Disabilities and occupational diseases: Questionnaire of the 4th Committee (2013)

July 04, 2013

General context of the questionnaire
Regardless of the eventual reimbursement of the preventive and curative health-related costs, there is the problem of providing a replacement income to the worker when he is unable to carry on his employment and earn his own income due to an illness or an accident.

Questionnaire
[1] What are the causes which give the right to the income replacement indemnities that are paid as a result of an inability to work?
Here a distinction must be drawn between temporary incapacity for work and permanent incapacity for work. Permanent incapacity for work is an injury or illness caused as a consequence of work, profession, service, nuclear accident, traffic accident or violent crime. Those with a permanent incapacity for work are paid a pension for incapacity for work of 40–100% in the case of permanent loss of capacity for work. The pension for incapacity for work is an income replacement indemnity and compensates a person’s partial or complete inability to work. In the case of less than 100% loss of capacity of work, it is presumed that the person should be able to work part-time in the extent of the remaining capacity for work. Permanent incapacity for work is determined for a period of 6 months to 5 years.
Temporary incapacity for work includes illness, household injury, occupational accident, occupational accident in traffic or complication/illness occurring as a consequence of an occupational accident, professional illness and traffic accident injury and complication/illness occurring as a consequence of a traffic accident.
The benefit for temporary incapacity for work is a monetary compensation paid on the basis of certificate of incapacity for work to the person who, due to being temporarily excused from work, forgoes income subject to social tax. The following deals above all with the temporary incapacity for work and the benefit for temporary incapacity for work.
[2] Does it make a difference whether the inability is caused by a handicap, illness or accident (as a result of a professional activity or not)?
The employee receives the benefit regardless of what caused the incapacity for work. However, the procedure for paying the benefit for incapacity for work depends on the type of certificate for incapacity for work and the reason for incapacity for work (e.g. is it just a case of merely an illness or occupational diseases). In the case of permanent
incapacity for work, it is not important what caused the incapacity for work; the amount of the pension depends on the extent of the incapacity for work.

[3] Does the employer need to take care of all or part of the compensation for incapacity resulting from an occupational disease of one of his workers?
In the case of a professional disease, the Health Insurance Fund will pay the employee the benefit for temporary incapacity for work. If a permanent incapacity for work should arise, the employer(s) who caused the occupational disease has/have the obligation to compensate the difference between the pension for incapacity for work and the average wage/salary, based on the loss of professional capacity for work. The organization liable for the damage is obliged to compensate additional expenses certified by medical expert’s opinion: prosthetic devices, assistive devices, prescription drugs etc.
But the employee has the option of filling judicial action against the employer for compensation of damage.
In case of an occupational disease, how is the disease found, recognized and controlled? How does the worker get the compensation for his occupational disease?
A professional disease is an illness caused by one of the occupational environment risk factors or types of work specified on the list of occupational diseases established by the Minister of Social Affairs.

The illness is diagnosed in the course of a medical examination carried out by an occupational health physician, who identifies the state of the employee’s health and gathers data on the employee’s current and past working conditions and type of work. An occupational disease is to be reported by the occupational health physician to the employer within 5 days of diagnosis of the disease, to the local institution of the Labour Inspectorate and the physician who referred the patient to the occupational health physician.

The employer must investigate all occupational diseases, with the participation of the working environment representative or, in the absence of the latter, the employees’ representative. The investigation must take place within 20 working days of receiving notice of the occupational illness and shall end with the preparation of a report. The report shall be submitted to the local institution of the Labour Inspectorate and the victim or a person representing his or her interests within 3 working days of the conclusion of the investigation of the occupational accident. All occupational disease cases and illnesses caused by work must be registered within the company and reported to the working environment specialist, the working environment representative, the employees’ representative and the working environment council.

The employee shall receive a corresponding certificate of incapacity for work, on the basis of which compensation shall be paid to him or her from the Health Insurance Fund.

Specify the conditions and duration of the compensation.
In the case of an occupational disease, the Health Insurance Fund will pay the benefit for temporary incapacity for work on the basis of certificate of incapacity for work,
starting on the second day, the rate of the benefit being 100% of the average salary/wage for the last six months. The benefit is paid for up to 182 days.

[4] Similarly, does the employer have to take care of all or part of the compensation for incapacity resulting from an accident at work of his employee?

In the case of a professional disease, the Health Insurance Fund will pay the employee benefit for temporary incapacity for work. If a permanent incapacity for work should arise, the employer(s) who caused the occupational disease has/have the obligation to compensate the difference between the pension for incapacity for work and the average wage/salary based on the loss of professional capacity for work. If the employer has been dissolved and has no legal successor, the obligation to pay the benefit shall pass to the state (local pension board). An organization liable for the damage is obliged to redress the additional expenses certified by medical analysis: prosthetic devices, assistive devices, sanatorium treatment, expenses on travel to health care facility or sanatorium, expenses for auxiliary care given to the victim.

But the employee has the option of filling judicial action against the employer for the benefit.

In case of incapacity resulting from an accident at work, specify the conditions and duration of the compensation.

If an occupational accident, occupational accident in traffic or complication/illness occurring as a consequence of an occupational accident should befall an employee, the Health Insurance Fund will pay the benefit for temporary incapacity for work on the basis of certificate of incapacity for work, starting on the second day, the rate of the benefit being 100% of the average salary/wage for the last six months. The benefit is paid for up to 182 days.

If the employer does not take care of the compensation, how is the incapacity to work resulting from an accident at work compensated?

See the responses made to the previous question.

[5] If the illness is not caused by a professional activity, is the worker still entitled to an income during the incapacity to work? If yes, to what income replacement indemnity is the worker entitled and who pays for this?

In the case of a complication/illness occurring as a consequence of illness, household injury and traffic accident injury, the employer pays the benefit from the 4th to the 8th day of the illness. The Health Insurance Fund pays the benefit from the 9th day of the illness. The benefit is paid for up to 182 days (up to 240 days for tuberculosis). The rate of the benefit is 70% of the average wage for the last six months.

[6] What are the conditions to be met by the worker to qualify for an income replacement indemnity (eligibility: training and payment of contributions for example; conditions for grant: being unable to work and have ceased all activity, for example)?

The employee must be an insured person in order to receive the benefit for temporary incapacity for work. The employee must submit a certificate of incapacity for work. Insured persons are not eligible to receive the benefit from the Health Insurance Fund if:
• His or her illness, or that of a person under his or her care, was caused by the intent of a person or was due to a state of intoxication.
• He or she, or a person under his or her care, disregards medically justified treatment prescribed by a physician, as a result of which recovery is hindered.
• The temporary incapacity for work begins at the moment at which the insured person is on leave.

Insured persons are not eligible to receive benefits as of the day of the violation if:
• He or she fails to appear for a doctor’s appointment, without good reason
• He or she is discharging employment or service obligations at the time of the temporary incapacity for work and receives, in exchange for it, income subject to social tax, or engages in enterprise.

[7] What formalities must be met by the worker to prove his incapacity to work and have it recognized?

In order for the Health Insurance Fund to determine and disburse the benefit on the basis of certificate for incapacity for work, the certificate for incapacity for work issued by a physician must be submitted to the Health Insurance Fund within 90 calendar days of the date on which the employee commenced discharging job duties as listed on the certificate for incapacity for work. The benefit shall be paid within 30 calendar days of the receipt by the Health Insurance Fund of documents filled in as required.

[8] How is the amount of income replacement indemnity to which the worker is entitled determined? (for example: a percentage of the lost remuneration)? Does the worker's family situation affect the amount of compensation (whether or not the worker has family members who depend on him for their income for example)?

The calculation of the benefit for temporary incapacity for work does not depend on whether the recipient has dependents. The amount of compensation is linked to remuneration. The rate of the benefit is 70% of the average wage per calendar day. The benefit payable is calculated on the basis of social tax for the previous calendar year, the data for which is obtained by the Health Insurance Fund from the Tax and Customs Board. To obtain the amount of compensation, the level of compensation shall be calculated from the employee’s average income for a calendar day of work and it is multiplied by the number of days subject to being indemnified. If there was no income subject to social tax in the past year, the benefit shall be calculated based on the minimum wage. Income tax is withheld from the benefit.

[9] Is it possible to cumulate the income replacement indemnity with another income or social benefits?

During the period in which the benefit for incapacity for work is paid, the person retains all social and family benefits to which the person is entitled.

No remuneration for work may be earned for the period in which the benefit for temporary incapacity for work is received. The person has no right to receive a benefit for temporary incapacity for work, if the person receives, for the time of the temporary incapacity for work, income subject to social tax. The employer may not allow the person to discharge job or service obligations during the time that he or she is shown on the certificate of incapacity for work as being excused from discharging job or service
obligations. Violation of this prohibition shall result in the insured person forfeiting the right to receive the benefit for incapacity for work as of the day of the violation.

[10] How is the medical control of the incapacity to work done and by whom? The treating physician – who can be either a GP or specialist – issues a certificate for incapacity for work in the case of illness or injury. The certificate for incapacity for work is the basis for paying the benefit for temporary incapacity for work.

[11] How is the income replacement indemnity granted and terminated (for example: is it by a decision taken by the control authority and communicated to the worker)? Is there any appeal against such decisions? Before which court? The benefit for temporary incapacity for work is paid by the Health Insurance Fund on the basis of a certificate of incapacity for work (see #7 for more details). The certificate, and other documents needed for determining and paying the benefit, are to be submitted to the Health Insurance Fund by the employer within seven calendar days of the day on which the insured received the certificate for incapacity for work.

In case of denial of benefit, the Health Insurance Fund shall draw up an administrative act, containing the circumstances for denying the benefit and procedure for contesting the decision. A person has the right to initiate a challenge within ten calendar days in accordance with procedure set forth in the Code of Administrative Procedure. If the Health Insurance Fund does not satisfy the challenge, the person can turn to Administrative Court.

[12] Does the sick worker have protection against dismissal or is the employer permitted to terminate the employment agreement of sick workers at any time? A public servant can be released from duty, and an employment contract between employee and employer cancelled, solely on certain conditions set forth in the Public Service Act and Employment Contracts Act, respectively.

[13] If the worker has protection against dismissal, please specify this dismissal protection. In accordance with clause 92 (1) 3) of the Employment Contracts Act, the employer cannot cancel an employment contract due to the fact that the employee is not able to discharge work duties for a short term due to health reasons. In accordance with clause 92 (1) 3) of the Employment Contracts Act, the employer cannot cancel an employment contract due to the fact that the employee is not able to discharge work duties for a short term due to health reasons. A reduction in ability to perform work due to health reasons is presumed if the employee’s health renders it impossible to perform work duties for four months. Before cancelling the employment contract, the employer must offer other work if possible. The employer must offer employees other work, including organizing in-service training for the employee, adapt the workplace or change the employee’s working conditions, if the changes do not cause disproportionally large expenses for the employer, and it can be reasonably required, in light of circumstances that the employee should be offered other work.

In the case of public servants, the protection is set forth by Subsection 93 (1) of the Public Service Act, in accordance with which a public servant can be released from public service due to reduction in capacity for work, if the public servant is unable to
perform his or her service duties on the basis of certificate for incapacity for work for over four consecutive months or over five months during a year.

[14] Does it make a difference to the dismissal protection whether the worker is unable to work as a result of handicap or chronic illness instead of a “normal illness”?

No, under legislation, the cancellation of employment contract or discharge from service does not depend on the reason for the long-term incapacity for work.

Sincerely

Meelis Eerik
President of the Estonian Association of Judges