). In fact, there are even contradictory positions in the decisions of the Court collegium for civil cases in the case No. 18-KГ17-10 dated 24 April, 2017 and in the case No. 89-KГ18-14 dated 8 April, 2019.

In the former decision the Higher court of the Russian Federation confirmed that obligation of the employer to increase salary level can be performed by way of its periodic increase, e.g. increase of monthly salary, bonus payment that does not refer purely to salary indexation. Whereas in the latter decision another position was ruled out. Internal policies must provide the exact mechanism for increase of salary level, i.e. periodic increase by means of monthly salary increase, bonus payment or purely salary indexation.

The Constitutional Court of the Russian Federation in its decisions dated 19 November, 2015 No. 2618-O and dated 29 May, 2019 No. 1269-O stated that employers not related to the budget financing (i.e. commercial entities) are not entitled to deprive their employees of the state guarantee concerning salary payment that is provided by the law (i.e., indexation) and avoid its establishing. Indexation (namely, its amount, order and conditions) has to be provided as stipulated by the respective document (i.e. employment or collective bargaining agreement, internal policy). If this is not provided by said documentation, this has to be done.

Summarizing the above, it may be concluded that salary indexation must be established. At the same time, the court practice is rather uncertain. In some cases the courts consider that there is an obligation to introduce the order of salary indexation, while in other cases the courts have taken an opposite view. The Higher court of the Russian Federation considers that even if salary indexation (i.e., order, timing, conditions) is not determined by the employer this does not mean that it should not be performed at all. On the other hand, lower courts (in particular, the Moscow state court in its decision dated 7 June 2019 No. 4r-7073/2019) in such situations dismiss the claims of employees.

At the same time, the position of the prosecution office as authority empowered to supervise compliance with labour legislation cannot be ignored. Among the powers of the prosecution office is the control of the absence in the internal policies concerning the order of salary indexation due to increase of the consumer prices for goods and services, as well as the control of non-fulfilling the obligations in the area of salary indexation as provided by the internal policies. According to the statistics, the prosecution office mostly controls issues concerning salary payment and, inter alia, pays special attention to the issues concerning salary indexation.

In accordance with the administrative regulation of the Labour inspectorate, within the framework of its conducted

inspections, the documents that establish the order of salary indexation and confirm such indexation may be requested. Therefore, the employers in case of such inspections from Labour inspectorate must be well prepared to this.

In the opinion of the Federal Labour inspectorate, if based on the results of the calendar year when the Federal Service of State Statistics (Rosstat) fixed the growth of the consumer prices salary indexation is not performed, the employer is liable. Such liability occurs irrespective of the adoption of the relevant internal policy. The committed violation of labour legislation must be eliminated not only by conducting salary indexation, but also by adopting internal policy (in case of absence).

In order to avoid potential disputes with employees and labour inspectorate, it is recommended to comply with the law as regards salary indexation. Thus, the order of salary indexation must be established in the relevant internal policy. This includes the following issues:

- the basis for indexation that may vary from a fixed part of the monthly salary (including or not bonus payments) to

just a capped basis (e.g., statutory minimum salary);

- relevant time period (e.g., quarter, half a year, year, 2 years);
- the amount of the indexation (e.g., growth index for consumer prices, percentage for increase of statutory minimum salary / minimum subsistence level);
- the ground for indexation (e.g., achievement of financial results).

In addition to the above, it is also necessary to determine in the relevant internal policy that increase of salary level may be performed by means of monthly salary increase, bonus payments.

Non-compliance with said formalities may be regarded as violation of labour legislation, entailing the risk of application of administrative liability in accordance with Art. 5.27 of the Code on Administrative Offences. Such liability may result in an official warning letter or administrative fine for the company's officials ranging from RUR 1,000 to 5,000 and an administrative fine for the company ranging from RUR 30,000 to 50,000.



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