

## **Guidance concerning contribution on industrial injury insurance to the Danish Guarantee Fund**

The guide has been prepared with the purpose of advising the companies when handling the payment of contributions to the Danish Guarantee Fund for Non-life Insurers. The guide (and the executive order) does not concern the relations between the insurance company and the policyholder nor the relations between the insurance company and competitors. The guide is an expression of the Danish Guarantee Fund's interpretation of the executive order – it is not approved by the Danish Financial Supervisory Authority (Danish FSA).

The Danish Financial Supervisory Authority has pursuant to section 3(9) in The Guarantee Fund for Non-life Insurers consolidated Act issued an Executive Order on contributions to the Guarantee Fund for Non-Life Insurers (no. 1111 of 1 June 2021).

The Executive Order applies to

- 1) Direct non-life insurers authorized by the Danish FSA to conduct insurance business.
- 2) Branches in Denmark of direct non-life insurers domiciled in another Member State of the European Union or in a country with which the European Union has concluded an agreement for the financial area.
- 3) Direct non-life insurers domiciled in another Member State of the European Union or in a country with which the European Union has concluded an agreement for the financial area and which were registered to conduct insurance business in Denmark through cross-border insurance business activities.

Pursuant to section 5 of the Executive Order, industrial injury insurance companies must pay an amount to the Danish Guarantee Fund per insured

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covered by an industrial injury insurance. The obligation to contribute extends to both the insureds who are employed full-time and part-time by the policyholder who has taken out the industrial injury insurance.

A full-time insured under an industrial injury insurance is employed by the policyholder for a minimum of 1,665 hours per year.

For insureds under industrial injury insurances who are employed by the policyholder for less than 1,665 hours per year the hours of work must be converted to full-time as the proportion of hours out of 1,665 hours.

The industrial injury insurance companies must pay in advance to the Danish Guarantee Fund on the basis of the policyholders estimated number of covered employees under industrial injury insurances that are taken out or renewed in the quarter.

#### What is included in the obligation to pay?

All industrial injury insurance policies are covered by the obligation to pay.

There will be an obligation to pay in all cases concerning compulsory industrial injury insurance policies including e.g. private household help for more than 400 hours per year. In addition, there is an obligation to pay concerning voluntary industrial insurance policies cf. section 48(2) in the Act on protection against the consequences of industrial injuries.

Concerning employees with a zero-hours contract etc. there will only be an obligation to pay to the extent that industrial injury insurance policies are taken out. Contributions are only to be paid if there are employees.

#### How is the number of full-time employees quantified?

The number of covered employees under an industrial injury insurance policy must be converted into full-time employees and reported to the Danish Guarantee Fund. The number of full-time employees is reported to the Danish Guarantee Fund as one single figure without decimal points.

A person who in a year only is insured full-time for 6 months is counted as 0.5 full-time insured.

At the time the insurance is taken out the insurance company must report the number of the (estimated) covered employees under the policy to the Danish Guarantee Fund. When the policy the following year is renewed and the insurance company knows the exact number of covered employees under the policy, the insurance company can adjust the number of covered employees in the subsequent report to the Danish Guarantee Fund. The contribution will then in time reflect the premium payment to the insurance company.

Example of calculation:

Policyholder 1 – in total 7.6 employees divided accordingly:  
1.2 office worker – 5.2 carpenter – 1.2 general worker

Policyholder 2 – in total 7.6 employees divided accordingly:  
7.6 office

Policyholder 3 - in total 0.2 employees divided accordingly:  
0.1 office – 0.1 consultant

The insurance company has in total renewed  $7.6 + 7.6 + 0.2 = 15.4$  employees.

A total of 15 full time covered employees are reported to the Danish Guarantee Fund and payment of contributions to the Danish Guarantee Fund will amount to  $15 \times \text{DKK } 30 = \text{DKK } 450$ .

In relation to the Danish Guarantee Fund the payment constitutes DKK 30 per full time covered employee (1665 hours) regardless of what time of the year the agreement is concluded and how many agreements are concluded.

Example:

Insurance is taken out on January 1st, 2022 covering estimated 12 full time employees and the payment constitutes  $12 \times \text{DKK } 30 = \text{DKK } 360$  to the Danish Guarantee Fund to be paid May 1st, 2022.

On July 1st, 2022 the policyholder calls and asks to expand the insurance to 15 full time employees on the same policy.

The company reports and pays an additional  $3 \times \text{DKK } 30 = \text{DKK } 90$  on November 1st, 2022 to the Danish Guarantee Fund.

When to report and pay to the Danish Guarantee Fund?

The number of covered employees in accordance with the new or renewed policies in the first quarter (January 1st to March 31st) is reported to the Danish Guarantee in the period from April 1st to April 30th and is paid to the Danish Guarantee Fund no later than May 1st.

The number of covered employees in accordance with the new or renewed policies in the second quarter (April 1st to June 30th) is reported to the Danish Guarantee Fund in the period from July 1st to July 31st and is paid to the Danish Guarantee Fund no later than August 1st.

The number of covered employees in accordance with the new or renewed policies in the third quarter (July 1st to September 30th) is reported to the Danish Guarantee Fund in the period from October 1st to October 31st and is paid to the Danish Guarantee Fund no later than November 1st.

The number of covered employees in accordance with the new or renewed policies in the fourth quarter (October 1st to December 31st) is reported to the Danish Guarantee Fund in the period from January 1st to January 31st and is paid to the Danish Guarantee Fund no later than February 1st.

Can the companies collect the contribution separately in March 2022, if it is not included in the collection in January 2022?

Yes – the contribution to the Guarantee Fund must be collected in the quarter where the policy is taken out or renewed. The reporting and payment to the Guarantee Fund is made in the following month.

Does the Insurance Contracts Act, sections 12-17, which ia concerns the legal effect of non-payment of premiums also apply to a separate claim of the contribution to the guarantee fund (ie not at the same time as the premium claim)?

The law firm DLA Piper has assessed the issue for the Guarantee Fund and concluded that the term premium in the Insurance Contracts Act sections 12-17 (compared with sections 5-6 of the Executive Order on contributions) also includes the contribution to the Guarantee Fund, if an insurance company (legally) and on a contractual law basis chooses to collect this from the policyholder, cf. the Executive Order on contribution section 6 (5).

Can the companies collect the contribution retroactively meaning e.g., no contribution is collected in 2022 but instead a double contribution is collected in 2023?

No.

A new contract/agreement/policy entails a contribution to the Danish Guarantee Fund

Where a policy is modified and that causes the policy to be perceived as a new agreement/contract, the policy will be considered as a newly drawn policy and therefore subject to contribution to the Danish Guarantee Fund.

Policies with monthly payment?

The reporting of the number of covered employees and the payment corresponding to the number of covered employees to the Danish Guarantee Fund must be done concerning the quarter in which the policy was taken out or

renewed. If the number of covered employees is regulated more often than once per year the insurance company can choose to report the estimated number on a specific date in the quarter and quantify the actual number of covered employees on the same date the following year. The Danish Guarantee Fund is only interested in the correct payment and therefore it does not interfere in how the policyholder collects the contributions.

#### How is reports and payments re-adjusted?

When a policy expires the following year, the contribution paid to the Danish Guarantee Fund is re-adjusted based on the quantified number of covered employees. If you in the first quarter year 0 have reported (estimated) 1000 covered employees and paid a contribution based on this number, the number of covered employees is re-adjusted in the first quarter year 1 in either an upward or downward direction based on the quantified number of covered employees.

It is only a requirement to re-adjust to the extent the company itself re-adjusts towards the policyholder.

A re-adjustment can only happen on the basis of fewer employees than estimated once a year – in connection with the auditor's annual review (annual statement).

#### Refund when a policy expires ordinarily?

When a policy expires ordinarily the reporting and contribution can be re-adjusted, cf. above under re-adjustment.

#### Example:

An insurance is collected on the renewal date on January 1st, 2022 regarding 12 x DKK 30 = DKK 360 paid to the Danish Guarantee Fund on May 1st, 2022.

On December 1st, 2022 the insurance is terminated by another insurance company with an expiration date on January 1st, 2023.

The "old" company does not pay the contribution to the Danish Guarantee Fund regarding 2023, the new insurance company pays the contributions regarding 2023.

#### Example:

An insurance is collected on the renewal date on January 1st, 2022 regarding 12 x DKK 30 = DKK 360 paid to the Guarantee Fund on May 1st, 2022.

On February 1st, 2023 the insurance is terminated retroactively from January 1st, 2023 and 12 x DKK 30 = DKK 360 have already been collected from the policyholder to cover the contribution to the Danish Guarantee Fund.

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The DKK 360 is not paid to the Danish Guarantee Fund on May 1st, 2023.

Example:

An insurance is collected on the renewal date on January 1st, 2022 regarding 12 x DKK 30 = DKK 360 paid to the Danish Guarantee Fund on May 1st, 2022.

On June 1st, 2022 the insurance is terminated retroactively from January 1st, 2022 and the company has therefore already paid the contributions to the Danish Guarantee Fund.

To the extent that the insurance company has reported and paid to the Guarantee Fund, it can be re-adjusted in connection with the auditor's annual review (annual statement).

Refund if the insurance is terminated prematurely?

No. Amounts collected will not be refunded to the policyholder regardless of premature termination of the insurance.

Annual statement

The insurance companies must along with the submission of the financial statement submit a statement from the management and/or a state-authorized or registered public accountant to the Danish Guarantee Fund confirming that the paid contributions are correctly calculated.

Can the policyholder cancel the insurance contract due to the contribution?

No. It is evident from section 4(1) in the Guarantee Fund for Non-life Insurers' consolidation Act that a policyholder, until the assets of the Danish Guarantee Fund constitute DKK 500 million, cannot cancel an insurance contract due to the extra charge to the premium which only use is to pay the contribution to the Danish Guarantee Fund.

When is the first payment of contributions concerning industrial injury insurance to the Danish Guarantee Fund due?

The first contribution concerning industrial injury insurance to the Danish Guarantee Fund must be paid 6 months after the Danish FSA has notified the Danish Guarantee Fund.

The Danish FSA has on October 8th, 2021 announced that the contributions for 2022 consists of 30 DKK per covered employee under an industrial injury insurance which is taken out or renewed.

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The first payment of contributions to the Danish Guarantee Fund concerning industrial injury insurance must be paid on May 1st, 2022.

Does the Executive Order apply to Greenland?

No – the Executive Order can by a decree be put into force for Greenland.