

7 SEVERANCE ORDINANCE

(CESSANTIA-LANDSVERORDENING)

Severance pay after dismissal

1. What is Severance Pay?

The severance pay is a one-time payment in cash, which the employer must pay to his employee when the working relationship with the employee terminates.

This payment is calculated on the basis of the number of years of service by the employee. The legal grounds for the payment lies in the immaterial damage that the employee suffers through the dismissal and the loss of seniority.

The severance payment results from a legal obligation of the employer, stated in the Severance Ordinance (Cessantia-landsverordening) (P.B. 1983, no. 85).

2. Who is entitled to a severance payment?

An employee in St Maarten, whose working relationship terminates other than through his or her own fault, is entitled to severance pay. This right originates after the first full year of service of the employee.

When an employee is dismissed due to a reason, which is accountable to, himself or herself, he or she cannot derive any rights from the Severance Ordinance. This is the case, for example, when an employee is dismissed on the spot due to a legally urgent reason, like a serious form of theft.

An employee also doesn't have a right to severance pay when he or she quits his or her job, unless he or she ends the working relationship because of an urgent reason caused by an act of the employer.

An employee is entitled to severance pay whether or not they were in permanent service, or worked on the basis of a temporary contract (provided that the duration of it is longer than one year).

Public servants or employees working in the public sector and teachers in subsidized education are not entitled to severance pay.

3. When does one not have a right to severance pay?

When an employee passes away, there is no right to severance pay for the next of kin. On the other hand, when an (former) employee already had a severance claim on the (former) employer, at the moment of his passing away, his next of kin (wife or children) can claim the right to this payment.

Furthermore, there is no need to pay severance if the employee receives at the end of his service a pension or a benefit by way of a retirement fund. The amount of this pension or benefit has to be the same or more than the amount of the then valid legal old-age pension. If the legal old-age pension is deducted as a whole or partially from the above-mentioned **company** retirement fund/pension, this pension or fund must be at least twice the amount of the then valid legal old-age pension.

Whether or not one is entitled to severance pay is not attached to a certain age, like reaching the majority age or the pensionable age.

4. What is the amount of the severance pay?

The amount of the severance pay is calculated as follows:

· For the first till the tenth full years in service: one week's wage per year in service;

For the eleventh till the twentieth full years in service: one and a quarter times the week's wages per year in service;

For the next full years following: twice the week's wages per year in service. Mind you: in a collective labour agreement a more convenient way of calculation can be used for the employee!

For the calculation of full years in service a period of more than six months after the first year of service counts as a full year of service.

A weekly wage can be calculated by multiplying a monthly wage by 12 and dividing it then by 52. The weekly wage can be deduced from the hourly wage by multiplying the hourly wage by the number of working hours per week or by multiplying daily wage by the number of working days per week.

Example

An employee has been working for 14 years and 8 months for the same employer for a gross monthly salary of NAfl. 1.800,-. The employer dismisses this employee due to business economical reasons. The employer must now pay to the employee a one-time severance pay for the first ten years of service one week's wage (calculation of weekly wage: NAfl. 1.800,- * 12 = NAfl. 21.600,- : 52 = NAfl. 415,38 per week). Multiplied by ten gives

NAfl. 4.153,80. For the eleventh till the fifteenth years of service (the last 8 months count as a full year of service) the employer will have to pay five times one and an quarter the weekly wage. This is five times (1,25 * NAfl. 415,38 =) NAfl. 519,23 = NAfl. 2.596,15. In total the employer will have to pay the employee a severance pay of NAfl. 6.749,95.

5. The claim of the employee to severance

The employee must claim his severance pay from the employer within one year; otherwise his right to severance will become outdated.

If an employer is bankrupt, has applied for a suspension of payments or is in a position where he has stopped paying (this is to be judged by the Social Security Bank, SZV), the employee can request payment from the Social Security Bank, SZV (Severance fund), however, up to a certain amount.