

ALRUD

January 2023

alrud.com



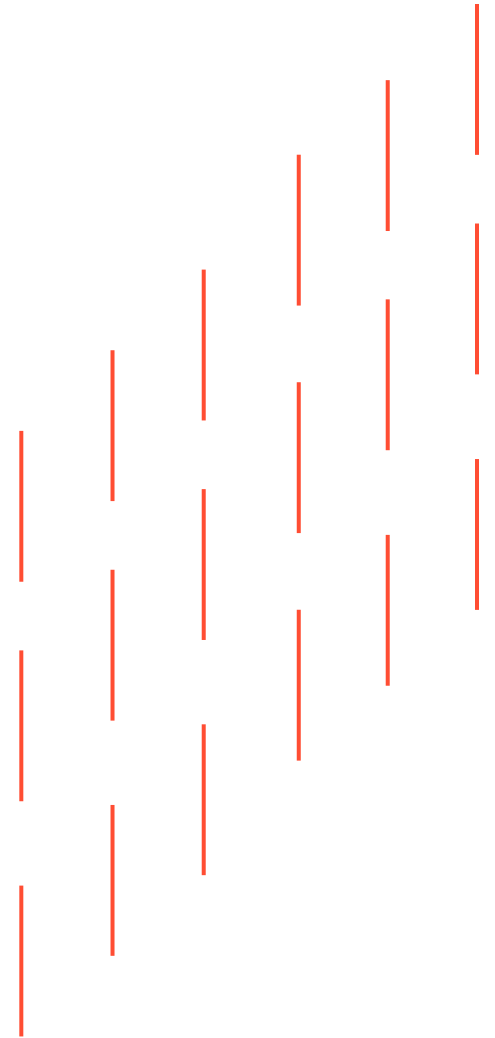
Checklist: Compensation for moral damage. Key provisions of the new Plenum Resolution

Dear Colleagues,

On 15 November 2022, the Plenum of the Supreme Court of the Russian Federation adopted the new Resolution No. 33 "On the Practice of Application by Courts of the Rules on Compensation for Moral Damage".

We have created this checklist to guide you through the most relevant clarifications concerning employers and employees.

alrud.com

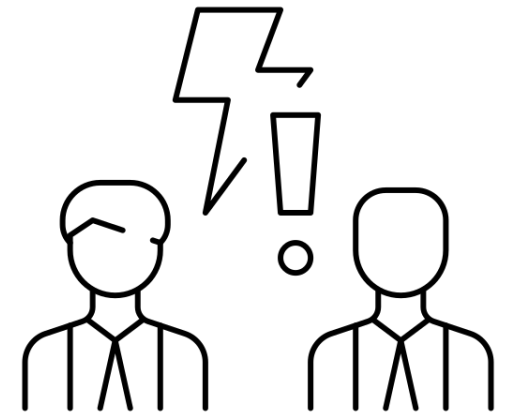


What constitutes moral damage?

Moral damage is mental* or physical** distress caused by action or inaction that encroaches on a citizen's non-material benefits or violates their property/personal non-property rights

***Mental distress** - distress that relates to mental distress (feeling of fear, humiliation, helplessness, shame, etc.)

****Physical distress** - physical pain resulting from injury, diseases, including those sustained as a result of mental distress, restriction of movement, unpleasant feelings or painful symptoms



When is an employee entitled to compensation for moral damage?



If their employment rights are violated by **any wrongful acts or omissions** of an employer



As **an example**, the Supreme Court of the Russian Federation cites

1

Unlawful dismissal or transfer of an employee

2

Unlawful imposition of a disciplinary sanction

3

Delayed/incomplete payment of salary

4

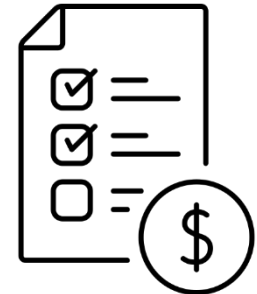
Unlawful overtime, etc.

How is the amount of compensation determined?

Moral damage is compensated **in cash** in the amount determined by

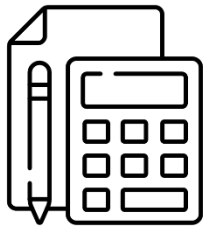
An agreement concluded between an employee and an employer

A court in the event of a dispute between the parties



How is the amount of compensation determined?

The Resolution does not set out specific **criteria** for calculating compensation



However, it stipulates that

The amount of compensation is **proportionate** to the consequences of the breach and must **compensate** an employee for any **distress caused**

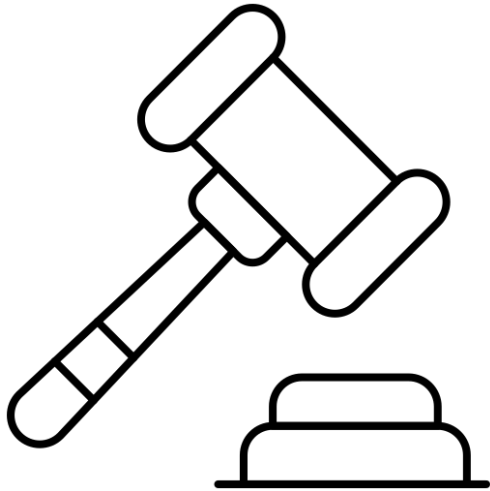
The **significance of compensation in relation to normal living standards** and the general income level of citizens must be taken into account

How is the amount of compensation determined?

When determining the amount of compensation for moral damage, the Supreme Court of the Russian Federation obliged courts to take into account

- Specific unlawful **acts (omissions) of an employer**
- The **severity of** an employee's physical and mental **distress**
- The **requirements of reasonableness**, fairness and proportionality of compensation to the consequences of the violation
- The individual **characteristics of an employee** (age, health, profession, occupation, etc.)
- The **behaviour of an employee** when they suffered damage
- **Other** relevant **circumstances**

How is the amount of compensation determined?



Other clarifications

- A court may not award an employee an **insignificant** amount of compensation unless such an amount is specified in the statement of claim
- If a plaintiff **does not specify** the amount of compensation for moral damage in the statement of claim or if this amount is **insignificant, the court may not reject the claim**
- In such a case, the court shall **hold a discussion about the amount of compensation**, during which the plaintiff can either state a specific amount or leave the determination of the amount of compensation to the court's discretion

Is a court obliged to consider an employer's financial situation?

The employer is an individual

The court **may** take into account the difficult financial situation of an employer who is a private individual

Lack of earnings due to long-term incapacity for work or disability

Dependents (minor children, children with disabilities, a disabled spouse or parent who is unable to work)

Payment of maintenance for minor or disabled adult children, etc.

The employer is a legal entity

The Supreme Court of the Russian Federation **does not oblige** courts to take into account the difficult financial situation of an employer who is a legal entity



To which court may an employee apply for compensation?



At the employer's address

At their place of residence

At the place where the employment contract is executed (if specified)

At the place where the damage was caused (if the moral damage arose due to an injury to one's life or health)

What are the time limits for an employee to file a claim for compensation for moral damage?



Within the limitation period or legal action period prescribed by law for the **protection of employment rights** whose violation **caused moral damage**

Within **three months** of the effective date of a court decision restoring a person's infringed employment rights

Example: An employee may file a claim for compensation for moral damage caused **as a result of unlawful dismissal** within **one month** from the date on which a copy of the dismissal order is provided or from the date of receipt of the labour book/employment record **or** within **three months** after a court decision that fully or partially restores a person's violated rights takes legal effect

Can an employer compensate damages out of court?

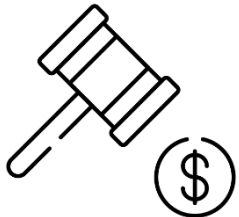
- Yes, an employee and an employer **can settle** this matter out of court
- However, the fact that an employee **received compensation** voluntarily provided by an employer **out of court** does not exclude the possibility of recovering compensation **in a higher amount** in civil proceedings
- A court may collect **additional compensation** for moral damage from an employer in favour of an employee who received compensation extrajudicially if it concludes that the compensation received is not sufficient to fully reimburse the physical or mental distress caused



Who compensates moral damage caused by an employee?



Moral damage caused by an employee when performing labour duties is subject to compensation by **the employer**



The imposition of criminal or administrative liability on an employee or the termination of criminal prosecution or proceedings on an administrative offense **does not relieve** the employer of the obligation to compensate moral damage

Contacts:



Irina Anyukhina

Partner,
Head of the Labour and
Employment Practice

ALRUD

E: ianyukhina@alrud.com



Margarita Egiazarova

Senior Associate of the Labour and
Employment Practice,
Ph.D. in Law

ALRUD

E: megiazarova@alrud.com



Maria Nevezhina

Senior Associate of the Labour and
Employment Practice,
Ph.D. in Law

ALRUD

E: mnevezhina@alrud.com

ALRUD Law Firm
Skakovaya str., 17, bld. 2, 6th
floor

Moscow, Russia, 125040

T: +7 495 234 96 92

F: +7 495 956 37 18

E: info@alrud.com