UDC 349.2
DOI https://doi.org/10.32849/2663-5313/2022.12.03

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Melnyk, Valentyn (2022). Forms of compensation for damage caused by an employee to an employer. *Entrepreneurship, Economy and Law, 12*, 18–22, doi https://doi.org/10.32849/2663-5313/2022.12.03

# FORMS OF COMPENSATION FOR DAMAGE CAUSED BY AN EMPLOYEE TO AN EMPLOYER

**Abstract.** ***Purpose.*** The purpose of the article is to establish the scope and characterise the forms of compensation for damage caused by an employee to an employer. ***Results.*** Relying on the analysis of scientific views of scholars and provisions of legislation in force, the article identifies and characterises the key forms of compensation for damage caused by an employee to an employer. The author emphasises that an important task of the legislator and national scholars is to work towards expanding and improving the content of the forms of compensation for damage caused by an employee to an employer. The author establishes that local rulemaking, as a form of compensation for damage caused by an employee, is an activity performed by an authorised entity (an employer or an authorised person) within the framework of legislation in force, which implies the development and adoption of local legal regulations, provisions thereof are aimed at regulating social relations arising in the process of compensation by an employee for damage caused by him/her to the employer. Therefore, the key task of rulemaking is to adopt a special local legal regulation. The content and significance of local rulemaking is to optimally choose a variant of regulatory mechanism, the legislation that would best meet the interests and goals of the organisation (social collective) and its members. To do this, it is necessary to allow for the specifics of the activities of a particular organisation (social collective), favourable objective and subjective conditions for the adoption and application of a local legal regulation, as well as the choice of the optimal legal form for resolving an urgent issue (problem). ***Conclusions.*** It is concluded that the forms are a range of practical actions performed by an employee and an employer within the framework of social relations on compensation for damage caused by an employee. It should be noted that the list of forms of compensation for damage caused by an employee to an employer is not exhaustive, and therefore an important task of the legislator and domestic scholars is to work towards expanding and improving the content of the relevant forms.

**Key words:** forms, compensation for damage, employee, employer, rulemaking.

**1. Introduction**

An important way to protect the employer's legitimate rights, freedoms and interests is to compensate for damage caused by an employee to an employer. In general, it should be noted that during the years of independence of our country, especially over the past 20 years, domestic lawyers have developed a fairly extensive and substantial scientific and theoretical basis on the issues of compensation for damages in labour law. However, some of the conclusions and proposals formulated by the researchers have already lost their relevance, while others require further clarification and refinement.

Certain problematic issues related to compensation for damage caused by an employee to an employer were considered in their scientific works by I.A. Rymar, V.V. Haievyi, O.M. Korotka, Ye.Yu. Podorozhnii, V.D. Chernadchuk, O.Yu. Kostiuchenko, A.A. Abramova, V.V. Yakovlev, P.R. Stavyskyi, N.M. Khutorian, V.S. Venediktov, and many others. However, despite a considerable number of scientific achievements, the legal literature remains insufficiently developed on the issue of forms of compensation for damage caused by an employee to an employer.

As a result, the purpose of the article is to establish the scope and characterise the forms of compensation for damage caused by an employee to an employer.

**2. Legal forms of compensation for damage caused by an employee**

In a general sense, a form is best understood as the external expression of a certain content. The concept of form is actively used in many areas of public life. For example, D.N. Bakhrakh, B.V. Rosinskyi and Yu.N. Starilov in their scientific work concluded that the form of governance is an external expression of the content of gov-

ernance, the limits of specific managerial actions taken directly by state and local governments. According to scholars, a form of management is a certain part of the management activities of a body, its structural units and officials. Each form of management includes certain actions performed by specific actors that reveal in a specific way the content of management activities, the management influence itself (Bakhrakh, Rosinskyi, Starilov, 2007, p. 362).

Therefore, the forms of compensation for damage caused by an employee to an employer are an external expression of practical actions taken by the parties to the relevant legal relationship. In the context of the presented topic, it is advisable to divide the relevant forms into legal and non-legal ones. Thus, according to N.M. Pakhomenko, legal form is, first of all, a comprehensive legal category that mediates various social phenomena that shall be regulated by law, and also serves as a framework within law, streamlines and combines all legal phenomena and law as such. With regards to legal forms, law as a certain social phenomenon is meant that differs from others (politics, religion, morality), which, together with law, are determined by the material conditions of society, its economic conditions and serve as a means of reflection and consolidation. In other words, the concept of "legal form" is a general reflection of the objective relationship between law and the phenomena it affects. The analysis of legislation in force leads to the conclusion that the concepts of "form" and "legal form" are inconsistently used in the regulatory framework (Parkhomenko, 2006, p. 18). V.M. Horshenov and I.B. Shakhova's scientific perspective should be mentioned. Scholars have come to the conclusion that the legal form is a specific organisational form of activity of state bodies, officials and other authorised actors: a) performed in strict compliance with the requirements of the law and other regulations; b) results thereof always entail certain consequences of legal significance or related to their occurrence. The authors emphasise that these two points act in an organic unity and are the main defining properties, and in their totality qualify each organisational form of activity as a legal one (Gorshenev, Shahov, 1987, p. 37).

With regard to the legal forms of compensation for damage caused by an employee, first of all, it is necessary to mention the rulemaking form, which implies local rulemaking of the employer. A.O. Nechyporenko argues that rulemaking is a complex scientific category characterised by the following: the initial stage of the regulatory mechanism, an element of the legal system and legal culture of society, in the course of which needs and interests are transformed into mandatory, formally defined prescriptions and rules; a means of organising social management, but the rulemaking process is itself regulated by law and other social norms; purposeful activity that has a certain longitude and contains internal elements – phases of the process of conception of a legal provision and its entry into force, entailing changes in social life (Nechyporenko, 2015, p. 5).

O.V. Petryshyn proposes a rather substantial list of characteristics of rulemaking, in particular: 1) Rulemaking is a phase of lawmaking; during rulemaking, legal regulations should enshrine the provisions of law which are the result of summarising the most important recurrent social relations, and also a means of displacing harmful social practice; 2) Rulemaking is a legal form of public authority's activity along with law application, interpretation of law, control and supervision, and constituent activities; 3) The result of rulemaking activity is legal regulations, which formally enshrine the provisions of law; 4) Rulemaking is performed by authorised actors – bodies and carriers of public authority; 5) Rulemaking is performed according to a certain procedure regulated by law (Petryshyn, Pohrebniak, Smorodynskyi, 2014).

As noted above, in the context of the issues being studied, local rulemaking is under focus. According to V.I. Prokopenko, the latter is performed directly by the participants to labour relations who make these provisions and can influence their content. This enables employees to know the scope of their rights and duties defined by local provisions, and to adapt as much as possible to realise their interests and meet their needs. The author continues that local rulemaking require two conditions. First, the provisions are local and come into force only if they are adopted in accordance with the procedure previously regulated by centralised control. Secondly, local rulemaking is possible in the presence of a general provision that grants certain actors the right to engage in rulemaking (Prokopenko, 2002). The content and significance of local rulemaking is to optimally choose a variant of regulatory mechanism, the legislation that would best meet the interests and goals of the organisation (social collective) and its members. To do this, it is necessary to allow for the specifics of the activities of a particular organisation (social collective), favourable objective and subjective conditions for the adoption and application of a local legal regulation, as well as the choice of the optimal legal form for resolving an urgent issue (problem) (Formaniuk, 2012).

Therefore, local rulemaking, as a form of compensation for damage caused by an employee, is

an activity performed by an authorised entity (an employer or an authorised person) within the framework of legislation in force, which implies the development and adoption of local legal regulations, provisions thereof are aimed at regulating social relations arising in the process of compensation by an employee for damage caused by him/her to the employer. Therefore, the key task of rulemaking is to adopt a special local legal regulation. According to M.I. Inshyn, local regulations are a type of legal regulations adopted by the employer, as a rule, in a conciliation and contractual manner with the collective of employees (trade union) in order to regulate labour relations in accordance with and within the framework of labour legislation. According to the author, the characteristic features of local regulations are as follows: a) They are adopted in accordance with the Labour Code and other acts of labour legislation of Ukraine; b) They are the result of local rulemaking by the employer and the collective of employees, their authorised bodies (officials); c) They contain local labour law provisions; d) They are usually of a negotiated and contractual nature; e) They cannot worsen the legal status of employees compared to labour law and social partnership acts; e) They serve as a legal basis for concluding labour contracts; f) They have a local scope (apply to the employer and the collective of employees); g) They are usually fixed-term; h) They should be accessible to all employees (posted in prominent places) (Inshyn, Kostiuk, Melnyk, 2016).

Thus, local regulations are regulations issued in accordance with the procedure established by law and aimed at regulating social relations arising in the process of compensation for damage caused by an employee to an employer. According to the Labour Code in force, the key regulations issued by the employer are orders and instructions.

**3. Management regulations**

In general, according to S.F. Denysiuk, an order is a type of managerial act that organises the work of each law enforcement body. Orders can contain individual prescriptions (of one-time – individual orders), as well as provide for rules designed for long-term and repeated use (regulatory orders) (Denysiuk, 2010). M.O. Bosenko identifies the most significant features of an order as follows: a) An order is a legal regulation, i.e. one that is governed by the Constitution of Ukraine and based on the legislation of Ukraine in force; the provisions specified in the text of the order shall not contradict the provisions of the Constitution of Ukraine and other official acts, such as the Laws of Ukraine; b) An order is an authoritative act that is binding on subordinates, i.e. no contradictions are allowed when the addressee executes the order; c) An order is issued by authorised public authorities; such authorities include heads of legislative, executive, judicial authorities, as well as heads of local self-government bodies; d) An order is may be in written, oral or conclusive form; e) It is adopted for the purpose of solving normatively defined tasks and functions of the state authorities of Ukraine; i) An order shall be prepared and issued in accordance with certain rules of legal technique; j) During execution, an order may be enforced by persuasion, state coercion; g) Orders may be issued individually or collectively by specially authorised public authorities; in general, the issuance of orders is characterised by exclusive sole authority, but in the case of a joint act, i.e. when several bodies are involved in the process of issuing an order (Bosenko, 2011, pp. 32-33).

As for the instruction, P.M. Baltadzhi states it is an individual act, a written or oral task of limited duration, which determines the content, place and time of execution, security measures (if any), as well as the list of performers. In order to summarise the understanding of the nature of instruction, this type of regulation is presented as an individual law application act adopted to address operational issues (Baltadzhy, 2008, pp. 134-135).

Therefore, the significance of the rulemaking form of compensation for damage caused by an employee to an employer is that it enables to ensure the normal process of implementation of the relevant legal relations, as well as to facilitate an enabling environment for protecting the rights of the parties to these relations.

The next form that should be mentioned within the framework of the topic being studied is law enforcement. According to Yu.L. Vlasov, law enforcement is a procedural and organisational activity of competent state bodies and officials aimed at resolving specific cases by issuing individual legal prescriptions, i.e., making an authoritative decision in a particular case on the basis of the law. The main social purpose of the application of legal provisions is to facilitate an enabling environment for and ensure the implementation of other forms of applying legal provisions. In many cases, the actual implementation of legal provisions in legal reality, conscious and volitional actions of people depend on the quality and efficiency of the application of legal provisions (Vlasov, 2005, p. 25). The result of law enforcement is the end result of lawful conduct of actors, which is characterised as socially valuable effects of the regulatory mechanism (Makarenko, 2004).

Closely related to the above form is the law application form. In general, following O.F. Skakun, law application is a proce-

dural and organisational activity of competent state bodies and officials, performed in a procedural manner, and implies individualisation of legal provisions in relation to specific actors and specific life cases in the act of applying the law (Skakun, 2000). A.M. Perepeliuk argues that law application as a special form of implementation of law, which finds its expression in the managerial activities performed by state bodies, officials and other specially authorised (competent) persons, the content thereof is to make individually specific decisions on the basis of and in pursuance of legal provisions (Perepeliuk, 2016).

The essential features of law enforcement are as follows: 1) In cases provided for by law, it is a necessary organisational prerequisite for the implementation of legal provisions, as a result of which its social purpose is to organise certain social relations; 2) It is the activity of only state bodies and state-authorised actors, as it shall be of a state power nature 3) It becomes legally significant primarily because the relations that arise, change or terminate as a result of such activities are in the form of mutual legal rights and duties of certain actors; 4) Such relations and ties are established by making individual formal binding decisions (on the basis of legal provisions and in accordance with specific life situations); 5) It shall be only on the basis and in accordance with the procedure provided for by law; 6) It is a process regulated by special provisions and consisting of successive stages; 7) It shall meet certain general requirements that ensure legality, fairness and efficiency; 8) Intellectual and legal results of law application, i.e. relevant decisions, are recorded, manifested externally in the established form – in acts of law application (Kelman, Murashyn, 2006).

**4. Conclusions**

Therefore, in the context of the issues being studied, forms are a range of practical actions performed by an employee and an employer within the framework of social relations on compensation for damage caused by an employee. It should be noted that the list of forms of compensation for damage caused by an employee to an employer is not exhaustive, and therefore an important task of the legislator and domestic scholars is to work towards expanding and improving the content of the relevant forms.

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## ФОРМИ ВІДШКОДУВАННЯ ШКОДИ, ЗАВДАНОЇ ПРАЦІВНИКОМ РОБОТОДАВЦЮ

**Анотація.** ***Мета.*** Мета статті – встановити коло та охарактеризувати форми відшкодування шкоди, завданої працівником роботодавцю. ***Результати.*** У статті, спираючись на аналіз наукових поглядів учених та норм чинного законодавства, виокремлено та охарактеризовано ключові форми відшкодування шкоди, завданої працівником роботодавцю. Акцентовано увагу на тому, що важливим завданням законодавця та вітчизняних науковців є проведення роботи у напрямі розширення та вдосконалення змісту форм відшкодування шкоди, завданої працівником роботодавцю. З'ясовано, що локальна нормотворчість як форма відшкодування шкоди, завданої працівником, являє собою здійснювану в межах чинного законодавства уповноваженим суб'єктом (роботодавцем або уповноваженою ним особою) діяльність, яка полягає у розробці та прийнятті локальних нормативно-правових актів, норми яких спрямовані на регулювання суспільних відносин, що виникають у процесі відшкодування працівником завданої ним шкоди роботодавцю. Тож, ключовим завданням нормотворчості є прийняття спеціального локального нормативно-правового акта. Зміст і значення локальної нормотворчості полягають у тому, щоб в ідеалі вибрати такий варіант правового регулювання, юридичної регламентації, який би найбільш повною мірою відповідав інтересам і цілям діяльності такої організації (соціального колективу) та її (його) членів. Для цього необхідно враховувати специфіку діяльності тієї чи іншої організації (соціального колективу), сприятливі об'єктивні і суб'єктивні умови для прийняття і застосування локального правового акта, а також вибір оптимальної правової форми вирішення нагального питання (проблеми). ***Висновки.*** Зроблено висновок, що форми являють собою сукупність практичних дій, які вчиняються працівником та роботодавцем у рамках реалізації суспільних відносин із відшкодування шкоди, завданої працівником. Варто відзначити, що перелік форм відшкодування шкоди, завданої працівником роботодавцю, не є вичерпним, а тому важливим завданням законодавця та вітчизняних науковців є проведення роботи у напрямі розширення та вдосконалення змісту відповідних форм.

**Ключові слова:** форми, відшкодування шкоди, працівник, роботодавець, нормотворчість.

*The article was submitted 19.07.2022*
*The article was revised 09.08.2022*
*The article was accepted 30.08.2022*