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?

Workers at entitled to income replacement indemnities as a result of inability to work, regardless of the cause (handicap, illness or accident)

[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)?

No, see above.

Under the Dutch civil code, the employer is obliged to pay 70% of the salary of workers in the event of inability to work, during the first 104 weeks (2 years) of the inability. If the employment agreement ends during the first 104 weeks, the worker is eligible to sickness benefit under the Sickness Benefit Act, also to the amount of 70% of the salary. For this salary/sickness benefit, it does not matter what the cause of the inability is (handicap, illness or accident).

In the Netherlands, it is not uncommon for the employer to supplement the sick-pay up to 100% of the last-earned salary during the first 52 weeks of sickness (generally agreed upon in an individual employment agreement or collective bargaining agreement).

If the worker is unable to work longer than 104 weeks, he may be eligible for an occupational disability benefit (WIA), if he is 35% work-disabled or more.

[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.
If the employer is responsible/liable for the worker’s inability to work as a result of an accident at work or an occupational disease, it could be ruled that the employer will have to compensate the worker for 100% for his loss of income instead of 70% (see [2]).

Every company in the Netherlands, with the exception of companies with less than 10 employees, must have a contract with a company doctor to assist the employer with his legal obligations. Generally, this is an external doctor working for a specialized occupational health and safety service (Arbo in Dutch). One of the doctor’s main tasks is to examine sick employees and to decide which reintegration options concerning suitable work the employee has. This doctor has no specific tasks regarding diagnosing occupational diseases. In the event of a worker claiming to have an occupational disease, generally the (medical advisor) of the insurance company of the employer will establish whether the worker suffers from an occupational disease. If there is a dispute about the cause of the disease or the amount of compensation to be paid by the employer, the civil court will have to rule on this.

[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?

See above [3], there is no distinction between the liability of the employer for loss of income of the worker as a result of incapacity resulting from an occupational disease or an accident at work.

[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?

As explained under [1] and [3], the worker is entitled to 70% of his income during incapacity to work, no matter what the cause is.

[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 worker must be employed on the basis of an employment agreement. Under Dutch law, during the first 104 weeks of incapacity to work, a worker is deemed to be sick if he is not able to fulfill his contractual obligations (i.e. his own job) fully and completely. The sick worker must participate with all (reasonable) reintegration activities set by the employer in
close cooperation with the company doctor (or the activities set out by the Institute for Employee Benefit Schemes (UWV) if the employment agreement has ended).

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

The worker must report his incapacity to work to his employer and comply with invitations from the company doctor so that the company doctor can advise whether the worker has an incapacity to work. The company doctor may ask the worker for permission to obtain information from the worker’s own medical doctor or specialist.

[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 income replacement indemnity during the first 104 weeks of incapacity to work amounts to 70% of the lost remuneration, but the employer may have a contractual obligation to pay more (see [2]). During the first 52 weeks, the employer is obliged to pay at least the minimum wage (or less if the salary was less than the minimum wage, for example in the event of part-time work). After the first 52 weeks, the worker may be eligible under the Supplementary Benefits Act (TW, Toeslagenwet) for a supplementary benefit if his income is less than the “guaranteed minimum income”.

For the TW, the family situation of the worker makes a difference. The employee is eligible to supplementary benefit if:

- he is married and the joint income is lower than the gross minimum wage;
- he is a single parent and has a child below the age of 18 and the income is below 90% of the gross minimum wage;
- he is single and his income is below 70% of the gross minimum wage.

Supplementary benefit is never more than the difference between the daily wage and the compensation for less of income, i.e. the supplementary benefit only supplements up to the previous income from employment.

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

The Civil code stipulates that social security benefits are subtracted from the 70% of the salary the employer is obliged to pay during the first 104 weeks of incapacity to work. However, it is possible to have private insurance which can supplement income replacement
indemnity. If a worker has two part-time jobs and is disabled for only one of these jobs, the income for the other job is not subtracted from the income replacement indemnity.

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

By the company doctor of the employer during the first 104 weeks of disability (see [3]), provided the worker is still employed by the employer. In the other cases, by the doctor of the Institute for Employee Benefit Schemes.

[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 income replacement indemnity is granted and terminated by the employer during the first 104 weeks of disablement (provided the worker is still employed by the employer). In the other cases, it is granted and terminated by the UWV.

Appeal to the employer’s decision is at the civil court (County Court).

The first appeal against the decision of the UWV is filed with the UWV itself. After that, appeal has to be made to the administrative law sector of the district 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?

The sick employee has dismissal protection (see [13]).

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

The sick employee is protected against dismissal during the first 104 weeks of sickness. Employers in the Netherlands need permission from the labour authorities to be able to terminate an employment agreement. If this permission is granted, it may not be used in the event of a sick employee, unless the employee was not yet sick when the employer filed the request for permission. There are some exceptions to this general rule, for example in the event that the employer closes his business, the sick employee is not protected against dismissal. The sick employee's employment agreement may also be ended (before the expiry of the 104-week period) if the employee constantly fails to comply with the Gatekeeper Improvement Act. The act allows for the employer first to stop salary payments to the employee and then, if the employee still fails to comply, to terminate the employment agreement. It is also possible for the employer to ask the court to terminate the employment agreement of the sick employee, because of a reorganization for example. Summary dismissal is also permitted if there is an urgent cause.
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»?

Yes, it can make a difference. According to the Act on equal treatment on the grounds of handicap or chronic illness (WGB h/cz), it is not permitted to make a distinction between workers who are disabled as a result of handicap and chronic illness and healthy workers, for example when entering into an employment agreement or terminating an employment agreement. This Act therefore provides protection against discriminatory dismissal on the basis of a handicap or chronic illness.

Karin Frikkee, the Netherlands