

## MANDATORY INSURANCE WITHIN THE FRAMEWORK OF EMPLOYMENT RELATIONS <sup>1)</sup>

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*The right to work is one of the fundamental human rights stated in both local and international acts. It is usually realized on the basis of an individual employment contract, resulting in the formation of a legal relationship between the employer and the employee. The relevance of mandatory social insurance and mandatory health insurance organizations cannot be overstated. Obligatory insurance in work relationships strives to give socio-economic assurances to employees who are legally required to be insured by both the public social security system and the compulsory health insurance system. The monthly payment of the social insurance contribution by the employer and the health insurance premium by the employee generates the right to multiple benefits and services established by law.*

**Keywords:** employee, employer, insured social risk, social security contribution, premium and social security benefit.

### ASIGURĂRI OBLIGATORII ÎN CADRUL RAPORTURILOR DE MUNCĂ

*Unul din drepturile fundamentale ale omului, proclamat atât în actele interne cât și în cele internaționale este dreptul la muncă. Realizarea acestuia are loc, de cele mai multe ori, în baza contractului individual de muncă, generând apariția raportului juridic între angajator și salariat. O importanță deosebită o au instituțiile asigurărilor sociale obligatorii și a asigurărilor obligatorii de asistență medicală. Asigurările obligatorii în cadrul raporturilor de muncă au drept scop oferirea garanțiilor socio-economice salariaților care, în virtutea legii, sunt asigurați obligatoriu atât în sistemul public de asigurări sociale cât și în sistemul asigurărilor obligatorii de asistență medicală. Achitarea lunară a contribuției de asigurări sociale de către angajator și a primei de asigurare medicală de către salariat generează dreptul la multiple prestații și servicii stabilite de lege.*

**Cuvintele-cheie:** salariat, angajator, risc social asigurat, contribuție de asigurări sociale, primă și prestație de asigurare socială.

### ASSURANCES OBLIGATOIRE DANS LES RELATIONS DE TRAVAIL

*L'un des droits fondamentaux de la personne proclamés dans les lois nationales et internationales est le droit au travail. Sa réalisation a lieu, la plupart du temps, sur la base du contrat de travail individuel, générant l'apparition de la relation juridique entre l'employeur et l'employé. Les institutions d'assurance sociale obligatoire et d'assurance maladie obligatoire revêtent une importance particulière. L'assurance obligatoire dans les relations de travail vise à fournir des garanties socio-économiques aux salariés qui, en vertu de la loi, sont obligatoirement assurés à la fois dans le système public d'assurance sociale et dans le système d'assurance maladie obligatoire. Le paiement mensuel de la cotisation d'assurance sociale par l'employeur et de la prime d'assurance maladie par le salarié donne droit à de multiples prestations et services établis par la loi.*

**Mots-clés:** employé, employeur, risque social assuré, cotisation d'assurance sociale, prime et prestation d'assurance sociale.

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## ОБЯЗАТЕЛЬНОЕ СТРАХОВАНИЕ В РАМКАХ ТРУДОВЫХ ОТНОШЕНИЙ

*Одним из основных прав человека, провозглашенных как во внутренних, так и в международных актах, является право на труд. Его реализация чаще всего происходит на основании индивидуального трудового договора, порождающего видимость правоотношения между работодателем и работником. Особое значение имеют институты обязательного социального страхования и обязательного медицинского страхования. Обязательное страхование в рамках трудовых отношений направлено на предоставление социально-экономических гарантий работникам, которые в силу закона застрахованы в обязательном порядке как в системе государственного социального страхования, так и в системе обязательного медицинского страхования. Ежемесячная уплата взноса социального страхования работодателем и взноса медицинского страхования работником порождает право на множественные льготы и услуги, установленные законом.*

**Ключевые слова:** работник, работодатель, застрахованный социальный риск, взнос социального страхования, страховая премия и пособие социального страхования.

### Introduction

One of the fundamental human rights, proclaimed both in domestic [1] and international acts [2], is the right to work. Its realization takes place, most of the time, on the basis of the individual employment contract, generating the appearance of the legal relationship between the employer and the employee. At the same time, considering the multiple risks that do not always result from being an employee, but can affect him/her during the exercise of the right to work, the legislation in force establishes a series of socio-economic guarantees intended to contribute to the removal or reduction of the consequences of social risks. In this context, the institutions of mandatory social insurance and mandatory healthcare insurance are of particular importance. The purpose of these regulations is to intervene in situations where the employee is affected by a certain insured social risk (age, disability, accident, illness, maternity, job loss or death) or the insured event is present (illness or condition).

### The essence of the public social security system

The public social insurance system in the Republic of Moldova is regulated by Law no. 489 of July 8, 1999 [3] and aims to protect insured persons in the event of social risks. According to art. 4 of the law stated above, the

person who carries out activity based on the individual employment contract is among the categories of persons who are compulsorily insured, by the effect of the law. This quality conditions the benefit of social insurance, which represent monetary or in-kind rights that belong to insured persons under the law, correlative to social insurance contributions.

It is important to mention that, by Law no. 60 of April 23, 2020 [4], changes were made in Law no. 489 of 07.08.1999 regarding the public social insurance system. According to the changes entered into force from January 1, 2021, the obligation to pay the individual social insurance contribution from salary payments calculated for the period starting in January 2021 was canceled for employees. Thus, from this date, only employers pay contributions to the state social insurance budget. The size of the contribution is provided for in Law no. 489 of July 8, 1999.

### Social insurance benefits guaranteed to the employee

The social insurance benefits offered to the employee, in the event of the occurrence of social risks, are various and their granting is conditional on the presence of the contribution period. The latter constitutes the entirety of the contributory periods as well as the non-contributory ones, established by law, which the employee confirms. Regulations

in this sense are contained in articles 5, 50 of Law 156 of October 14, 1998 [5]. Among the multiple periods that are included in the internship, the period of caring for an adult or a severely disabled child stands out. Although undeniably important from a social point of view, this period, after 1999, caused multiple controversies and was not always included in the contribution period. Starting from January 01, 2017, only the period of care of a child with a severe disability under the age of 18 by one of the parents, guardian, curator, until employment as a personal assistant began to be included in the contribution period [6]. The period of care for an adult with a severe disability remained outside the legal regulations. In this context, the intervention of the Constitutional Court of the Republic of Moldova was needed, which *constitutionally* recognized the text “of a child with a severe disability under the age of 18” from article 5 para. (2) let. d) from Law no. 156 of 14.10.1998 regarding the public pension system, to the extent that the period of care of the person with a severe disability by one of the parents, guardians, curator, up to their employment as a personal assistant is assimilated to the contribution period, regardless of the age of the severely disabled person [7]. Starting from 01.01.2020, the employee’s contribution period includes the period of care of a child with a severe disability under the age of 18 or a person with a severe disability by one of the parents, by the guardian or curator, until employment in the position of personal assistant [8]. Although in order to benefit from social security benefits the employee or former employee must confirm the period of contribution, its duration will be different, depending on the benefit category.

Addressing pensions, we highlight that at the current stage in the Republic of Moldova, in the public social insurance system, the following categories of pensions are offered: *old-age pension; disability pension; survivor’s*

*pension; special pension; early retirement for long career* [5].

*The old-age pension* will be granted to people who confirm a minimum contribution period of 15 years and the age established by law. According to the provisions of art. 41, 42 of Law 156 of 14.10.1998, in order to benefit from a full pension, men must confirm in 2022 the retirement age of 63 years and the contribution period of 34 years, and women - the age of 60 years and the period of 33 years (for women, the increase will occur on 01.07.2022). In the case of the *disability and survivor’s pension*, the age is directly proportional to the contribution period, which varies from 2 to 15 years. From 01.01.2022, employees (former employees) can also benefit from a long-career pension, if they confirm a contributory contribution period of 5 years greater than that generally established by law, regardless of age. At the same time, certain categories of employees can realize their right to a special pension [9].

We must note that, in the situation where the person meets the conditions to benefit from several categories of pensions, he/she can only opt for one of them. At the same time, starting from 01.01.2019, the right to pension is also offered to people who have established their residence abroad of the Republic of Moldova [10]. The amendments were based on the Decision of the Constitutional Court of the Republic of Moldova regarding the exception of unconstitutionality of art. 36, paragraph (1) of Law 156 of October 14, 1998 on the public pension system [11].

In addition to pensions, the public social insurance system guarantees employees several social insurance benefits offered in the form of *allowances, aids or balneosanatorial treatment*. Among them we highlight: *the allowance for temporary incapacity for work caused by common illnesses or accidents not related to work; allowance for disease prevention (quarantine); benefit for the*

*recovery of working capacity; maternity allowance; the allowance for raising the child up to the age of 3; allowance for the care of a sick child; death aid.* In this case, the total contribution period to be confirmed is 3 years. Insured people who have a total contribution period of up to 3 years, benefit from the right of social insurance payments if they confirm a contribution period of at least 9 months in the last 24 months preceding the date of occurrence of the insured risk or the date of birth of the child in the case of the risk ensured the growth of the child. Regardless of the duration of the contribution period, the allowance will be granted for temporary incapacity for work caused by tuberculosis, AIDS or an oncological disease; maternity benefit and death benefit [12].

The condition of contribution period of a certain duration is not necessary to be met even in the case of benefits for work accidents and occupational diseases. In this case, the employee is entitled to *benefits for medical rehabilitation; benefits for the recovery of working capacity; benefits for professional rehabilitation; allowance for temporary work incapacity; allowance for temporary transfer to another job; disability allowance; death benefit* [13].

The public social insurance system also provides for a series of protection mechanisms for people looking for a job. Among them, former employees who are actively looking for a job and are registered with the territorial subdivisions of the National Employment Agency stand out. At the current stage, employment measures include: *measures to promote employment (employment services; active employment measures); employment facilitation programs; unemployment insurance.* Employment measures are provided from the state budget and the state social insurance budget, as well as from other financial sources. The unemployment benefit will be established for the unemployed who

cumulatively meet the following conditions: they do not earn income from work activities at the time the unemployment benefit is established; have activated and completed a contribution period in the public state social insurance system of at least 12 months in the last 24 calendar months preceding the date of registration; does not refuse a suitable job or participate in the active employment measures offered by the territorial subdivision according to the individual employment plan of the unemployed [14].

### **The essence of mandatory health care insurance**

Mandatory medical assistance insurance represents an autonomous system guaranteed by the state for the financial protection of the population in the field of health care by establishing, on the principles of solidarity, from the account of insurance premiums, money funds intended to cover the costs of treating the states conditioned by the occurrence of the insured events (illness or condition). This institution has enough tangents with the other institution of compulsory insurance, which we have addressed above. Although compulsory health care insurance (as a legal institution approached in a strictly formal sense) largely follows the classic cliché of the structure of the insurance institution in the field of civil law, they have common elements, especially in terms of the characteristic features, with the institution mandatory social insurance from the branch of social security law [15, p. 247].

The mandatory healthcare insurance system also covers employees, who have the dual status of insured and insured person. According to the provisions of Law 1585 of 27.02.1998, the insured for employed persons (employees) is the employed person him/herself, including the natural person, other than the one employed by individual employment contract [16]. It is important to note that in the case of social insurance, the contribution is paid only by



the employer, and in the case of mandatory medical assistance insurance – only by the employee. Thus, in the insurance premium payment report, the employee has the status of insured, and consequently the quality of insured person is generated. This statute gives the employee the right to benefit from the full volume of medical assistance provided for in the Single Program of mandatory medical assistance insurance (hereinafter Program) [17]. Assistance is provided by medical service providers contracted by the National Medical Insurance Company. The size, manner and terms of payment of compulsory health care insurance premiums are regulated by special law [18].

It is welcome to note that any employee can, in addition to the services provided under the mandatory medical assistance insurance, also benefit from other services based on the optional health insurance or through direct payments offered to the medical service provider. This fact is also valid for the pension system, the legislation of the Republic of Moldova, regulating optional pension funds [19]. Although these aspects go beyond the limits of mandatory insurance in employment relationships, they offer the employee additional possibilities to benefit from certain benefits or services.

As an insured person, the employee has the right to choose his/her family doctor; to be given medical assistance throughout the territory of the Republic of Moldova; to benefit from medical services in the volume and quality provided by the Program, regardless of the size of the paid insurance premiums; to initiate actions against the insured, the insurer, the medical service provider, including to obtain material compensation for the damage caused by their fault.

At the same time, the legislation in force highlights for him/her a series of obligations, among which: registration with the family doctor and presentation of the act at the time

of addressing the medical and pharmaceutical service provider.

### **Assistance and medical services intended for the employee**

According to the Program, every employee, if he/she confirms illnesses and conditions that require medical assistance financed from the means of compulsory medical assistance insurance, has the right to various types of assistance and medical services: *emergency pre-hospital, primary, specialized ambulatory assistance, including dental, hospital; high performance medical services, community and home medical care, palliative care.*

*Prehospital emergency medical care* is provided in case of medical - surgical emergencies and includes activities aimed at stabilizing the vital physiological parameters of the patient, and the *primary one* includes activities of prophylaxis, early detection of diseases, consulting, with curative and support purposes, aimed at meeting the health needs of the people registered with the doctor family, within the limits of his/her competences. We emphasize that both the medical -surgical emergencies, which condition the provision of urgent pre-hospital medical assistance, as well as the illnesses and conditions that give the right to primary medical assistance, are provided for in the Program.

*Specialized ambulatory care* is granted to the persons insured by the professional specialist doctor together with the average staff involved in the medical act and includes all the activities, including organizational-methodical ones, which belong to the competence of the specialist and the respective staff. In contrast to this, *hospital medical assistance* is granted to people through hospitalization in cases when all possibilities of providing medical assistance in ambulatory conditions are excluded or the patient's health condition requires to be supervised in hospital conditions. Treatment in hospital conditions

for all profiles is considered short-term, except phthisiopneumology, psychiatry, narcology, oncological radiotherapy (curative cases) and hemablastoses, which are considered long-lasting. Both the professional specialist and the family doctor have the right to prescribe *high-performance medical services*.

Of particular importance are *community and home medical care*. Beneficiaries of home medical care are people who suffer from chronic diseases and /or have undergone major surgical interventions and geriatric patients who present a certain level of dependency and a limited ability to travel to a health care provider. A welcoming thing was the coverage by the Program, starting from 01.01.2022 of community medical care. The list of community and home care services provided from the mandatory medical assistance insurance funds is established by the normative acts approved by the relevant Ministry. These include community mental health services and youth-friendly health services provided by community mental health centers and youth-friendly health centers.

*Also starting with 01.01.2022 has been covered by the program palliative care*. This represents the provision of health services for the active and complex support of patients whose disease no longer responds to curative treatment. Palliative care services are provided by health care providers authorized for that type of service, regardless of the type of ownership and legal form of organization. Beneficiaries of palliative care are patients of all ages, with advanced chronic diseases and other diseases with a limited prognosis, who have a life expectancy of less than 12 months, with uncontrolled symptoms, significant psycho-emotional or spiritual suffering and/or who present a certain level of addiction.

### Conclusions

In conclusion, we highlight that both mandatory social insurance and mandatory

medical assistance insurance, although they can be supplemented by optional insurance, constitute important guarantees offered to employees (former employees). Both people who are employed in the field of work, and those who no longer have the status of employee, but have a period of contributions during their life, are entitled to various benefits and social insurance services. At the same time, each employee will benefit from various types of assistance and medical services.

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