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


The basis for the payment of social security benefits for temporary disability are lists of disability issued in the manner approved by the Government of the Republic of Kazakhstan (Article 159 of the Labor Code).

The rules of the expertise of temporary disability issue sheet and certificate of temporary disability, approved by the Government of the Republic of Kazakhstan on October 31, 2011 № 1241, provide that in diseases and injuries of health worker gives a sheet and a certificate of temporary disability alone and at the same time on three calendar days (during the period of increased morbidity flu - up to six days) and with a total of not more than six calendar days.

Extending the sheet and certificate of temporary disability of more than six days produced jointly with the head of department of the medical organization of no more than twenty calendar days. Over this period of temporary disability extension sheet is held on the conclusion of the WCC.

Individuals engaged in the private practice of medicine issue sheet and a certificate of temporary incapacity for a period of not more than six calendar days.

Sheet of temporary disability shall be issued for a period not exceeding two months, with the exception of pregnancy and childbirth, as well as diseases identified by the Government of the Republic of Kazakhstan on December 4, 2007 № 1171 "On approval of the list of diseases which can be set period of temporary incapacity for work for more than two months."

If, in the WCC is no reason for referral to the ITU to establish disability and worsen the working conditions of the clinical course and prognosis of the disease, given the conclusion of the WCC on temporary transfer to an easier job for a period of two to six months. CWC deadline set by occupation (specialty), severity and complications of the disease.

[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)?

According to the Rules of the examination of temporary disability issue sheet and certificate of temporary disability, approved by the Government of the Republic of Kazakhstan on October...
31, 2011 № 1241, temporary disability - a condition of the human body caused by disease or injury, in which dysfunction is accompanied by the inability to perform professional work in for the time required for rehabilitation or determination of disability.

Distinguish types of disability: the degree of disability - full or partial, depending on the recovery prospects of employment functions - temporary or permanent, by type of employment - general or vocational.

Occupational disease - a chronic or acute disease caused by exposure to harmful factors employee in connection with the performance of his or her labor (official) duties.

When persistent violations of disability, which leads the patient to stop professional work for a long period of time or require significant changes in working conditions, established disability.

Disability is a basic condition for a pension, benefits, providing a variety of benefits in terms of labor, etc.

Accident at work - the impact on the employee harmful and (or) hazardous production factors in the performance of labor (official) duties or tasks of the employer, which resulted in a work accident, a sudden illness or poisoning of the employee, which led him to a temporary or permanent disability, occupational disease or death;

Disability - the degree of limitation of human life due to health problems with a persistent disorder of body functions, which leads to a restriction of his life and the need of social protection.

Regarding the differences in disability caused by disability, illness or an accident, there are differences of species and the amount of paid social benefits.

Thus, the relations in the field of public welfare of citizens eligible to receive special government allowances, regulated by the Law of the Republic of Kazakhstan on April 5, 1999 N 365 "On special state benefit in the Republic of Kazakhstan" (the Act).

In accordance with paragraph 7), 8), 8-1) of section 4 of the citizens who are entitled to benefits include: people with disabilities first, second and third groups, disabled children under sixteen years of age; disabled children from sixteen to eighteen years of the first, second, third teams.

Article 7 of the Act, set the amount received by the state special benefits:

9) persons with disabilities first and second groups - monthly index 1.4;

10), the third group of people with disabilities - 0.6 monthly index;

11) for disabled children under sixteen years of age - 0.9 monthly index;

11-1) for disabled children from sixteen to eighteen years:

the first - the second group - monthly index 1.4;

the third group - 0.6 monthly index.
Payment of special government allowances shall be as approved by the Government of the Republic of Kazakhstan at the expense of the national budget.

Article 12 of the Law "On state social benefits, disability, survivor and age in the Republic of Kazakhstan", the following dimensions of disability benefits, implemented through the budget:

1. Persons with disabilities from the general illness, industrial injury, occupational disease, the children - invalids to sixteen years old, disabled children from sixteen to eighteen years - the first, second, third groups, the disabled since childhood, disabled people from the military (except conscripts), persons officers and other ranks of the Interior and former State Investigation Committee of the Republic of Kazakhstan with the disability as a result of injuries received in an accident that is not associated with the performance of military service obligations (duties), or a disease that is not associated with the performance of military duty, and monthly disability benefits shall be appointed as follows:

- disabled group I 1.36 subsistence level established by the relevant financial year;
- disabled group II - 1.06 living wage;
- disabled group III - 0.74 living wage;
- children - disabled people under 16 years old - 1.00 living wage;
- disabled since childhood, I - 1.36 living wage;
- disabled since childhood, group II - 1.11 living wage;
- disabled since childhood, group III - 0.87 living wage;
- disabled children from 16 to 18 years Group I 1.36 living wage;
- disabled children from 16 to 18 years in Group II 1.11 living wage;
- disabled children from 16 to 18 years Group III 0.87 living wage.

2. Of disabled conscripts, who became disabled as a result of injury, concussion, injury, disease, received at the military service, the persons who became disabled in the aftermath of accidents at nuclear facilities civilian or military purposes or as a result of accidents at nuclear facilities; injuries due to environmental emergencies, including as a result of radiation exposure during nuclear explosions and tests and/or their effects, subject to the determination of cause-effect relationship monthly disability benefits shall be appointed as follows:

- disabled people in group I - 1.61 living wage;
- disabled group II - 1.30 living wage;
- disabled group III - 1.00 living wage.

3. Disabled people from the military (except conscripts), who became disabled as a result of injury, concussion, injury, disease, received at the military service, employees of the Interior
and former State Investigation Committee of the Republic of Kazakhstan on duty monthly
disability benefits shall be appointed in the following amounts:

• disabled people in group I - 2.09 living wage ;
• disabled group II - 1.49 living wage ;
• disabled group III - 1.00 living wage.

Social temporary disability benefits at the expense of the employer , the order of payment and
the amount of which is determined in accordance with the Rules of appointment and payment of
social benefits, as well as their determination , approved by the Government of the Republic of
Kazakhstan dated December 28, 2007 N -1339.

Mentioned Rules provides that the allowance is paid at the place of work from the first day of
incapacity until the day of rehabilitation or to establish disability.

The monthly allowance can not exceed fifteen times the monthly index values , except as set out
in these Rules.

The monthly allowance given employee is determined by multiplying its average daily wage by
the number of working days to be paid according to the list of disability.

If the temporary disability begins in the previous year and ends in the current , the
calculation of benefits and a monthly limit of its size are made in two stages , with the
appropriate year monthly index .

Benefit working participants , invalids of the Great Patriotic War and persons equated to
them , shall be paid from the first day of disability in the amount of one hundred percent of the
average wage.

Benefit related to an industrial injury or occupational disease, the employee shall be paid by
the employer in the amount of one hundred percent of the average wage from the first day of
disability to return to work or determination of disability .

Upon the occurrence of a temporary incapacity of the employee due to an industrial injury or
occupational disease benefit is granted if the act of an accident or other damage to the
employee's health in the workplace.

[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 case of an occupational disease, how is the disease found, recognized and controlled? How
does the worker get the compensation for his occupational disease?
• Specify the conditions and duration of the compensation.

According to article 936 of the Civil Code of the Republic of Kazakhstan damage to life and
health of the citizen in the performance of contractual obligations , labor (official ) duties ,
responsibilities of military service shall be compensated according to the rules of this chapter, unless the legislative acts or the contract provides for increased responsibility.

The labor legislation of the Republic of Kazakhstan establishes certain cases where employees are given guarantees and compensation payments are made. Compensation - cash payments related to working hours and working conditions, with compensation to the employee costs incurred in carrying out the work.

In addition, the property interests of citizens and legal entities, including those associated with causing harm to life and health of citizens as a result of accidents and other events that diseases can be objects of property and personal insurance, and are regulated by the Law of the Republic of Kazakhstan on February 7, 2005 N 30 "Compulsory insurance against accidents employee in the performance of labor (official) duties."

Insurance payment - an amount of money paid by the insurer to the beneficiary within the sum insured when the insured event. Therefore, the insurance payout for the harms associated with the death of the employee's health or damage shall be made in the amount of actual damage, but no more than the sum insured stated in the contract of compulsory insurance.

Insurance payments are made in connection with the insured event, which include:
- The establishment of the degree of disability of the employee;
- Occupational disease;
- The death of the employee.

The amount of additional costs caused by damage to the health of the employee (for treatment, additional food, purchase of medicines, prosthetics, nursing care, spa treatment, purchase of special equipment, training for another profession, etc., if it is accepted that the victim needs these types of care and do not get them for free), and the funeral expenses of the employee (the cost of manufacturing the coffin, clothing for the deceased, wreaths, grave digging, late delivery to the place of burial, and other necessary expenses directly related to the burial and installation costs monuments, fences based on the cost of their production) is determined by the Insurer on the basis of documents confirming the costs submitted by an employee or a person who suffered these costs.

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

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

Ensuring the protection of property interests of the workers, life and health were damaged in the performance of labor (official) duties performed by making insurance payments. The object of compulsory insurance against accidents in the performance of labor (official) duties (hereinafter - the compulsory insurance of employees against accidents) is the property interest the employee life and health of the injured in the accident, which led him to establish the degree of disability or his death, in the presence or absence of fault of the injured worker. The subjects of compulsory insurance against accidents are insured, the insurer and the beneficiary.
Compulsory insurance against accidents on the basis of a contract concluded between the insured and the insurer in accordance with the Law of the Republic of Kazakhstan "On compulsory insurance against accidents employee in the performance of labor (official) duties" and the Civil Code in favor of the employee life and health which may be injured in the performance of labor (service) duties.

The circumstances under which the accident has led to the establishment of an employee degree of disability or of his death, provided for by paragraph 2 of Article 322 of the Labor Code of the Republic of Kazakhstan.

The size of the harms associated with the loss of earnings (income) in connection with the death of the employee or the establishment of his degree of disability shall be determined in accordance with the requirements of the Civil Code of the Republic of Kazakhstan. Insurance payments due as compensation for damage shall be in accordance with the Law of the Republic of Kazakhstan "On compulsory insurance against accidents employee in the performance of labor (official) duties."

Every accident, associated with the production, caused by the employee (employees) of disability, according to the medical report (recommendation) is executed by the accident in the form established by the authorized body for labor, the required number of copies (for each victim separately). Confirmed in due course Health Organization poisoning cases are made as an act of an accident, regardless of whether there is or is not a disability.

In the insurance case shall the payment of the insured. Social benefit for temporary disability shall, at its own expense to pay employees by the employer. The basis for the payment of social security benefits for temporary disability are lists of disability issued in the manner approved by the Government of the Republic of Kazakhstan. Social benefits for temporary disability paid to workers from the first day of incapacity until the day of rehabilitation or disability prior to the establishment of the calculation of their average salary, calculated in accordance with the laws of the Republic of Kazakhstan. Social security benefits, the order of appointment and payment are determined by the Government of the Republic of Kazakhstan. Employers may establish additional payments to employees to social security benefits prescribed by the laws of the Republic of Kazakhstan.

On labor legislation of the Republic of Kazakhstan the employee shall be entitled to an appeal, requests and complaints to the state labor inspectors or the court in accordance with the laws of the Republic of Kazakhstan. Also, the right to notice of an employee with claims to the courts to protect the rights of workers to compensation for damage caused as a result of injury or other harm to health in connection with the performance of work duties, and in other cases of infringement of the rights of workers to safety and health is of public protection inspector labor.

[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, it does. Social temporary disability benefits at the expense of the employer, the order of payment and the amount of which is determined in accordance with the Rules of appointment
and payment of social benefits, as well as their determination, approved by the Government of the Republic of Kazakhstan dated December 28, 2007 N-1339.

[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 procedure for determining compensation and damages caused to the employee governed by Chapter 47 of the Civil Code of the Republic of Kazakhstan "Liabilities arising from the injury ."

Paragraph 1 of Article 938 of the Civil Code of the Republic of Kazakhstan clearly regulated the size of compensable loss of earnings (income) , which is defined as a percentage of average monthly earnings ( income) to injury or other impairment of health or to the onset of disability .

To implement the payment of social allowances for temporary disability worker must have sick leave granted in the manner approved by the Government of the Republic of Kazakhstan (Article 159 of the Labor Code) in the case of general illness , non-occupational activities.

Disabled basis for the payments of social benefits is the availability to sign medical and social assessment of disability .

Upon the occurrence of a temporary incapacity of the employee due to an industrial injury or occupational disease benefit is granted in the presence of certificate of incapacity and the act of an accident or other damage to the employee's health in the workplace.

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

Establishing the degree of disability in accordance with the Rules of the medical and social assessment , approved by the Government of the Republic of Kazakhstan of July 20, 2005 № 750 (hereinafter - the Rules) . In accordance with paragraph 7 of the Rules of medical organizations (WCC ) conduct an examination of temporary disability and if the testimony is directed to medical and social expertise of persons after the necessary diagnostic, therapeutic and rehabilitation measures, confirming the persistent disruption of the body , caused by diseases , injuries and defects of the consequences no later than four months. Medical and social assessment carried out in accordance with the criteria set of disability . With regard to establishing percent loss ( occupational ) disability (hereinafter - UPT ), the employees of the degree of disorders of the body , which caused the loss of ability to work , set out in Annex 2 of the Regulations , the percentage of DCA is established if the employee can continue their professional activities with moderate or slight decrease qualification, or a decrease in the volume of work performed, or if the performance of his professional activity requires more voltage than before, establishes the degree of disability from 5 to 30 percent. At the same time to inform you that in determining the degree of disability and disability are given : 1 ) a certificate of disability , and 2 ) a certificate of degree of disability .
[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)?

In accordance with Article 943 of the Civil Code of the Republic of Kazakhstan, the amount of compensation for damage paid by the citizens due to the impairment of health or death of the victim, shall be indexed in the prescribed legislative enactments with an increase in the cost of living.

An increase in the order established by the legislative acts of the minimum wage amount of compensation for lost earnings (income), other fees, awarded due to the impairment of health or death of the victim, increase proportionally increase the monthly calculation index (MRP).

Marital status does not affect the employee's compensation.

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

The composition of the lost earnings (income) to be recovered shall include all types of remuneration for labor and civil contracts as a major workplace and in combination, the taxable personal income tax. It does not include lump sum nature (compensation for unused vacation, severance pay severance, etc.). During the period of temporary disability and maternity leave is taken into account benefits paid. Income from business activities, as well as royalties included in lost wages, revenues from business activities are included on the basis of the tax authority.

All types of earnings (income) recognized in the amounts accrued before taxes.

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

In accordance with the Rules of medical and social assessment, approved by the Government of the Republic of Kazakhstan of July 20, 2005 № 750 the establishment of disability and the degree of disability, and identify the needs of the examined entity in the social protection measures are carried out by means of medical and social expertise territorial divisions of the Monitoring Committee and Social protection of the Ministry of Labor and social Protection.

[11] How is the income replacement indemnity granted and terminated (for exemple: 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?

Article 35 of the Law of the Republic of Kazakhstan "On Social Protection of Disabled Persons in the Republic of Kazakhstan" indicates that compensation for harm people with disabilities to receive employment injury or occupational disease caused by the employer shall be in accordance with the laws of the Republic of Kazakhstan.

According to article 937 of the Civil Code of the Republic of Kazakhstan in causing a person injury or other impairment of health reimbursed the loss of earnings (income ), which he had either definitely could have, as well as the expenses caused by the injury to health ( for
treatment, additional food, purchase of medicines, prosthetics, nursing care, spa treatment, purchase of special equipment, training for another profession, etc.), if it is accepted that the victim is in need of these types of assistance and care and do not get them for free. In determining the loss of earnings (income) disability benefits assigned to the victim due to injury or other impairment of health or other types of benefits that are assigned both before and after the damage to the health and pension benefits as compensation does not count. On account of redress is not counted as income received by the victim after the injury to health. Legislative acts or the contract may be increased volume and the amount of compensation payable to the victim in accordance with this Article.

Size reimbursable lost earnings (income) is defined as a percentage of average monthly earnings (income) to injury or other impairment of health or disability before the corresponding degree of loss to victims of occupational ability, and in the absence of it - a total disability.

The composition of the lost earnings (income) includes all types of remuneration for labor and civil contracts as a major workplace and in combination, the taxable personal income tax. It does not include lump sum nature (compensation for unused vacation, severance pay, severance, etc.). During the period of temporary disability and maternity leave is taken into account benefits paid. Income from business activities, as well as royalties included in lost wages, revenues from business activities are included on the basis of the tax authority.

All types of earnings (income) recognized in the amounts accrued before taxes.

Average monthly earnings (income) is calculated by dividing the total amount of earnings (income) for the twelve months of the prior damage to health or offensive disability at twelve. In the case where the victim at the time of the injury worked less than twelve months, the average monthly earnings (income) is calculated by dividing the total amount of earnings (income) for the number of hours actually worked months before the damage to health by the number of months.

Fully-developed victims months at his request completely replaced the preceding month of work or are excluded from the calculation if you can not replace them.

In the case where the victim at the time of the injury was not working, is carried at the request of his earnings to dismissal or ordinary remuneration of the employee his or her qualifications in the area, but not less than ten times established by the legislative acts of the monthly index.

If the earnings (income) to the victim of causing injury or other impairment of health occurred sustainable changes that improve his property status (salary increase for the position, translated into a better paying job, went to work after graduation, and in other cases where will prove the stability of the changes or the ability to change pay the victim), the determination of his average monthly earnings (income) is taken into account only income (income), which he has received or should have received after the relevant changes.

With an increase in the employer held liable for the damage, the size of the average worker's wage is the same profession and qualification is recalculated the amounts of compensation for lost earnings (income) to be determined as a percentage of the increase in average monthly earnings (income), corresponding to the degree of loss to victims of employability and in the absence of it - a total disability.
Compensation for damage caused to employees by the employer, as necessary to carry out inspections, advisory opinions are involved in the authorized state labor agencies. If there is a dispute about the right to question the validity and amount of payments authorized by the court at the request of an interested person or the prosecutor.

[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?

The employment contract by the employer on the sub-17) of paragraph 17 of Article 54 of the Labor Code of the Republic of Kazakhstan shall be terminated in the event of non-employee to work more than two consecutive months due to temporary disability, confirmed by a sheet of disability.

Except for the termination of the employment contract to the specified base is to find an employee on maternity leave, and if the disease is in the list of diseases for which a longer period of disability, approved by the Government of the Republic of Kazakhstan dated December 04, 2007 № 1171 "On approval of the list of diseases which can be set period of temporary incapacity for work for more than two months" (hereinafter - the List).

It is noted that according to Article 55 of the Labor Code of the Republic of Kazakhstan is not allowed termination of the employment contract by the employer during the period of temporary incapacity of the employee, except for the termination of the employment contract in accordance with subparagraph 1) of paragraph 1 of Article 54 of the Labor Code of the Republic of Kazakhstan - the elimination of the employer - legal person or the termination of an employee - an individual.

However, when there is doubt about the validity of the employer granting sick leave, it is recommended to send requests to the appropriate medical institution that issued them.

For the employee unable to work due to occupational injury or illness, job (position) is retained until rehabilitation or determination of disability.

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

According to Article 3 of the Labor Code of the Republic of Kazakhstan - the purpose and objectives of the labor legislation of the Republic of Kazakhstan is the legal regulation of labor relations and other relations directly related to employment, aimed at protecting the rights and interests of the parties to labor relations, the establishment of minimum guarantees of rights and freedoms in the workplace.

Thus, the basic rights and duties of the employee are the protection of the rights and legitimate interests by not contradicting the law in accordance with subparagraph 14 of paragraph 1 of Article 22 of the Labor Code of the Republic of Kazakhstan.

The primary protection of civil rights by the court, tribunal or the arbitral tribunal by: recognition of rights to restore the situation that existed before the violation of law, suppression of acts that violate the law or threatening to infringe, the award to the execution of an obligation in kind, the recovery of damages, penalties, invalidation, non-pecuniary damage; termination or alteration of legal relations; invalidation or inapplicable the relevant legislation.
act of state or local representative or executive body, fining with public bodies or officials for obstructing a citizen or legal person in the acquisition or exercise of rights as well as other remedies provided by legislative acts.

[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»?

For the determination of disability and the degree of disability the person by carrying out medical and social assessment (ITU), the territorial units of the authorized body in the field of social protection. Prior to ITU employee should be sent for examination to a medical facility for the receipt of the opinion. Medical and social assessment is carried out on the basis of a comprehensive assessment of the state based on the analysis of clinical and functional, social, occupational and psychological data of the examined person in the manner prescribed by the Government of the Republic of Kazakhstan. Upon recognition of a disabled person and determining the degree of disability is determined by their causes, duration, time of onset, the need for additional forms of assistance and providing technical aids (compensatory) means of special vehicles, as well as develop an individual program of rehabilitation of the disabled person.

If the employee's illness is not included in the list approved by the Government of the Republic of Kazakhstan dated December 04, 2007 № 1171 "On approval of the list of diseases which can be set period of temporary incapacity for work for more than two months," termination of employment on the basis of subsection 17) of paragraph 17 of Article 54 Labor Code of the Republic of Kazakhstan may be exercised only at the end of periods of temporary disability, confirmed by a piece of temporary disability.

Termination of the employment contract by the employer with pregnant women, women with children under three years old, a single mother raising a child under the age of fourteen (disabled child under eighteen years of age), other persons bringing up such children without a mother, not permitted, except as provided in subparagraphs 1), 3) -18) of paragraph 1 of Article 54 of the Labor Code of the Republic of Kazakhstan.

The employment contract with the employee by the employer may be terminated in the following cases: subparagraph 4) of Article 54 of the Labor Code of the Republic of Kazakhstan - the discrepancy employee position or job due to health status, impeding the continuation of this work, when it should be confirmed by a medical report in the manner prescribed the legislation of the Republic of Kazakhstan.

However, for an employee unable to work due to occupational injury or illness, job (position) is retained until rehabilitation or determination of disability.