Disabilities and occupational diseases: Questionnaire of the 4th Committee (2013)—Answers from Republic of China (Taiwan).

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?

1-1. According to Article 184 of Taiwan Civil Code, if the inability to work is caused by a person\(^1\) who, intentionally or negligently, has wrongfully damaged the rights of another, the person is bound to pay for the income replacement indemnities. The same rule shall be applied when the injury is done intentionally in a manner against the rules of morals. In addition, if the inability to work is caused by a person\(^2\), who violates a statutory provision enacted for the protection of the injured party and therefore prejudice to them, is bound to pay for the income replacement indemnities, except no negligence in his act can be proved.

1-2. According to Article 487-1 of Taiwan Civil Code, if the inability to work is caused while the worker is performing the services, the worker may demand to the employer (as long as the employer is responsible) for the injury, if, owing to circumstance for which the worker is not responsible.

1-3. According to Article 7 of Act for Protecting Worker of Occupational Accidents, an employer shall compensate for the income replacement indemnities to worker if the inability is caused as a result of occupational accidents\(^3\) unless the employer can produce proof of non-negligence.

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\(^1\) Including the employer himself.

\(^2\) Including the employer himself.

\(^3\) In Taiwanese legal statutes, when refers to ‘occupational accident’, it includes the handicap, illness or accident caused by a professional activity.
1-4. According to Article 33 and 35 of Taiwan Labor Insurance Act, in case an insured worker of labor insurance\(^4\) is not receiving salary payment on account of an ordinary injury or sickness for which he is hospitalized and under medical treatment, he shall be paid ordinary injury or sickness benefits beginning from the fourth day on which he is incapacitated for work. The Ordinary injury or sickness benefits shall be payable at the rate of fifty percent of the average monthly insurance salary of an insured worker, and payable once every half month for the maximum period of six months, provided that such benefits shall be payable for an additional six months in case the insured worker has at least one full year of insurance coverage prior to the occurrence of the injury or sickness.

1-5. According to Article 53 of Taiwan Labor Insurance Act, in case an insured worker suffers from ordinary injury or sickness and the worker's condition is stable after medical treatment but no improvement could be expected for further treatment, and if the worker is diagnosed to be permanently disabled by the insurer's (the Bureau of Labor Insurance) own hospital or qualified hospital and the disability comply with the disability benefit standard regulation, the insured worker could claim disability benefit according to his/her average month insurance salary and stipulated benefit payment standard. If the insured worker has the situation as described above or the insured worker himself is a physically or mentally disabled citizen, and is examined as no capability to work permanently, the insured worker could claim for disability pension benefit. The disability benefit standard is calculated based on the insured's insurance coverage years. 1.55% of the insured's average monthly insurance salary is granted for every single insurance coverage year; if the total amount is less than four thousand NT dollars (about 133 US dollars), four thousand NT dollars will be granted to the insured worker.

1-6. According to Article 33 of Taiwan National Pension Act\(^5\), The insured persons qualify for one of the followings are entitled to apply for mentally/physically disability pension payment:

A. The insured persons were harmed or had suffered from disease before but with current symptoms remain stable after the termination of treatment. No improvement is expected even continue the treatment. Additionally, the insured persons have to be diagnosed as severe mentally/physically disability without capability to work by qualified hospitals evaluated by central health care competent authority.

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\(^4\) Labor insurance is a compulsory insurance for the worker stipulated by Labor Insurance Act.

\(^5\) National Pension Insurance is a compulsory insurance roughly for the citizens aged 25 and above but under 65 with their household registered in Taiwan except for those should participate or have already participated in other related social insurances (such as Labor insurance, civil servant and teacher insurance, military personnel insurance or farmer’s health insurance). The insurer of National Pension is also the Bureau of Labor Insurance.
B. The insured persons still not yet recovered from the disease or harm suffered during the Insurance period after more than one years of treatment. The after effect of suffering from severe mentally/physically disability was diagnosed as never to be recovered and no capability to work by qualified hospitals.

1-7. According to Article 34 and 36 of Taiwan Labor Insurance Act, in case an insured worker is not receiving salary payment on account of injury or occupational disease incurred on duty for which he is receiving medical treatment, he shall be paid occupational injury or disease compensation beginning from the fourth day on which he is incapacitated for work. Occupational injury or disease compensation shall be payable at the rate of seventy percent of the average monthly insurance salary of an insured worker, and payable every half month for the maximum period of six months. In case the insured worker has not recovered from the injury or disease after one full year, the compensation shall be reduced to fifty percent of the average monthly insurance salary for the maximum period of one year.

1-8. According to Article 54 of Taiwan Labor Insurance Act, in case an insured worker suffers from occupational injury or disease and the worker's condition is stable after medical treatment but no improvement could be expected for further treatment, and if the worker is diagnosed to be permanently disabled by the insurer's (the Bureau of Labor Insurance) own hospital or qualified hospital and the disability is qualified to claim a lump sum disability benefit standard regulation, the insured worker could claim disability compensation according to his/her average monthly insurance salary and stipulated benefit payment standard with 50% extra benefit. If the insured worker mentioned above is examined as no capability to work permanently and has claimed for disability pension benefit, other than granting the pension according to the regulation in article 53, an extra twenty month occupational injury or disease disability compensation based on the insured's average monthly insurance salary should also be issued.

1-9. According to Article 59 of Taiwan Labor Standards Act, an employer shall pay compensation to a worker who is injured, handicapped or sick as a result of a professional activity according to the following provisions (no matter the employer is negligent or not):

A. When a worker under medical treatment is not able to work, the employer shall pay him compensation according to his/her pre-existing wage. The employer shall be released from such compensation obligation by giving to the worker a lump sum payment equal to forty months of average wage if the worker failing to recover after two years of medical treatment has been diagnosed and confirmed by a designated hospital as being unable to perform the original work and so does not meet the disability requirements under the following B.
B. When after the termination of medical treatment the designated hospital has definitely diagnosed that the worker is disabled forever, the employer shall pay him a lump sum as disability compensation in accordance with he/her average wage and the degree of disability.

[1-10] According to Article 8 of Act for Protecting Worker of Occupational Accidents, for the insured worker of Labor insurance, in addition to the protection of 1-4,1-5, 1-7 and 1-8, if the worker suffers an occupational accident during the existence of insurance coverage, the person concerned may apply to the Bureau of Labor Insurance for the following subsidies:

A. When suffering an occupational disease and being lost of partial or full capability to work, the person concerned may apply for extra living allowance after having received various occupational accident benefits of labor insurance scheme.

B. Owing to residual physical impairment caused by an occupational accident and being lost of partial or full capability to work, the person concerned may apply for extra disability living allowance

C. After suffering an occupational accident, the person concerned may apply for extra living allowance if having not received training subsidy or living allowances referred to in the preceding subparagraph A or B during the period of participating in vocational training.

D. Upon the termination of labor insurance coverage, the insured person of labor insurance scheme may apply for living allowance only when the person concerned being diagnosed by a physician of having occupational disease, which had been contracted during the existence of insurance coverage, and having not received labor insurance benefits and still incapable of working.

The maximal period of receiving subsidies for the workers described in Subparagraphs A, B and D mentioned above and still another care-taking subsidy shall be up to five years in total.

[1-11] According to Article 9 of Act for Protecting Worker of Occupational Accidents, for the worker who is not the insured person of Labor insurance, in addition to the protection of 1-9, if the worker suffers an occupational accident may apply to the Bureau of Labor Insurance for subsidy if qualified with one of conditions prescribed in 1-10 subparagraph A or B.

The maximal period of receiving subsidies for the workers prescribed under Subparagraphs A, B and care-taking subsidy shall be up to three years in total.
[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)?

In the circumstance of 1-1 and 1-6 mentioned above, it makes no difference.

In the circumstances of 1-2, 1-3, 1-7, 1-8, 1-9, 1-10 and 1-11 mentioned above, it is for the inability caused by a handicap, illness or accident as a result of a professional activity only.

In the circumstances of 1-4 and 1-5 mentioned above, it is for the inability caused by a handicap, illness or accident NOT as a result of a professional activity.

[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?

For 1-1, 1-2 and 1-3: if the employer is negligent for the cause to the inability, yes.

For 1-4 and 1-5: these are the indemnification of insurance, and the premium for the ordinary insurance is paid 70% by the employer, 20% by the insured and 10% by the central government.

For 1-6: this is the indemnification of insurance, and the premium for the insurance, in normal circumstance⁶, is paid 40% by the central social welfare competent authorities, 60% by the insured.

For 1-7 and 1-8: these are the indemnification of insurance, and the premium for the occupational accident insurance is all paid by the employer.

For 1-9: it shall be paid by the employer, but in respect of the same occupational accident, the employer has already paid compensation to the worker concerned in accordance with the provisions of the Labor Insurance Act⁷ or other applicable statutes and administrative regulations, the employer may deduct those already paid compensation therefrom. Also, the compensation paid by an employer in accordance with 1-9 may be deducted from the payment of compensation for the damages arising out of the same occupational accident in accordance with the provisions mentioned in 1-1, 1-2 and 1-3.

For 1-10: it is paid from a special fund from the surplus of occupational accident insurance balance of the Labor Insurance Fund.

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⁶ For the low-income insured person prescribed in the National Pension Act, the percentage of payment may be adjusted.

⁷ For example, as mentioned in 1-7 and 1-8.
For 1-11: it is paid from a budget of special fund prepared by the Council of Labor Affairs, Executive Yuan\(^8\) of Taiwan.

- 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?

- How is the disease found, recognized and controlled?

A worker who is suspected of having an occupational disease shall be diagnosed by a physician. When disagreeing with the diagnostic result concerning the occupational disease, the worker concerned or the employer concerned may prepare relevant documents and information and file application to the municipal or county(city) competent authorities for determination. In order to determine occupational diseases, to protect the rights of workers having occupational diseases, the municipal and county(city) competent authorities may establish a Committee on Occupational Diseases Determination. When the municipal or county(city) competent authorities have difficulty in determining an occupational disease, workers or employers disagree with the determination on an occupational disease rendered by the municipal or county(city) competent authorities, or labor insurance institutions deems it necessary in the case of determining an occupational disease, an application may be filed together with relevant documents and information with the Central Competent Authority (i.e. the Council of Labor Affairs, Executive Yuan) for appraisal. In order to appraise occupational diseases to protect the rights of workers having occupational diseases, the Central Competent Authority shall establish a Committee on Occupational Diseases Appraisal\(^9\).

The Bureau of Labor Insurance in examining and deciding each subsidy prescribed in 1-10 and 1-11 may if necessary undertake the following acts:
1. Interviewing the applicant, employer, insured unit, relevant government agencies, organizations or persons.
2. Requesting with written notice a hospital, clinic or physician to explain or provide relevant documents.

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\(^8\) Executive Yuan is the Highest administrative authority of Taiwan.

\(^9\) The Appraisal Committee shall consist of 13 to 17 members, and the Central Competent Authority shall select members from the following persons, and appoint one of the members as the chairperson:
(1). 2 delegates from the Central Competent Authority.
(2). 1 delegate from the Department of Health, Executive Yuan.
(3). 8 to 12 physicians specialized in occupational diseases.
(4). 1 expert in occupational safety and health.
(5). 1 expert in laws.
The term of service for members is 2 years, and may be extended by the expiration date; members who represent government agencies shall stay and quit with their duties.
information.
3. Notifying an applicant to submit medical record and relevant examination reports; the costs required shall be paid by the Bureau of Labor Insurance.

- How does the worker get the compensation for his occupational disease?

i. For 1-1, 1-2, 1-3 and 1-9, if the person who is responsible (inc. the employer) does not pay the compensation autonomously, then the worker would have to file a civil lawsuit against the person to get the compensation.  

ii. For 1-4 and 1-7, the worker shall prepare the following documents to apply to the Bureau of Labor Insurance for the payments:
   A. Application forms for injury or sickness benefit payments and Receipt of benefit payments.
   B. Written medical diagnosis of the injury or sickness. In the event that hospitalization is required, the documents prepared and issued by the hospitals concerned which contain the names of the injury or sickness and the dates of hospitalization and discharge can be served as substitutes.

iii. For 1-5 and 1-8, the worker shall prepare the following documents to apply to the Bureau of Labor Insurance for the payments:
   A. Application forms for disability benefit payments and Receipts of benefits payment.
   B. Medical certificate of disability.
   C. Enclose check-out report and related pictures and photos where medical examination is made.

To audit disability benefit payments, the insurer may designate authorized national health insurance hospital or clinic or physicians to perform re-examination, and may notify the hospital or clinic producing the medical certificate of disability to provide necessary records of examination or patient data of diagnosis and treatment.

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10 According to Article 32 of Act for Protecting Worker of Occupational Accidents, when a civil lawsuit is brought for an occupational accident, the court shall, upon the application filed by the workers suffering an occupational accident, rule the grant of lawsuit assistance (which includes the temporary exemption from paying the court costs and other litigation expenses which are to be advanced, exemption from providing a security for the litigation expenses and temporary exemption from paying the attorney’s fees when the presiding judge, pursuant to the applicable laws, appoints an attorney to advocate the case for the party), however, provided that the worker concerned is not obviously hopeless to win the lawsuit. When a worker suffering an occupational accident requests for the order for safety protection or provisional execution, the court may reduce or waive the amount of guarantee for the worker concerned.
iv. For 1-6, 1-10 and 1-11, the worker shall prepare the following documents to apply to the Bureau of Labor Insurance for the payments:

A. Application forms.
B. Medical certificate of disability.
C. Enclose check-out report and related pictures and photos where medical examination is made.

- Specify the conditions and duration of the compensation.
  For 1-1, 1-2 and 1-3, it depends on the duration granted by the court that of inability to work is caused by the occupational disease.
  
  For 1-4, 1-5, 1-7, 1-8 and 1-9 as mentioned in Question 1.
  
  For 1-6, mentally/physically disability pension payments will be calculated based on the insurance period of the insured persons. Monthly payment will be 1.3% of the monthly insured amount for every insurance year.
  
  For 1-10 and 1-11, it varies from 1800 to 8200 NT dollars (about 60 to 273 US dollars) according to the percentage of the lost remuneration.
  
  [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?
  
  Same as Question 3.
  
- In case of incapacity resulting from an accident at work, specify the conditions and duration of the compensation.
  
  Same as Question 3.
  
- If the employer does not take care of the compensation, how is the incapacity to work resulting from an accident at work compensated?
  
  The worker can get compensated via 1-1, 1-4, 1-5, 1-6, 1-7, 1-8, 1-10 and 1-11 in accordance with the regulations mentioned above.
  
  [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?
  
  Yes, As mentioned in 1-1, 1-4, 1-5 and 1-6.
[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)?

As mentioned in Question 1.

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

Usually Medical certificate of disability and enclose check-out report and related pictures and photos where medical examination is made.

[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)?

It is determined by a percentage of the lost remuneration set by the Bureau of Labor Insurance (even for civil lawsuit brought against to employer or non-employer on the basis of 1-1 and 1-2, the court often refers to the percentage of the lost remuneration set by the Bureau of Labor Insurance as well.)

Only for 1-5 and 1-8, for those who claim for disability pension benefit and have family dependants who comply with the following criteria, an extra 25% family dependant allowance on the amount calculated for every dependant with the maximum of 50% extra:

1. The spouse should be more than 55 years of age and the conjugal relationship has existed for more than one year. However, the above regulation does not apply if any following condition exists:
   (1) incapable of earning a livelihood.
   (2) raising children as stipulated on subparagraph 3.
2. The spouse should be more than 45 years of age and the conjugal relationship has existed for more than one year and the spouse's monthly work income does not exceed 19047 NT dollars (about 635 US dollars).
3. The dependent children should comply with at least one of following criteria. As for adopted children, the adoption relation should have been existed for more than six months:
   (1) minority;
   (2) incapable of earning a livelihood;
   (3) under the age of 25 and still goes to school with monthly work salary does not exceed...
1047 NT dollars (about 635 US dollars).

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

For 1-1, 1-2, 1-3 and 1-9, it is possible to cumulate the income replacement indemnity with another income or social benefits.

For 1-4 and 1-7, it is paid under the condition that the worker is incapacitated for work, so it is not possible to cumulate the income replacement indemnity with another income, but it is possible to cumulate with social benefits.

For disability benefit mentioned in 1-5 and 1-8, it is possible to cumulate the income replacement indemnity with another income or social benefits.

For disability pension benefit mentioned in 1-5 and 1-8, it is not possible to cumulate the income replacement indemnity with another income, but it is possible to cumulate with social benefits.

For 1-6, it is not possible to cumulate the income replacement indemnity with another income nor social benefits.

For 1-10 and 1-11, it is possible to cumulate the income replacement indemnity with another income or social benefits.

[10] How is the medical control of the incapacity to work done and by whom?

The disability type, status, and level, benefit standard, medical organization level for issuing diagnosis and examining standards are to be defined by component central authority (i.e. the Council of Labor Affairs, Executive Yuan of Taiwan.) For defining the standards mentioned above, the component central authority should establish occupation counseling evaluation and individualized professional evaluation mechanism as the basis for disability pension benefit.

[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)?

For 1-1, 1-2 and 1-3, the civil court usually grants a lump sum income replacement indemnity to the worker.

For 1-9, it is granted by a decision taken by the civil court.
For 1-4 and 1-7, a term for the insured persons to apply for the payments of injury or sickness benefits is set at every fifteen days and the applications shall be made starting from the next day of the end of the term; if the period is less than fifteen days, the applications shall be made starting from the next day after the insured persons are discharged from the hospital or the treatment for the occupational injuries or diseases are terminated. The decision is taken by the Bureau of Labor Insurance.

For the disability benefit mentioned in 1-5 and 1-8, it is a lump sum payment granted by the Bureau of Labor Insurance.

For the disability pension benefit mentioned in 1-5 and 1-8, it is granted by the Bureau of Labor Insurance annually. After the insured worker claimed and got disability pension, the insurer （the Bureau of Labor Insurance） should review the degree of disability at least every five years, except for that the insurer think there is no need to review the disability. If the insurer reviews the degree of disability on those who have claimed disability pension and finds the disability has been reduced and does not conform to the criteria for claiming disability pension, the insurer should stop issuing disability pension benefit and grant a lump sum disability benefit.

For 1-6, 1-10 and 1-11, it is granted by the Bureau of Labor Insurance as well.

Is there any appeal against such decisions? Before which court?

Yes.

For 1-1, 1-2, 1-3 and 1-9, it is before the civil court.

For 1-4 to 1-8 and 1-10, 1-11, it is before the 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?

12-1. According to Article 13 of Taiwan Labor Standards Act, an employer shall not terminate a contract with a worker who is receiving medical treatment due to the illness, handicap or accident as a result of a professional activity, unless the employer cannot continue operating the business due to an act of God, catastrophe or other force majeure and a prior approval has been obtained from the competent authorities.

12-2. According to Article 23 of Act for Protecting Worker of Occupational Accidents, employers may not issue an advance notice to terminate the labor contract with workers suffering a handicap, illness or accident as a result of a professional activity except under any of the following conditions:
A. The employer’s business is in suspension or suffers serious loss and approval from the competent authority has been obtained.

B. After the termination of medical care for a worker suffering the handicap, illness or accident, a public medical institution appraises that the worker concerned is mentally deranged or physically disabled to be incapable of working.

C. The employer’s business cannot continue because of natural disaster, incident or other acts of God, and approval from the competent authority has been obtained.

[13] If the worker has protection against dismissal, please specify this dismissal protection.

As mentioned in Question No.12.

[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.