

COMPENSATION ISSUES IN CASE OF OCCUPATIONAL DISEASES AND ACCIDENTS

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Abstract. Aim. The aim of this paper is to analyze, evaluate and compare the compensation system for occupational diseases and accidents in Romania with those in UK, Spain, US and New Zealand, in order to provide suggestions for further improvement of Romanian compensation scheme. **Method.** The study evaluates the systems enumerated by making a comparative analysis of the legislation in each country in the field of occupational diseases and accidents. **Comparative analysis.** In the US and partially UK, compensation for accident victims is still handled by tort law. Spain and New Zealand offer good examples of compensation schemes, the latter been considered for implementation in other countries. **Conclusions.** The recommendations for the Romanian legislation include the augmentation of the monetary compensations according with the costs of the treatment. The scheme should also cover events arisen from the tiredness and stress accumulated at work and provide for better prevention of work-related accidents.

Key words: compensation, benefits, legislation, occupational diseases, occupational accidents

Rezumat. Scop. Lucrare urmărește să analizeze în mod comparativ sistemul de plată și ajutoare pentru accidente de muncă și boli profesionale din România cu cele din Marea Britanie, Spania, Statele Unite și Noua Zeelandă, spre a oferi sugestii pentru îmbunătățirea legislației românești în domeniu. **Metodă.** Cercetarea evaluează sistemele enumerate prin intermediul unei analize comparative a legislațiilor naționale în domeniu. **Rezultate.** În Statele Unite și parțial în Marea Britanie, plata compensațiilor pentru accidente de muncă și boli profesionale este încă guvernată de sistemul răspunderii delictuale. Spania și Noua Zeelandă dețin sisteme eficiente de despăgubiri, modelul neo-zeelandez fiind luat în considerare spre a fi aplicat și în alte țări. **Concluzii.** Recomandările pentru îmbunătățirea legislației românești includ creșterea sumelor acordate ca despăgubire până la nivelul acoperirii în totalitate a costurilor tratamentului suportat. De asemenea, sistemul ar trebui să acopere și evenimentele survenite datorită oboselei sau stresului de la locul de muncă, oferind modalități mai eficiente de prevenire a accidentelor.

Cuvinte cheie: compensare, beneficiu, legislație, boli profesionale, accidente de muncă

INTRODUCTION

The aim of this study is to analyze, evaluate and compare the compensation system for occupational diseases and accidents in Romania with those in UK, Spain, US and New Zealand. It also includes suggestions for further

improvement of Romanian compensation scheme.

From the historical point of view, workers' compensation laws were first enacted in Europe and Oceania, with the US following shortly thereafter. Workers' compensation programs were

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a key component of the labour structure of the former Soviet Union and soviet-style societies.

The Romanian compensations system is regulated by Law no. 346/ 5th of June 2002 and Law no. 319/ 14th of July 2006. The legislation in question covers the following main cases:

- "events", represented by accidents that lead to death or body injury, happened during the work process, disappearance, traffic accident involving employees, dangerous incidents, professional or profession-related disease;
- "work accidents", meaning violent injuring of the body, acute professional intoxication during the work process or during the fulfilling of professional duties, that leads to temporary work incapacity of at least 3 days, invalidity or death;
- "professional disease", described as the pathological condition produced as a consequence to practicing a work or profession, caused by negative physical, chemical or biological agents, inherent to the workplace, as well as the overwhelm of different body organs or systems, during the work process (1).

Compensation is defined as a fixed sum, payable once, without affecting the other benefits the employee is entitled to. It is paid if an occupational disease or accident either reduces the work capacity below 50% or does not reduce the work capacity, but constitutes a mutilation (2).

The benefits for temporary working incapacity represent 100% of the

average salary in the last 6 months or 100% of the monthly insured revenue.

In terms of duration, they are paid for a period of 180 days/year, calculated from the first day of the medical leave.

The benefit for temporary change of the workplace due to an occupational disease or accident is only paid if the income received at the new workplace is inferior to the monthly average salary in the last 6 months at the initial workplace. The law also provides for a benefit for the reduction of the working time with 1/4 of the normal interval (2).

The duration for both benefits covers a maximum 90 days, in one or more payments.

In terms of rate, it is represented by the gross income at the new workplace or in the new timeframe subtracted from the average salary in the last 6 months, but no more than 25% of the calculation basis.

COMPARATIVE ANALYSIS

The British compensations system has as general characteristic the Compulsory employers' liability insurance, dating from 1972. There are currently two systems of workplace compensation in the United Kingdom: Industrial Injury Disablement Benefit and Employers' Liability insurance.

The industrial injuries disablement benefit is a state benefit and does not involve fault being established. It covers disablements from a 'loss of physical or mental faculty' caused by an industrial accident or prescribed disease. A loss of faculty may include disfigurement even if it does not trouble the worker. The case law in the

United Kingdom has expanded the concepts of accident, industrial accident, etc. to include less obvious situations. For example, a conversation or verbal harassment could constitute an accident. (3). Employers' liability insurance requires the courts to establish the negligence of an employer. The system is highly criticized by the Association of British Insurers because: claims costs are increasing very rapidly and claims are becoming increasingly difficult to predict. (4). This is why the number, type and cost of Employers' Liability claims will depend on whether future advances in medical science show up links between certain occupational diseases and working practices.

The Spanish compensations system is governed by a General Scheme and several Special Schemes for certain categories of workers. The events covered by the General Scheme comprise two categories. In order to receive compensation for common diseases, the worker has to be affiliated and in an active contribution status or in a situation assimilated to affiliation and having covered a 180-day contribution period in the 5 preceding years. The second category of events consists in injuries, whether or not work-related, and occupational diseases, for which no previous contributions are required. The amount differs according to the category of diseases. Thus, for occupational diseases or work-related injuries it represents 75% of the calculation basis for benefits from the day following the date of leave from work. For common diseases and non-

work-related injuries, there is a different amount, representing 60% of the calculation basis for benefits from the 4th day of the leave until the 20th, inclusive, and 75% from the 21st day onward. The duration of the benefits ranges from 6 months (which may be extended for another 6 months) for periods under observation for occupational diseases, to 12 months (which may be extended for another 6 months if healing is foreseen within this period) for diseases or injuries. (5) Loss or suspension of receiving the benefits shall occur in cases of fraudulent action in order to obtain or maintain the benefits, working for another person or as self-employed worker, and refusing or abandoning the prescribed treatment. The workers have no right to subsidy during situations of legal strike or lockout.

The Special Schemes refer to the fields of Agriculture, Self-Employed Workers, Domestic Employees, Coal Mining, and Sea Workers. For bullfighting professionals, inclusion on the active roll is equivalent to being on active status. (6)

The United States' compensations system

In the US most employees who are occupationally injured have an absolute right to medical care, and often, monetary payments to compensate for temporary or permanent disabilities. US legislation lacks a unified national set of employee entitlements covering minimum wage, wage and hour, or collective bargaining rights in addition to compensation. The legislation, however, differs from one state to another.

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The benefits for temporary total disability represent a percentage that ranges from 60 to 80% of worker's wage. Compensation stops if the employee withdraws from the labour market, is released to work without any physical restrictions, or refuses offer to work that is consistent with a rehabilitation plan, states the specific regulation in Minnesota (7).

The benefits for temporary total disability are subject to offsets for Social Security and payments from employer-paid pension and profit sharing plans. Public employees' benefits are coordinated with employer-paid disability benefits. The total amount may not exceed 100% of the employee's spendable weekly wage (in Alaska) (7). The same benefits are subject in Colorado to Social Security benefit offsets and reduction by benefits under an employer pension or disability plan.

The benefits for permanent partial disability are subject to Social Security benefit offsets and to reduction by benefits under an employer pension or disability plan. The total maximum amount payable is \$120,000 (in Colorado). The highest percentage of worker's wage represented by the benefits is 80% (in Arizona) (8).

Disfigurement benefits, when provided, may be awarded for a maximum period that ranges between 15 weeks (in Kansas) to 350 weeks in New Hampshire – for disfigurement and scarring caused by burns, and 500 weeks in Rhode Island for permanent bodily disfigurement. There are also

jurisdictions providing for no maximum period (9).

Attempting to get compensation can be a complex task, often being extremely difficult to definitively prove whether the injury was a result of the work place. Many employees find themselves needing the services of a workers compensation attorney in order to gain their due benefits.

The New Zealand compensations system

New Zealand holds a comprehensive compensation scheme for personal accidents, including workplace, traffic and household. The events covered by the system are generally defined as work accidents or illnesses "arising out of and in the course of employment". An accident or injury that occurs when the person is on a break, or travelling in the course of employment between work sites, is considered a work accident.

Short-term benefits for temporary disability comprise the "loss of earnings or wage loss" compensation. Its rate is composed of weekly benefits of 80% of the claimant's total pre-injury earnings made immediately before the injury prevented a claimant from working (in the 1st to 4th week). From the 5th week- onwards, the weekly earnings are assessed on the basis of the claimant's total earnings in the 52 weeks before incapacity up to a set maximum and minimum (currently maximum of \$1,246.27 per week of \$265.41) (10). These benefits are indexed and taxable. In terms of duration, they are paid until the worker is judged as permanently disabled. To continue to receive

temporary benefits, regular certification from a physician is needed proving that the subject is unable to work because of a continuing disability.

Long-term benefits for permanent partial and total disability comprise economic "loss of earnings or wage loss" awards or pensions, which are indexed and taxable (11).

These benefits are paid until the claimant reaches 65 years of age (age of eligibility for Guaranteed Retirement Income)

Award for permanent physical impairment is periodic (pension or annuity) and covers the ongoing additional costs of the disability. It is additional to any other benefit or pension the person may be receiving. It is also not earnings related or income tested and is adjusted annually for inflation. The threshold for payment is 15%, with a maximum of \$60 a week tax free scaled by degree of disability. The award does not cover disfigurement (10).

CONCLUSIONS

In the US and partially UK, compensation for accident victims may still be handled by tort law, which has proved to be costly and overall less efficient.

Spain and New Zealand offer good examples of compensation schemes, the New Zealand one being proposed for England, although recently rejected in this country by the Pearson Report.

From analysing the aforementioned systems, the following recommendations can be drawn for improving the Romanian compensation scheme:

➤ The compensations and benefits sums should be in accordance with the actual costs of the treatment, not only with the person's income.

➤ The scheme should also cover stress-related conditions and events arisen from tiredness accumulated at work, happening outside the workplace and after the working hours (e.g. car accidents caused by the lack of attention due to work-related fatigue).

➤ The scheme should provide for better prevention of work-related accidents and diseases, among others, by compelling the employers to minimize the number of over-time work hours, in order to reduce or avoid long-term stress and exhaustion consequences, not covered by the law.

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