

Amendments to the Wage Guarantee Fund Regulation have been Introduced

14 Oct 2021

Regulation Amending the Wage Guarantee Fund Regulation ("**Amendment Regulation**") has entered into force after being published in Official Gazette dated 30 September 2021 and numbered 31614.

The Amendment Regulation aims to clarify the procedures and principles to be applied regarding the payments to be made from the fund in the event of the employer's insolvency as well as the principles regarding the wage guarantee fund, by bringing additional regulations to the articles that are unclear in the Wage Guarantee Fund Regulation.

- Pursuant to article 1 of the Amendment Regulation, the definitions in article 4 of the Wage Guarantee Fund Regulation have been amended. In this regard, the definitions of "Date of Insolvency" and "Basic Wage" stated under article 4/1-d of the Wage Guarantee Fund Regulation have been separated from each other, and the part related to the "Basic Wage" has been added as a separate provision under article 4/1-g.
- Pursuant to article 2 of the Amendment Regulation, in order for employee's 3 months' wages to be paid, the employee is required to apply to the Turkish Employment Agency ("**Agency**") in person, except in cases of force majeure.
- In accordance with article 3 of the Amendment Regulation, some changes and additions have been made in article 9 of the Wage Guarantee Fund Regulation. Pursuant to the amendments made in article 9/1 of the Wage Guarantee Fund Regulation, it is explained which document can be deemed as the Employee's Receivables Certificate, if the employer cannot be reached in order to determine the unpaid wages. In this regard, a finalized court decision which states the wage's amount and period or a payment order issued by the execution office shall be deemed as an Employee's Receivables Certificate, when submitted to the Agency.
- Pursuant to the amendments made in article 9/2 of the Wage Guarantee Fund Regulation, it is stated that the employee should have worked for at least one day at the same workplace within the last one year prior to the employer's insolvency. Furthermore, it is also stated that, during the calculation of the one-year period, the duration starting from the filing of lawsuits initiated in order to determine the insolvency or the unpaid wages, until the date of the verdict will not be taken into account.
- Additionally, new subclauses have been added to article 9 of the Wage Guarantee Fund Regulation. Following regulations added to the payment procedures and principles:
 - The applicants can benefit from the fund only once, based on the lien minutes which can be considered as a certificate of insolvency, for their employment relations with the same employer.
 - In case of suspicious situations listed in the Wage Guarantee Fund Regulation, the procedures regarding the applications will be concluded following the examination made by the inspectors.
 - The premium amounts which have been notified to the Social Security Institution as well as those pertaining to holidays and paid leaves which the employee has earned without working, as well as overtime receivables, are evaluated within the scope of the fund, if the amounts are in connection with the requested month.
 - In service contracts where the wage is determined in foreign currency, the effective foreign exchange selling rate determined by the Central Bank of the Republic of Turkey on the last day of the period in which the employee will receive the wage will be taken as a basis for the payment to be made.
 - If the decision or document regarding the insolvency of the employer is terminated or cancelled through a finalized court decision, payments made shall be collected from the employer together with the statutory interest.

- Excess or improper payments which are determined to be caused by the intent or fault of the employee or the employer shall be collected from the persons concerned together with the statutory interest.
 - The payments made pursuant to the final respite decision shall be collected from the employer together with the statutory interest, if the respite decision is canceled or removed due to reasons other than the confirmation of concordatum or the order of bankruptcy. If the concordatum request is concluded with a bankruptcy order, the date of such order shall be deemed as the date of insolvency, and the same person can receive a payment for only up to 90 days in total in connection with the final respite decision and bankruptcy decision. No payment can be made within the scope of the fund if the concordatum project is approved by the court.
- Pursuant to article 4 of the Amendment Regulation, the rules regarding the notification for the payment of the wage to be made from the fund have been changed. In this regard, a certificate of insolvency can be obtained only if the written notification is made to the execution office, and such notification can no longer be made to the employer as it has been removed from the relevant provision. Similarly, concerning the announcement of the concordatum, the section regarding the notification to be made liquidator of the concordatum has been removed from the provision, and such written notification can only be made to the trustee in composition.
 - Provisional article number 2 has been added to the Wage Guarantee Fund Regulation. Pursuant to the provisional article number 2, concerning the applications made to the Agency prior to the effective date of this provision, the payments can be based on the provisional respite decisions given by the court if the employer is subject to the announcement of concordatum.
 - In accordance with the Amendment Regulation, annex 1 regarding the employee's receivables certificate in the Wage Guarantee Fund Regulation has been removed.

Please see this [link](#) for the full text of the Regulation published in the Official Gazette dated 30 September 2021 and numbered 31614, effective as of the same day (Only available in Turkish).

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