



Guidelines for Compressed Working Hours, Determining the Average Salary and Granting Annual Vacation and Calculating Annual Vacation Pay

On 6 December 2021, the Minister of Labour and Social Protection approved the Guideline for Compressed Working Hours /reference number A/193/, Guideline For Determining The Average Salary /reference number A/192/, Guideline For Granting Annual Vacation and Calculating Annual Vacation Pay /reference number A/191/ in relation to the Revised Labour Law of 2021. We are pleased to share summaries of these regulations with you.

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1. GUIDELINE FOR COMPRESSED WORKING HOURS (CWH Guideline)

The CWH Guideline shall be followed when calculating working hours of employees of a business entity or organization which is unable to comply with the standard daily and weekly working hours established by law due to the nature of work, services and production.

CWH Guideline provides that under certain circumstances, delivering large-scale work orders in a short period of time and during the peak period of industry specific works (such as mining exploration and exploitation; building construction and maintenance; roads and road facilities repair and maintenance; harvesting, hay and fodder preparation; delivering large-scale work orders in a short period of time; and the similar seasonal or one-off works, services and production), employers may use the CWH arrangement during the peak period by extending the standard working hours or days of employees for certain period of time while granting time of in lieu or monetary compensation once the peak period ends. The employer can select from the following arrangements when compensating overtime under the CHW regime:



- (i) compensatory rest;
- (ii) reducing the working hours;
- (iii) reducing the number of working days per week;
- (iv) additional leave in addition to the regular annual vacation period; or
- (v) overtime payment / cash out (the average hourly rate shall be increased by no less than 1.5 times).

When applying the CWH arrangement, the employer is required to approve an official order/decision stating the grounds and duration for CWH regime and notify an employee in advance. Daily working hours must not exceed 12 hours. In case employees are compensated with an overtime pay, the payment must be made in the following month of the end of the peak period. In case employees are given time of in lieu, employees shall utilize day-offs within the respective year.



Under the CWH arrangement, overtime can be calculated as follows:

Overtime during peak period = Total number of worked hours during the peak period - Standard working hours for the same period

Should you have more questions with this regard, please do not hesitate to contact us.

Please refer to the link for more details <https://legalinfo.mn/mn/detail/16389706618161>



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2. GUIDELINE FOR DETERMINING THE AVERAGE SALARY (Average Salary Regulation)



The Average Salary Regulation shall be followed in determining the average salary of an employee for the purpose of calculating additional pays and some allowances in accordance with the Labour Law.

As the Average Salary Regulation provides, the benchmark for average monthly working days can be **21 days** while the average monthly working hours can be **168 hours**.

General approach for determining the average salary:



The average salary of an employee is determined as follows:

$\text{Average monthly salary} = \frac{\text{gross salary for the reference period}}{\text{Actual worked months for the reference period}}$

$\text{Average daily salary} = \frac{\text{gross salary for the reference period}}{\text{Actual worked days for the reference period}}$

$\text{Average hourly salary} = \frac{\text{gross salary for the reference period}}{\text{Actual worked hours for the reference period}}$

For the purpose of defining the average salary, the salary has components such as base salary, additional pay, extra pay, annual vacation pay and bonuses. All types of employee allowances (such as reduced working hours, idle time, etc.), benefits (such as adopting infants for parents), reimbursement, discounts (discounts on transportation, meals, etc.) are not included in the employee's salary component.

Specific approach for determining the average salary for the purpose of calculating additional pays and some allowances.

A) Last 3 months average salary shall be used for calculating the following additional pays and allowances:

- (i) Overtime pay
- (ii) Night hours pay
- (iii) Weekend work pay
- (iv) Public holiday work pay
- (v) allowance for a period during which employee was unable to perform his/her job duty due to the strike even though was a non-participant;
- (ii) allowance for a period till employment agreement termination in accordance with Article 80.5 of the Labour Law;
- (iii) allowance for a reduction in an employee's salary as due to performance of other work during idle time;
- (iv) allowance for a period during the performance of a donor's role;
- (v) allowance for a wrongfully dismissed employee reinstated to previous job/position;
- (vi) compensation in the event of a reduction in an employee's salary as a result of an unjustified transfer or reassignment;
- (vii) allowance for paternity paid leave;
- (viii) benefit for leave of adopting infants for a period of up to 60 days.

B) Last 6 months average salary shall be used for calculating the following allowances and compensations:

- (i) deducting salary for the damage;
- (ii) determining the material liability in accordance with the Labour Law;
- (iii) reimbursement paid to an employee or the family, regardless of whether the employee who was injured in an industrial accident, acute poisoning, occupational disease, or died is covered by industrial accident or occupational disease insurance.

For more information, please visit:

<https://legalinfo.mn/mn/detail?lawId=16389706524321>

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3. GUIDELINE FOR GRANTING ANNUAL VACATION AND CALCULATING ANNUAL VACATION PAY (Annual Vacation Regulation)

The Annual Vacation Regulation shall be followed for calculating the annual vacation pay.

The employer is required to approve an annual vacation schedule in the first quarter of each year based on the employee's request without disturbing the normal operation of work, services and production. Therefore, in case of the normal operation of a legal entity is suspended due to work necessities, the employer has a right to give annual vacation to employees.

An employee's annual vacation shall be calculated in an employment year. Employees can take annual vacation in parts and at least one of them shall be 10 continuous working days in an employment year. Moreover, annual leave days of part-time employees shall be prorated to the number of hours they worked in an employment year.



The Annual vacation shall not be granted during the following period:

- (i) childcare leave,
- (ii) active military service,
- (iii) training for more than 6 months,
- (iv) protection of witnesses and victims, and
- (v) suspension from work by the competent authority.



Employees who are on the following leaves are eligible for respective annual vacation entitlements:

- (i) maternity leave,
- (ii) adoption leave,
- (iii) personal leave granted in accordance with relevant procedures, and
- (iv) temporary disability leave.



As per the Annual Vacation Regulation, annual vacation salary should be paid to the employee before the commencement of the annual vacation.

Annual vacation salary shall be calculated from the employee's average salary for an employment year. Average salary for the annual pay shall include base salary, additional pay, extra pay and bonuses paid to the employee in the respective employment year.

The annual vacation pay shall be calculated as follows:

Annual vacation pay = Daily average salary*Annual vacation days

Daily average salary = Total gross salary[^] since the last annual vacation / Number of total worked working days since last annual vacation

[^]Gross salary includes base salary, additional pays, extra pays, and bonus pay.

For more information, please visit:

<https://legalinfo.mn/mn/detail?lawId=16389706300881>

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