

LEGAL AND ECONOMIC CONSEQUENCES OF WORK ACCIDENTS AND OCCUPATIONAL DISEASES IN POLAND

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For the last several years, we have been paying more and more attention to economic consequences of work accidents and occupational diseases in the field of labour protection. It is expressed, among others, by actions taken by the International Labour Organization. One should take into consideration the fact that shape of economic consequences of work accident and occupational diseases depends on legal regulations in a given country. There were also some legal basics presented in this article which regulate the discussed consequences in Poland. There is no legal act existing which would include issues set in the title of this article. In this connection, a number of law regulations was presented. They characterize particular legal and economic consequences of work accidents and occupational diseases, taking under consideration subjects they refer to.

Key words: legal protection, occupational diseases, work accidents

1. Beginnings of legal protection at work

Considering the elimination aspect of the consequences resulting from the work accidents, the social politics needs to be taken into account. The beginnings of social politics, originally defined as «*political activities, which by using suitable means are necessary firstly, to improve the economic and social situation of the absolutely weak people or only those who are weak in comparison with the others and secondly, to prevent them from the risk of existence-threatening*»¹, are related to the legal protection of employees and their legal privileges. The technical progress which was made at the beginning of the «industrial revolution» resulted in the development of the industry and also in taking the advantage of the workers employed by the factories, mines and foundries' owners. In addition, it used to be very common to employ children and women even for very hard pieces of work. The difficult work conditions influenced numerous work accidents and caused various occupational diseases. As a result, it was the government obligation to make any necessary steps to make the people happier. Moreover, the legal protection at work was deeply scrutinized in certain countries. A good example could be the Factory Inspection, which took place in England in 1833 or even the introduction of obligatory work insurance in Germany in 1884. The development of the social politics in the field of work protection defined as «*the system of means which provided employees for safe and healthy work conditions*»², influenced not only the

improvement of the employees' work conditions but it meant to protect the employees and their families in case of the loss of their lives, health or even the jobs.

Apart from the significance of the national regulations of the legal protection at work, the International Labour Organization also needs to be mentioned. This organization introduced certain conventions and as a result, it also regulated such aspects as: the freedom of union, possibility to make group agreements, prohibition to employ children, protection for the juveniles, prohibition of discrimination, the equality of payment, safety, work hygiene, social protection, work time and the equality of rest days and holidays for all the employees. Nevertheless, it needs to be stressed that the economic and legal regulations of employees and their families are of high importance as their lives and health are still under risk. It should be mentioned that the International Labour Organization, which has been introducing certain conventions from the very beginning, is going to provide the employees for suitable life conditions in case of their work disabilities. Both convention no. 24 concerning the sickness insurance of people employed in industry, commerce or in a household and also the Convention no. 25 of ILO regarding the health insurance of farmers should be taken into consideration. Both of them came into effect on the 15th of July in 1928³. On this point of view, the economic and legal consequences of work accidents and occupational diseases related to the regulations of work protection in Poland will be further analyzed.

¹ Leksykon Polityki Społecznej, red. naukowa B. Rysz – Kowalczyk, Oficyna Wydawnicza ASPRA-JR, Warszawa 2002, s. 119.

² Z. Sadowski, T. Wach, Leksykon pracy, bezrobocia i zabezpieczenia społecznego, Wyd. Biblioteka Pracownicza, Warszawa 2003, s. 179.

³ A. M. Swiatkowski, Międzynarodowe Prawo Pracy Tom I, Wyd. C.H.BECK, Warszawa 2008, s. 207.

2. Consequences of work accidents and occupational diseases

Both the work accidents and the occupational diseases do not influence the economic consequences. The economic consequence appears when the employee is legally entitled to claim certain benefits and as a consequence to possess the payment of compensation. Therefore, the legal regulations are of high importance to analyze the economic consequences of work accidents and occupational diseases. Legal regulations of work benefits for work accidents or occupational diseases are introduced in the labour and social insurance law. One of the principle of the labour law is the principle of safe and hygienic work. According to this principle, the employer is obliged to provide all the employees for safe and hygienic work conditions. «This duty towards the employees is at the same time the duty towards the state and it cannot be depended on the employee's qualifications or even on the level of fulfilling his or her obligations»⁴.

Nevertheless, much more complicated are the legal consequences of temporary work disability and therefore this aspect should be further analyzed. The main document of the labour law is the Labour Code⁵. Under the article 92 of this Code:

§ 1 For the period of work disability due to:

- 1) disease or isolation caused by some infectious diseases – up to 33 days of the calendar year – the employee is legally entitled to 80 % payment compensation unless the labour laws of a certain employer show higher percentage,
- 2) accidents on the way to and from work or some health problems at the time of pregnancy – in the period specified in point 1 – the employee is legally entitled to 100 % payment compensation.

§ 1⁶. On the first day of work disability due to some disease or the isolation caused by some infectious disease lasting not longer than 6 days, the employee is legally entitled to the payment compensation specified in § 1 point 1.

§ 2. The payment, specified in &1, is calculated on the basis of regulations that are obligatory for the assessment basis for sickness benefits and that is paid for each day of the work disability excluding holidays.

§ 3. The payment specified in § 1:

- 1) is not reduced in case of introducing the restrictions for the assessment basis for sickness benefits,
- 2) cannot be possessed by employees if they are not entitled to claim sickness benefits.

§ 4. The employee is entitled to claim sickness benefits, introduced in § 1 under the rules specified in separate regulations if he/she has been disabled to work for more than 33 days of the calendar year.

The aspect of sickness benefits, specified in § 4 has been regulated under the act of this 25 June, 1999 on the financial benefits from the national insurance in case of some health problems and the maternity leave⁷. The risk of losing the possibility to earn money due to the work disability caused by some disease or even the isolation caused by the infectious disease, has been divided in article 92 among – the employee, the employer and the institution of social insurance. It should be noticed that article 92 is about diseases and isolations caused by some infectious diseases and it is also about the accidents on the way to and from work. However, this article does not include the aspect of work disability caused by work accidents or any other occupational diseases.

As it has been stressed in literature, benefits specified in article 92 § 1 of the Labour Code, which are normally paid by the employer, are legal payments for doing a job but not the national insurance benefits. The employer who provides the benefit payments for the employee, is not the national insurance payer but just a person who performs his obligation by making this payment⁸. In conclusion, benefits for temporary work disability or the isolation caused by some infectious diseases or even the accidents on the way to or from work, are legally paid, under the Labour Code by the employer up to 33 days of the calendar year.

⁴ Zarys Prawa Pracy”, (prac. Zbio.), Wydawnictwo Verba, Lublin 2004, s 58.

⁵ Ustawa z dnia 26 czerwca 1974 r. Kodeks Pracy

⁶ Artykuł 92 § 1 i 4 zmieniony, § 1 dodany przez ustawę z dnia 26 lipca 2002 r. o zmianie ustawy – Kodeks pracy oraz o zmianie niektórych innych ustaw (Dz.U. Nr 135, poz. 1146).

⁷ Ustawa z dnia 25 czerwca 1999 r. o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa (Dz.U. Nr.32, poz.267).

⁸ Gersdorf M., Raczka K., Skoczynski J., «Kodeks Pracy – komentarz», Wydawnictwo Lexis Nexis, Warszawa 2003, s. 348.

After the expiry period of 33 days, this benefit payment is transformed into sickness benefit which is paid by the Social Insurance Institution.

Under article 230 of the Labour Code: in case of some symptoms of occupational disease, the employer is obliged to, on the basis of the medical certificate, transfer the employee at the time specified in the certificate, to any other place of work without any factors that could cause the occupational diseases. If the employee, in his new place of work, is paid less than in his/her previous one he/she needs to be paid the difference for the period of 6 months.

Under article 297 of the Labour Code, the Minister of Labour and Social Policy has been legally obliged to:

- 1) introduce the rules of payment
 - a) at the time of work disability,
 - b) determine the amount of fine, deductions, charges, death or any other work compensations specified in the Labour Code,
- 2) introduce the amount of work compensation.

The Minister of Labour and Social Policy issued the regulation of this 29 May, 1996⁹, under which the work compensation is provided for:

- 1) pregnant or breast-feeding women;
- 2) employees with symptoms of occupational disease;
- 3) employees with work disability caused by work accidents or the occupational diseases – this work compensation is a difference between the payment possessed by the employee before and after the work transfer.

The equalizing allowance is calculated under the regulations of holiday payment.

Under article 237 of the Labour Code, employees with work accident or occupational diseases specified in article 237 & 1 point 2, *are entitled to claim social benefits from the national insurance as defined by separate regulations*. Employees with the work accident or the occupational disease and the family members of the employees who died due to the work accident or the occupational disease, are entitled to claim benefits from the national insurance.

The variety of benefits, their rates and the conditions of claiming them are specified in the act of this 30 October, 2002 on the national insurance of work accidents and occupational diseases¹⁰.

According to article 6 of this act on work accidents and occupational diseases the employees are entitled to the following benefits:

- ‘sickness benefit’ – for the insured with work disability caused by the work accident or occupational disease.
- ‘rehabilitation benefits’ – for the insured with the work disability who has already claimed benefits but is still disabled to work. These benefits are paid providing the further treatment or the rehabilitation will guarantee his/her recovery;
- ‘equalizing allowance’- for the insured whose benefits have been reduced due to permanent or long-lasting detriment to health;
- ‘one- off compensation’ – for the insured with permanent or long- lasting detriment to health;
- ‘one – off compensation’- death compensation paid to the family members of the employees or pensioners;
- ‘disability allowance’ – for the insured with work disability caused by the work accident or the occupational disease;
- ‘training allowance’ – for the insured with the vocational retraining caused by the work disability preceded by the work accident or the occupational disease;
- ‘family pension’ – death compensation paid to the family members of the insured or the compensation paid to the retired person who is entitled to claim this pension due to the work accident or any occupational disease;
- ‘family allowance benefit’ – for full orphan
- ‘nursing allowance’;
- free dentistry and protective vaccinations services and the orthopaedic equipment specified in this act.

This act refers to all the insured who are depended on the national insurance under the act of this 13 October, 1998 on the system of national insurance¹¹.

⁹ Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 26 maja 1996 r. w sprawie sposobu ustalania wynagrodzenia w okresie niewykonywania pracy oraz wynagrodzenia stanowiącego podstawę obliczania odszkodowań, odpraw, dodatków wyrównawczych do wynagrodzenia oraz innych należności przewidzianych w Kodeksie pracy.

¹⁰ Ustawa z dnia 30 października 2002 r. o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych (Dz.U. Nr.199, poz. 1673 z pozn. zm.).

¹¹ Ustawa z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych (Dz.U. Nr.137, poz.887 z pozn. zm.).

Under this act the system of national insurance consists of:

- 1) health insurance;
- 2) pension insurance;
- 3) retirement insurance;
- 4) sickness and maternity leave insurance;
- 5) insurance against work accidents and occupational disease.

All the people employed in the territory of Poland, excluding judges and prosecutors are entitled to claim the pension, retirement, health and against work accidents insurance benefits. The pension and retirement insurance contributions are paid equally by the employer and the employee. All the insurance contributions of the employees who are on maternity leave or on the maternity dole are fully subsidized by the government. However, the insurance contributions against sickness are fully financed by the employees. Moreover, the insurance contributions against work accident are covered by the employer. Taking into account some examples of disabled people their insurance contributions are financed differently, not under the act on the system of national insurance, but under the regulations specified in article 25 of the act of this 27 August, 1997 on the work and social rehabilitation and also on the employment of disabled people¹².

Insurance contributions:

- 19,52 % assessment basis for pension insurance;
- 13,00 % assessment basis for retirement insurance;
- 2,45 % assessment basis for sickness insurance;
- 0,4–8,12 % assessment basis for accident insurance;

The interest rate of the accident insurance is calculated annually and it depends on the scale of work – threatening factors and on their results which are specified in article 4 of the act of this 30 October, 2002 on the national insurance against accidents and occupational diseases.

The assessment contribution basis for the pension and retirement insurance depends on the employment income under the act of this 26 July, 1991 on the personal income tax¹³. Social benefits, the period of work disability and the isolation caused by any infectious diseases¹⁴ are not included in this income.

The annual rate of the maximum base for the retirement and pension insurance has been calculated in order to deduct from it the insurance contribution. In case of sickness and accident insurance no payment restrictions have been specified. Nevertheless, the base rate for sickness and accident insurance is calculated on the same employment income as the one for the retirement and pension insurance except for the fact that the contribution amount has been calculated on the basis of a full employee's income.

The payer – the employer is obliged monthly to calculate and transfer to the Social Insurance Institution the full insurance contribution for the pension, retirement, sickness and accident insurance, which are paid partly by the employer and the insured employee as well.

The rules of legal consequences of work accidents and occupational diseases have been stated in the Labour Code, which regulates itself **the equalizing allowance and the compensation in case of work accidents in the way to or from work**. However, the granting and payment of any other benefits are specified by other legal regulations. All the other benefits have been specified in the executory regulations of the act on the system of national insurance. It needs to be stressed that if some benefits are specified by other regulations than those in this act on the national insurance of work accidents and occupational diseases, the regulations of this act are superior to any other executory regulations. To picture the consequences of legal complexity of work accidents and occupational diseases, the following diagram has been drawn to show the source of benefits and the dependence between certain legal regulations (diagram).

3. Conclusions

The system of employees' protection against work accidents or occupational diseases in Poland differs completely from these types of systems which are observed in other countries. The reason for that are the following prerequisites. First of all, the Conventions of the International Work Organization show the general guidelines how to protect employees against work accidents or occupational diseases. All the countries

¹² Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych (Dz.U. Nr.123, poz. 776).

¹³ Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym osób fizycznych (Dz.U. Nr.14, poz.176 z pozn. Zm.).

¹⁴ Salwa Z., «Prawo pracy i ubezpieczeń społecznych», Wydawnictwo Lexis Nexis, Warszawa 2004, s.341.

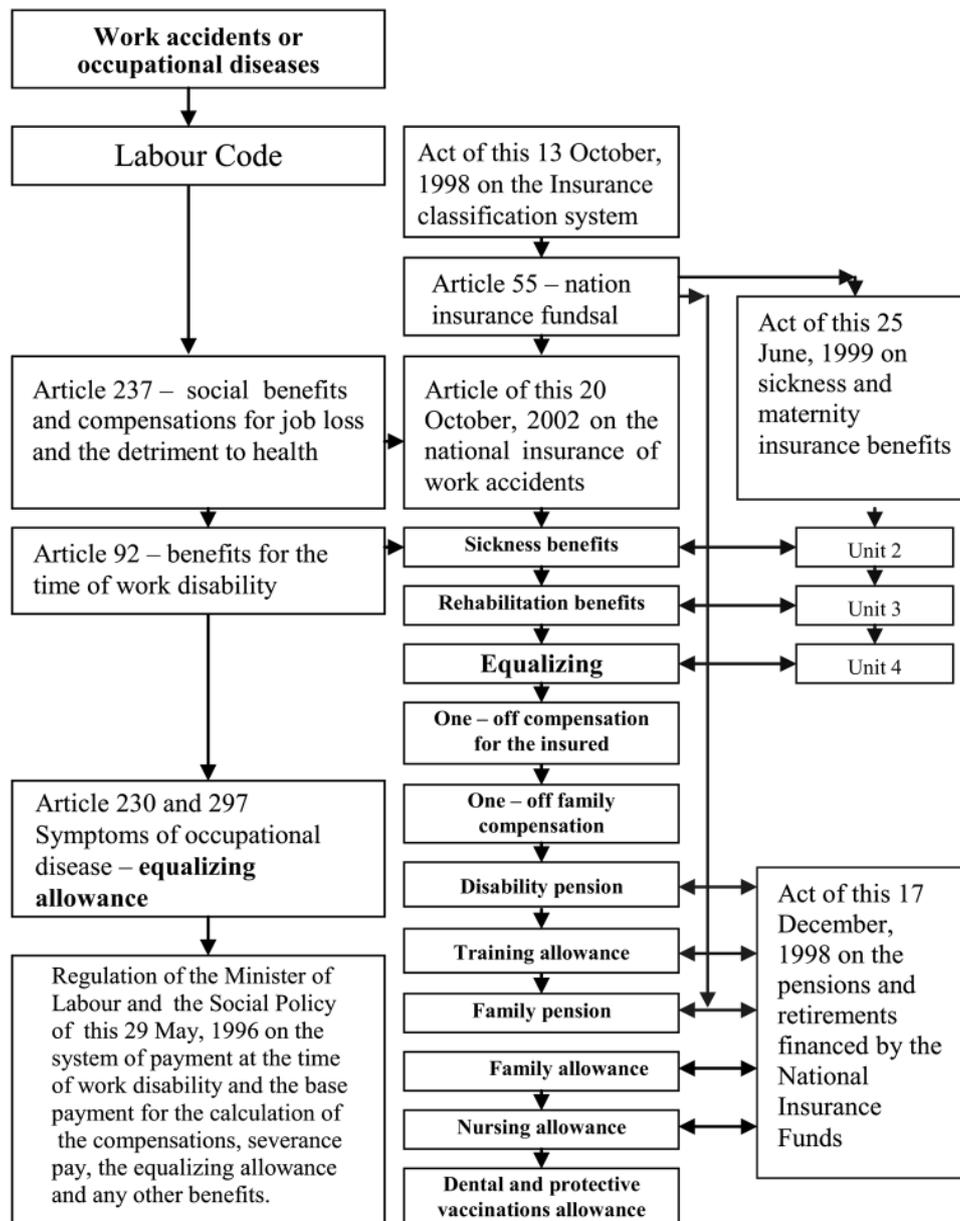


Diagram. *System of legal consequences of work accident and occupational diseases in Poland.*

Source. *Individual analysis.*

which ratify above – mentioned conventions need to observe them while making internal acts but the particular decisions need to be made within the competence of each country. The similar situation is in the European Union Countries. There are no uniform legal regulations of the social protection in the law of the European Union. Although, the regulation no. 1407/71 of this 14 June, 1971 specifies the rules of coordinating the national systems of social protec-

tions in some countries of the European Union, which are of the international dimension, the judicial decisions of the European Court of Justice show that the rules of these Regulations do not refer to the situation when all the above mentioned elements are restricted but only to an individual territory of some European country, when a given person has never crossed the administrative border of the European countries before.

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Чапка М., Козік В.

ЗАКОНОДАВЧІ ТА ЕКОНОМІЧНІ АСПЕКТИ НЕЩАСНИХ ВИПАДКІВ НА ВИРОБНИЦТВІ ТА ПРОФЕСІЙНИХ ЗАХВОРЮВАНЬ У ПОЛЬЩІ

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В останні кілька років приділяється все більше уваги до економічних наслідків нещасних випадків та професійних захворювань в області охорони праці. Це обумовлено, поміж іншого, вимогами Міжнародної Організації Праці. Необхідно прийняти до уваги те, що економічні наслідки нещасних випадків та професійних захворювань залежать від законодавства в даній країні. В цій статті представлено законодавчі основи, які регулюють ці наслідки в Польщі. Тут не існує законодавчого документа, який би включав предмет обговорення, вказаний в назві статті. Це підтверджують законодавчі акти, які представлені в статті. Вони характеризують тільки часткові законодавчі та економічні наслідки нещасних випадків та професійних захворювань.

Ключові слова: законодавство по охороні праці, професійні захворювання, нещасні випадки на виробництві, Польща

Чапка М., Козік В.

ЗАКОНОДАТЕЛЬНЫЕ И ЭКОНОМИЧЕСКИЕ АСПЕКТЫ НЕЩАСТНЫХ СЛУЧАЕВ НА ПРОИЗВОДСТВЕ И ПРОФЕССИОНАЛЬНЫХ БОЛЕЗНЕЙ В ПОЛЬШЕ

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В последние несколько лет в области охраны труда уделяется все больше внимания экономическим последствиям несчастных случаев и профессиональных болезней. Это обусловлено, среди прочего, требованиями Международной Организации Труда. Необходимо принять во внимание то обстоятельство, что экономические последствия несчастных случаев и профессиональных болезней зависят от законодательства в данной стране. В этой статье представлены основы, которые регулируют эти последствия в Польше. Там не существует законодательного документа, который бы включал предмет обслуживания, указанный в названии статьи. Это подтверждают законодательные акты, представленные в статье. Они характеризуют только частные законодательные и экономические последствия несчастных случаев и профессиональных заболеваний.

Ключевые слова: законодательство по охране труда, профессиональные болезни, несчастные случаи на производстве, Польша

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