

Translation. Only the Danish version has legal validity

Order no. 356 of 27 April 2011 issued by the National Labour Market Authority

Order on the calculation of the benefit rate for employees

Pursuant to section 51 a, section 74 b(4), section 74 1(8) and section 95 of the act on unemployment insurance, etc. (*lov om arbejdsløshedsforsikring m.v.*), cf. consolidated act no. 574 of 27 May 2010, as amended by act no. 1540 of 21 December 2010, and following negotiations with the Employment Council, the following provisions are laid down:

Chapter 1 *Concepts, etc.*

Section 1. The date of calculation shall be the date on which the unemployment fund shall calculate the rate of a member when the member requests benefits. Reference is made to section 19.

Subsection 2. The calculation period shall be the period forming the basis of the calculation of a rate. Reference is made to sections 4-6.

Subsection 3. The calculation basis shall be the income during the calculation period. Reference is made to sections 3, 7 and 8.

Subsection 4. Wage hours shall mean hours for which wages have been paid in ordinary employment which is in accordance with the collective agreements in force or otherwise carried out in accordance with general wage and working conditions, cf. the order on the employment requirements of employees and the benefit period.

Section 2. A member entitled to benefits may receive benefits at a rate calculated on the basis of the previous income during the calculation period (calculated rate), cf. chapters 2 and 3.

Subsection 2. A member may be entitled to benefits at a fixed rate, cf. chapter 4.

Chapter 2 *Calculation basis*

Section 3. The calculation shall be made on the basis of the earnings and the number of wage hours reported pursuant to section 3 of the act on an income register (*lov om et indkomstregister*) unless this order stipulates otherwise.

Subsection 2. A position as a mayor, alderman, committee chairman, member of parliament, member of the government or the European Parliament entitling the holder to be admitted to an unemployment fund shall be considered equal to work. Taxable amounts received by a member for holding such a position shall be included in the calculation basis.

Subsection 3. Employment that cannot be considered self-employment, cf. the order on the performance of self-employment and for which no information has been reported about income and wage hours to the income register, cf. section 3 of the act on an income register (*lov om et indkomstregister*), shall be included in the calculation basis.

Subsection 4. Only earnings and wage hours during a membership period may be included in the calculation basis. Earnings and wage hours during a reporting period partly within a membership period may be included in relation to the number of calendar days in the month.

Subsection 5. For members admitted pursuant to section 41(1)(iii)(b), work after the completion of the training programme and before the date of admission to the unemployment fund may, however, be included in the calculation basis.

Calculation period

Section 4. The calculation period shall include the latest uninterrupted reporting periods prior to the unemployment, covering 3 months in case of monthly reportings and 12 weeks in case of weekly or bi-weekly reportings, cf. section 3.

Subsection 2. For a full-time insured member, during the calculation period pursuant to subsection 1 at least 320 wage hours shall be reported in case of monthly reportings and at least 296 wage hours in case of weekly or biweekly reportings. For a part-time insured member, during the calculation period pursuant to subsection 1 at least 195 wage hours shall be reported in case of monthly reportings and at least 180 wage hours in case of weekly or biweekly reportings.

Subsection 3. For members who, during the reporting periods prior to the unemployment, cf. subsection 1, have had reported wages both on a monthly and on a weekly or biweekly basis, the latest wage reporting during the calculation period shall be used as the point of departure when calculating the number of wage hours, cf. subsection 2 and subsection 5.

Subsection 4. If the income and wage hours are not to be reported, cf. section 3(2) and (3), section 8 and section 24, the period and the number of wage hours, cf. subsections 1 and 2, shall be calculated from the latest payment.

Section 5. If a member's working hours are not verifiable according to the provisions of the order on the calculation of the employment requirements of employees and the benefit period, the number of wage hours shall be found by converting the income into hours.

Section 6. A member may choose whether a period is to be used as a calculation period pursuant to section 4 if the member has during the period:

- 1) received benefits from the unemployment fund, cf. however subsection 2;
- 2) been self-employed as his or her main employment;
- 3) taken part in training programmes entitling him or her to receive state education grants;
- 4) been covered by an industrial conflict;
- 5) done military service or been employed on terms similar to those of a national serviceman; or
- 6) carried out work with public wage subsidies pursuant to the act on active employment activities (*lov om en aktiv beskæftigelsesindsats*), which the job centre shall report to the unemployment fund, except work in service jobs pursuant to the act on service jobs (*lov om servicejob*) applicable before 1 April 2002.

Subsection 2. A period shall be used as a calculation period though during the period:

- 1) there are days on which a member has been unemployed due to company closure because of holidays;
- 2) there are days on which holiday benefits have been paid;

- 3) there are days when a member has taken part in courses with educational grants or VEU allowance (special allowance in connection with participation in vocationally oriented adult education and continuing training); or
- 4) there are days when the member has been enrolled with the job centre without having received benefits from the unemployment fund.

Subsection 3. If, during the period, there is absence as mentioned in section 12 outside an employment, a member may choose that the period shall not form the basis of a calculation.

Income to be included in calculations

Section 7. When making the calculation, all taxable wage shares reported during the calculation period shall be included, cf. however subsection 3 and section 8.

Subsection 2. If a member has, during the calculation period, had free board, lodging, car, multimedia, etc. in an employment, the value determined by the tax authorities shall be included in the calculation.

Subsection 3. Irrespective of the provision of subsection 1, the employee's contributions to pension schemes covered by part I of the act on the taxation of pension schemes, etc. (*lov om beskatningen af pensionsordninger mv.*) and contributions to the Danish Labour Market Supplementary Pension (ATP) shall be included in the calculation. This also applies to amounts that a pension company or pension institute has paid to a member's group life insurance on an ongoing basis.

Section 8. A member who has been exempted from tax liability during his or her employment by an international organisation or at a foreign diplomatic or consular representation shall, irrespective of section 7(1), include the earnings in the calculation.

Chapter 3 *Calculation procedure*

Section 9. When calculating a rate, the calculation basis as mentioned in chapter 2 shall be taken as the basis.

Subsection 2. If there is any documented absence during the calculation period, this shall be included in the calculation basis, cf. section 12.

Subsection 3. The income during the calculation period shall be reduced by the social security contribution pursuant to the act on social security contributions (*lov om arbejdsmarkedsbidrag*) by the percentage applicable on the date of calculation.

Section 10. Benefits may, as a maximum, constitute an amount corresponding to 90 per cent of the member's calculation basis and may not exceed the greatest amount of the benefits pursuant to section 47 or 70 of the act.

Subsection 2. Daily earnings shall constitute 1/65 of the income during the calculation period. In case of weekly or biweekly reportings, daily earnings shall, however, constitute 1/60 of the income during the calculation period.

Subsection 3. Where calculations shall be made on income that has not been reported to the income register, cf. section 4(4) of the order, daily earnings shall constitute 1/65 of the income during the calculation period.

Subsection 4. For members who have had both monthly reportings and weekly or biweekly reportings during the calculation period, the latest wage reporting during the calculation period shall be used as the basis when choosing the divider, cf. subsection 2.

Section 11. When calculating the earnings for a member serving on a ship registered in the Danish International Ship Register (DIS), the monthly DIS wage shall be adjusted. The adjustment shall be made on the basis of the monthly earnings and the guaranteed tax exemption, excluding compensatory adjustment, ATP and contributions to pension schemes covered by part I of the act on the taxation of pension schemes, etc. (*lov om beskatningen af pensionsordninger mv.*). The adjustment shall be made every year as of 1 January.

Subsection 2. In case of service of less than 30 days' duration, the wages shall be adjusted proportionally.

Subsection 3. After having made the conversion pursuant to subsection 1, the member's contribution to ATP and contributions to pension schemes covered by part I of the act on the taxation of pension schemes, etc. (*lov om beskatningen af pensionsordninger mv.*) shall be added to the calculated income.

Subsection 4. The Director of the National Labour Market Authority shall determine the scales and conversion factors on the basis of:

- 1) the state tax and the health contribution, cf. section 5 of the income tax act (*personskattelov*);
- 2) the country average of the local and church tax;
- 3) the personal allowance, cf. section 10 of the income tax act (*personskattelov*); and
- 4) the seaman's tax deduction, cf. section 3 of the act on the taxation of seafarers (*lov om beskatning af søfarende*).

Subsection 5. The Director of the National Labour Market Authority shall every year determine scales and conversion factors when calculating the annual DIS wage for calculating unemployment benefits, cf. annex 1.

Documented absence

Section 12. If there is documented absence without full wages in an employment, the income shall be increased in the calculation period by an amount corresponding to the member's average wage earnings multiplied by the number of documented hours of absence, cf. subsections 2 and 3.

Subsection 2. If there is documented absence in an employment where the employment is, in respect of time, arranged so that it is possible to determine for how many hours a member could have been employed on the day(s) of absence, this number of hours shall be included as documented absence in a calculation.

Subsection 3. If it is not possible to determine for how many hours a member could have worked on days with documented absence, the absence per day shall be included by 7.4 hours for full-time insured and by 6 hours for part-time insured.

Subsection 4. Documented absence includes:

- 1) Public holidays.
- 2) Sickness days and days on which a member has been on maternity leave.

- 3) Holidays provided for by collective agreement, including extra holidays and special holidays.
- 4) One's own earned holiday with holiday allowance and holiday with holiday pay.
- 5) Days on which a member has taken part in a course with VEU allowance.
- 6) Days on which a member has been compensated for loss of earnings pursuant to section 42 and section 119 of the act on social service (*lov om social service*) and section 19 of the act on benefits in connection with sickness and birth (*lov om dagpenge ved sygdom og fødsel*).
- 7) Days on which state educational support for adults has been paid pursuant to the act on the state educational support for adults (SVU support) (*lov om statens voksenuddannelsesstøtte*).
- 8) Days on which a member has participated in a course with educational grants.
- 9) Days on which a member performs a civic duty.
- 10) Days on which a member is compensated for loss of earnings due to absence.
- 11) Idle days in connection with company closure due to holiday.
- 12) Days on which a member has come up before the medical board or has been recalled for military service.

Chapter 4

Fixed benefit rates

82 per cent benefit rate

Section 13. A member who has been full-time insured in the last three years before the unemployment may be paid benefits at a fixed amount constituting 82 per cent of the highest benefit pursuant to section 47 of the act if the member during the entire three-year period:

- 1) has been fully employed and has had reported a number of wage hours, cf. section 3(1), corresponding in average to at least 30 unsupported wage hours per week; or
- 2) has had periods as a full-time employee during which the person in question has had reported a number of wage hours corresponding in average to at least 30 unsupported wage hours per week or has performed unsupported self-employment to a considerable extent, cf. however subsections 3 and 4, for an uninterrupted period of at least 13 weeks.

Subsection 2. A member does not meet the requirement of subsection 1 if payments have been made from the unemployment fund outside a period with self-employment to a considerable extent during the three-year period. Excepted shall be the following:

- 1) Holiday pay.
- 2) Benefits on unemployed days from employee work in connection with company closure due to holiday.
- 3) Benefits for up to a week in connection with unemployment between two employments or after the expiry of self-employment.
- 4) Periods of up to four weeks with:
 - a) VEU allowance; or
 - b) SVU support.

Subsection 3. A member shall not be considered as having been fully employed if the member has received public assistance pursuant to other legislation outside an employment period during the three-year period.

Subsection 4. Absence of no more than 26 weeks within the last three years due to illness, maternity leave or education during a period of self-employment shall not hinder the receipt of benefits pursuant to subsection 1. A member who has once during the last three years met the condition for being entitled to the rate pursuant to subsection 1 shall keep this right irrespective of absence due to maternity leave.

Section 14. A member shall receive benefits as a fixed amount constituting 82 per cent of the highest benefit rate pursuant to section 47 or 70 of the act if there has not, during the last five years prior to the date of the request for benefits, either:

- 1) been a period meeting the conditions of sections 3-6; or
- 2) been paid benefits at a previously calculated rate.

Subsection 2. When assessing whether the conditions of subsection 1(i) and (ii) are met, the unemployment fund may not go further back than to the start of the latest membership period.

Section 15. A member admitted to an unemployment fund on the basis of vocational training, cf. section 41(1)(iii)(b) of the act, shall receive benefits as a fixed amount constituting 82 per cent of the highest benefit rate pursuant to section 47 or 70 of the act. The same shall apply to a member who has otherwise become entitled to benefits with the rights of a graduate on the basis of vocational training.

Section 16. A member admitted to an unemployment fund during military service or during employment on terms similar to those of a national serviceman may receive benefits as a fixed amount constituting 82 per cent of the highest benefit rate pursuant to section 47 or 70 of the act.

Subsection 2. A member admitted as a member of an unemployment fund before military service or employment on terms similar to those of a national serviceman may receive benefits at a calculated rate. The rate shall be calculated on the basis of employment meeting the conditions of sections 3-6 before or after the period of military service or of employment on terms similar to those of a national serviceman. However, the member shall receive at least a fixed amount constituting 82 per cent of the highest benefit rate pursuant to section 47 or 70 of the act.

Subsection 3. For a conscript officer who, upon his or her discharge, is unemployed and who has a period meeting the conditions of sections 3-6, the calculation shall be made on the basis of the wage received as a conscript officer, irrespective of admission to the unemployment fund before or during the military service.

100 per cent benefit rate

Section 17. A member who has for more than two years received assistance for taking care of a handicapped or seriously ill child pursuant to the act on social service (*lov om social service*) may receive benefits as a fixed amount constituting 100 per cent of the highest benefit rate pursuant to section 47 or 70 of the act.

Section 18. A member who has been a relief worker during the calculation period may receive benefits as a fixed amount constituting 100 per cent of the highest benefit rate pursuant to section 47 or 70 of the

act. It shall be a condition that the member has been sent out in connection with voluntary programmes to which assistance is given pursuant to the act on international development work (*lov om internationalt udviklingsarbejde*) or private voluntary programmes carried out for humanitarian organisations approved under section 12(3) of the tax assessment act (*ligningsloven*).

Chapter 5 *Date of the calculation*

Section 19. Calculations shall be made when:

- 1) a member requests benefits;
- 2) the member meets the conditions for receiving benefits; and
- 3) there is a calculation period meeting the conditions of sections 3-6.

Subsection 2. If a member has previously received benefits at a calculated rate, it shall be a condition for having a new rate calculated that the period in subsection 1(iii) has been terminated at least one year after the end of the last day in the latest period that has formed the basis of a calculation, cf. however section 20.

Subsection 3. A member who has received benefits pursuant to section 13 or section 14 shall have a rate calculated when six months have passed since the commencement of the right to receive benefits and the member has terminated an employment meeting the conditions of sections 3-6.

Subsection 4. A member who has received benefits as 82 per cent of the highest benefit rate, cf. section 47 of the act, on the basis of self-employment to a considerable extent, cf. the order on the procedure when calculation the earnings of self-employed persons, shall have a rate calculated when six months have passed since the commencement of the right to receive benefits and the member has terminated an employment meeting the conditions of sections 3-6.

Subsection 5. A member who has received benefits pursuant to section 15 shall have a rate calculated when six months have passed since the commencement of the right to receive benefits and the member has terminated an employment meeting the conditions of sections 3-6 after the completion of the training programme.

Subsection 6. A member who has become entitled to receive benefits pursuant to section 16(1) shall have a rate calculated when six months have passed since the commencement of the right to receive benefits and the member has terminated an employment meeting the conditions of sections 3-6 after the commencement of the right to receive benefits.

Subsection 7. Where work that may form the basis of a calculation pursuant to subsections 3-6 lies within the six-month periods in the provisions mentioned, the payment of benefits at the calculated rate shall not become effective until from the first Monday after the commencement of the right to receive benefits at a calculated rate.

Section 20. For a member who has previously received benefits at a calculated rate, calculations shall be made irrespective of section 19(2) if the member:

- 1) becomes part-time or full-time insured or the other way round; and
- 2) in that connection has had an employment period meeting the conditions of sections 3-6.

Subsection 2. A member's insurance category on the date of calculation shall be decisive for the number of many wage hours to be required to meet the requirement of section 4.

Section 21. For a member starting to receive early retirement benefits or who is to be issued with an early retirement certificate, calculations shall be made if there is a period prior to this meeting the conditions of sections 3-6.

Subsection 2. A member issued with an early retirement certificate shall, when starting to receive early retirement benefits, be entitled to choose the calculation basis that the member had on the date when the early retirement certificate became effective.

Chapter 6

Calculation for a member who has been working abroad

EEA

Section 22. A member who has not been insured in a Danish unemployment fund during the last five years before the arrival in Denmark and who meets the conditions for being entitled to receive benefits, cf. the order on unemployment insurance in case of work, etc. within the EEA and other foreign countries, shall have a rate calculated on the basis of the last work in Denmark meeting the conditions of sections 3-6.

Subsection 2. A member who has been insured in a Danish unemployment fund during the last five years before the arrival in Denmark and who has, subsequently, been insured against unemployment in another EEA country or in Switzerland shall have a rate calculated on the basis of the work in Denmark, cf. sections 3-6, if the member immediately resumes the right to receive benefits after work in another EEA country, cf. the order on unemployment insurance in case of work, etc. within the EEA and other foreign countries.

Subsection 3. A member entitled to receive benefits not meeting the conditions for a calculation pursuant to sections 3-6 may, cf. section 14, receive benefits at a fixed rate of 82 per cent of the highest benefit rate, cf. sections 47 and 70 of the act.

Subsection 4. For a totally unemployed frontier worker domiciled in Denmark, calculations shall be made on the basis of the earnings in the country of employment prior to the member becoming unemployed.

The Faroe Islands and other foreign countries

Section 23. For a member entitled to transfer qualification periods from the Faroe Islands and entitled to receive benefits, calculations shall be made on the basis of the last work meeting the conditions of sections 3-6.

Subsection 2. The conditions of subsection 1 may be met through work in Denmark, through work in both Denmark and the Faroe Islands or through work only in the Faroe Islands. However, they cannot be met through work in Denmark prior to the stay in the Faroe Islands, cf. however subsection 4 and section 24.

Subsection 3. If the conditions of subsections 1 and 2 are not met, benefits shall be paid at a fixed rate of 82 per cent of the highest benefit rate, cf. section 47 or 70 of the act.

Subsection 4. A member who has either prior to work in the Faroe Islands been a member of a Danish unemployment fund or who has during work in the Faroe Islands maintained his or her membership of a Danish unemployment fund may choose to be covered by section 24.

Section 24. A member may choose that calculations shall be made on the basis of income from work abroad if:

- 1) the member is unemployed after work in Greenland or abroad except for EEA countries; and
- 2) the member has maintained his or her membership of a Danish unemployment fund during work abroad.

Subsection 2. If a member chooses that the income earned abroad shall be used when calculating a rate, the rate of exchange on the date of calculation shall be used.

Chapter 7

Entry into force, etc.

Section 25. This order shall enter into force on 1 May 2011¹ and shall apply when determining calculation periods from 1 January 2008.

Subsection 2. Where there is no calculation period during the period, cf. subsection 1, and the person concerned as a consequence of the five-year rule in section 14 can include income and employment from before 1 January 2008, this calculation shall be made according to the provisions previously in force.

Subsection 3. When calculating income and employment pursuant to subsection 2, income and employment may be included only once according to a calculation on the basis of reportings to the income register or according to the provisions previously in force, respectively.

Subsection 4. When deciding whether the working hours during periods prior to the entry into force of the order are not verifiable, the provisions applicable prior to 1 May 2011 stipulated in section 3 of order no. 566 of 19 June 2008 on supplementary benefits shall apply.

Subsection 5. Order no. 1032 of 22 October 2004 on the calculation of the benefit rate for employees shall be repealed. References to regulation (EEA) no. 1408/71 shall remain in force and the application of this regulation shall remain in relation to each individual EEA country and Switzerland for as long as each individual EEA country or Switzerland has not acceded to regulation (EC) o. 883/04.

Subsection 6. Section 17 shall apply to members who have, on 1 August 2008 or later, received assistance for taking care of a handicapped or seriously ill child pursuant to section 42 of the act on social service (*lov om social service*).

National Labour Market Authority, 27 April 2011

Marie Hansen / Vibeke Dalbro

¹ Guidelines will be made for this order.

The scales and factors for 2011 can be determined as follows:

1. Conversion outside restricted trade – with a seaman’s tax deduction

Scales and conversion factors when calculating the benefit rate of members

- 1) covered by DIS (Danish International Ship Register) collective agreements; and
- 2) serving outside restricted trade and, consequently, having a seaman’s tax deduction, cf. section 3 of act no. 386 of 27 May 2005 on the taxation of seafarers (*lov om beskatning af søfolk*)

shall be as follows:

Annual gross income:

- 1) DKK 0-99,800
- 2) DKK 99,801-389,900
- 3) DKK 389,901 –

corresponding to:

Annual net income:

- 1) DKK 0-99,800, which is converted by factor 1.00
- 2) DKK 99,801-280,973, which is converted by factor 1.60
- 3) DKK 280,974 – , which is converted by factor 2.10

Adjustment of monthly (net) wage shall be made according to the following scales:

- 1) Monthly income between DKK 0-8,317 shall be converted by factor 1.00
- 2) Monthly income between DKK 8,318-23,414 shall be converted by factor 1.60
- 3) Monthly income above DKK 23,414 shall be converted by factor 2.10

2. Conversion in restricted trade – without a seaman’s tax deduction

Scales and conversion factors when calculating the benefit rate of members

- 1) covered by DIS (Danish International Ship Register) collective agreements; and
- 2) serving in restricted trade and, consequently, not having a seaman’s tax deduction, cf. section 3 of act no. 386 of 27 May 2005 on the taxation of seafarers (*lov om beskatning af søfolk*)

shall be as follows:

Annual gross income:

- 1) DKK 0-42,900
- 2) DKK 42,901-389,900
- 3) DKK 389,901 –

corresponding to:

Annual net income:

- 1) DKK 0-42,900, which is converted by factor 1.00
- 2) DKK 42,901-259,608, which is converted by factor 1.60
- 3) DKK 259,609 – , which is converted by factor 2.10.

Adjustment of monthly (net) wage shall be made according to the following scales:

- 1) Monthly income between DKK 0-3,575 shall be converted by factor 1.00
- 2) Monthly income between DKK 3,576-21,634 shall be converted by factor 1.60
- 3) Monthly income above DKK 21,634 shall be converted by factor 2.10