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Benefits that employees are entitled to due to contracting occupational diseases

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Summary: The article entitled “Benefits for an employee due to an occupational disease” presents a catalog of benefits due to an employee who has an occupational disease. This catalog has been divided into one-off, short-term and long-term benefits. One-time benefits include one-off compensation for an employee due to permanent or long-term damage to health or to the family of a worker due to death due to occupational disease and covering medical costs in the field of dentistry and immunization and supply of orthopedic items. Short-term benefits include sickness benefit from accident insurance, rehabilitation benefit and compensatory allowance. On the other hand, long-term benefits are a disability pension, a training pension, a survivor’s pension and a care allowance. Guarantees about benefits are wide, but it must be borne in mind that receiving each of the indicated benefits requires a medical certificate confirming the occupational disease. The benefits are awarded only in half of cases, and their amount is usually not sufficient to cover the costs of treatment and rehabilitation.

Key words: occupational disease, employee, pension, compensation.

Świadczenia przysługujące pracownikowi z tytułu zachorowania na chorobę zawodową

Streszczenie: Artykuł zatytułowany „Świadczenia przysługujące pracownikowi z tytułu zachorowania na chorobę zawodową” przedstawia katalog świadczeń przysługujących pracownikowi, który zachorował na chorobę zawodową. Katalog ten został podzielony na świadczenia jednorazowe, krótkoterminowe oraz długoterminowe. Do świadczeń jednorazowych zalicza się jednorazowe odszkodowanie dla pracownika z tytułu stałego lub długotrwałego uszczerbku na zdrowiu lub dla rodziny pracownika z tytułu śmierci wskutek choroby zawodowej oraz pokrycie kosztów leczenia z zakresu stomatologii i szczepień ochronnych oraz zaopatrzenia w przedmioty ortopedyczne. Jako świadczenia krótkoterminowe wymienia się zasiłek chorobowy z ubezpieczenia wypadkowego, świadczenie rehabilitacyjne oraz zasiłek wyrównawczy. Natomiast świadczenia długoterminowe to renta z tytułu niezdolności do pracy, renta szkoleniowa, renta rodzinna oraz dodatek pielęgnacyjny. Gwarancje dotyczące świadczeń są szerokie, jednak trzeba mieć na uwadze, iż otrzymanie każdego ze wskazanych świadczeń wymaga przedstawienia orzeczenia lekarskiego potwierdzającego chorobę

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zawodową. Przyznanie świadczeń następuje jedynie w połowie przypadków, a ich wysokość zazwyczaj nie jest wystarczająca na pokrycie kosztów leczenia i rehabilitacji.

Słowa kluczowe: choroba zawodowa, pracownik, renta, odszkodowanie.

Introduction

Occupational diseases comprise problems that cover two fields of law²: labour law³ and social security law⁴. The Labour Code regulates the obligations of an employer concerning the prevention of occupational diseases and the procedure for contracting occupational diseases. The law on social insurance against accidents at work and work-related diseases specifies the types of benefits, conditions for entitlement and amounts of benefits that employees are entitled to as a result of work-related diseases. Pursuant to Article 4 of the Law, an occupational disease is defined as a disease specified in Article 235¹ of the Labour Code which stipulates that “an occupational disease is considered a disease named in the list of occupational diseases, if the evaluation of working conditions can establish clearly or with a high probability that the disease was caused by the impact of harmful factors occurring in the workplace or by the way the work is performed, referred to as “occupational exposure”. It should be added that the list of occupational diseases was set forth in the Regulation of the Council of Ministers of 30 June 2009 on occupational diseases⁵.

Procedure for the determination of an occupational disease

A decision⁶ on the recognition of an occupational disease or on the absence of grounds for the recognition is issued by a doctor based on the results of medical examinations and auxiliary examinations, medical documentation of an employee or a

² M. Gerdorf, K. Rączka, J. Skoczyński, *Labour Code. Commentary*, Warsaw 2003, p. 651.

³ Act of 26 June 1974, Labour Code (OJ 2016, Item 1666, consolidate text) (hereinafter referred to as: the Labour Code).

⁴ Act of 30 October 2002 on social insurance against accidents at work and work-related diseases (OJ 2015, Item 1242 consolidate text) (hereinafter referred to as: Work Accident Act); It is also worth adding that Poland as a member of the International Labour Organisation signed an international act called: Convention (No. 42) on work-related diseases of 1934 (OJ of 1949, no. 31, Item 235), which in Article 1. 1 provides that: “1. Each Member of the International Labour Organization, ratifying this Convention, undertakes to provide those affected as a result of work-related diseases or members of their families, a compensation on general terms of national legislation on compensation for accidents at work. 2. The amount of this compensation shall not be lower than, provided for in the national legislation, the amount of compensation for damages resulting from work-related accidents. Subject to the provision, each Member when establishing in its national legislation the conditions of paying compensation for occupational diseases and applying to these diseases their legislation on compensation for accidents at work, will be able to change and adopt them, as they consider appropriate.” The provisions of the previously signed Convention on compensation for occupational diseases, adopted in Geneva on 10 June 1925, have been repeated here.

⁵ Regulation of the Council of Ministers of 30 June 2009 on occupational diseases (OJ 2013, Item 1367 consolidate text) (hereinafter referred to as: Regulation of CM on occupational diseases).

⁶ § 8, Sec. 1 Regulation of CM on occupational diseases.

former employee, employment documentation and occupational exposure assessment⁷. It is noteworthy that an injured employee should notify the employer⁸. An employer shall, in turn, notify two authorized bodies, namely, the State Sanitary Inspector and the Regional Labour Inspector⁹. Failing to do so the employer commits an offence¹⁰.

Benefits

Pursuant to Article 237¹, § 1 an employee who fell victim to an accident at work¹¹ or contracted an occupational disease is entitled to social security scheme benefits¹² provided for in separate regulations. These benefits, the conditions for acquiring the rights to particular types of benefits as well as the amount¹³ of each of the benefits were set forth in the Act on social insurance against work-related accidents and occupational diseases¹⁴. This law applies to all insured persons subject to accident social insurance¹⁵ under the Act of 13 October 1998 on the social insurance

⁷ § 6 Regulation of CM on occupational diseases. Occupational exposure may result from presence at work: chemical and physical factors, sensitization factors (allergens), carcinogenic factors or the way work is performed.

⁸ Regulation of the Labour and Social Policy Minister of 24 Dec 2002 on detailed rules and recognition of an incident as an accident on the way to or from work, the way of accident documentation, sheet template for an accident to or from work and the time of issuing the sheet template (OJ of 2013, Item 924 consolidate text).

⁹ Cf.: R. Widzisz, Criminal responsibility for failure to notify about an accident at work, Public Prosecutor's Office and Law 2007, No. 5, p. 41-64.

¹⁰ Ibidem. The right of an employee (former employee, family members of an employee who deceased as a result of an occupational disease) to the benefits on account of an occupational disease (in this case it is the main object of protection) is an individual object of protection under the provisions of Article 221 of the Penal Code (...) The form of reporting a disease is, in turn, specified in § 3.2 of the Regulation concerning occupational diseases: "Reporting (suspecting an occupational disease) shall be performed immediately in a form set out in the regulations issued on the basis of Article 237 § 4 Item 1 of the Act of 26 June 1974 – the Labour Code, and in the case of acute occupational diseases or suspecting that an occupational disease affected the employee's death -in an additional phone form".

¹¹ It should be added that a worker who had an accident at work shall have a claim for compensation for items lost or damaged as a result of this accident. Cf. E. Hofmańska, Legal consequences of an employee's death, Warsaw, Poland 2006, p. 196 and later.

¹² In the initial phase of developing accident-related liability, the forms of benefits for people injured in accidents occurring in relation to professional work were a kind of compensation relied on the employer's civil responsibility for the consequences of work-related accidents. The scope and nature of such liability was subject to gradual changes evolving towards compulsory insurance. S. Samol, *The term of work-related accidents as an incident related to work* [at:] Z. Góral (Ed.), *The issues of contemporary labour law – The anniversary book of Professor Henryk Lewandowski*, Warsaw 2009, p. 417.

¹³ In accordance with article 7 of the Accident Act, when establishing entitlement to a sickness benefit, rehabilitation benefit and compensatory benefit, the assessment basis and the amount of the benefits as well as their payment, the provisions of the Act of 25 June 1999 on cash benefits under social insurance in case of sickness and maternity shall apply accordingly taking the provisions of the Accident Act into account. D. Lach, S. Samol, K. Słebzak, *Law on social security due to work-related accidents and occupational diseases. Commentary*, Warsaw 2010, p. 13.

¹⁴ Additionally, "occupational disease of farmers" should be taken into consideration. In accordance with § 1-2 of the Decree by the Minister for Agriculture and Rural Development of 16 May 2007 on the determination of one-off compensation for an accident during farm work or occupational disease of farmers and the sickness benefit (OJ 2015.1150 consolidate text): one-off compensation for an accident during farm work or occupational disease of farmers is PLN 700 for each per cent of permanent or long-term damage to health, whereas the sickness benefit is PLN 10 for each day of temporary incapacity for work for at least 30 consecutive days.

¹⁵ D. Strzelec, *Benefits for employees. Fiscal aspects*, Warsaw 2011, p. 62.

scheme¹⁶. These benefits are paid on the basis of accident social insurance¹⁷, so they come from an insurance body and not from an employer¹⁸.

Benefit catalogue

Benefits from an insurance institution comprise a fairly wide catalogue which includes one-off benefits, short-term and long-term benefits.

One-off benefits include:

- one-off compensation for an employee due to permanent or long-term damage to health or for an employee's family due to death related to an occupational disease;
- covering medical treatment in the field of dentistry, preventive vaccination and supply of orthopaedic appliances.

As far as short-term benefits are concerned, the following are listed:

- sickness benefit under accident insurance;
- rehabilitation benefit;
- compensatory benefit.

As regards long-term benefits, they consist of:

- disability pension for incapacity for work;
- training allowance;
- the survivor's pension;
- attendance allowance.

One-off benefits:

One-off compensation for an employee due to permanent or long-term damage to health¹⁹ or for an employee's family due to death related to an occupational disease²⁰. One-off compensation is a benefit for an insured person who has suffered damage to health. This compensation applies to both permanent and long-term damage to health. Permanent damage to health is considered to be impairment which affects the functioning of an organism and is not prognosticated to have a chance to improve²¹.

¹⁶ The Act of 17 Dec 1998 concerning old-age and disability pensions from the Social Insurance Fund (FUS), (OJ of 2016, Item 887 consolidate text) (hereinafter referred to as: Act on old-age and disability pensions from FUS) in conjunction with Art. 83, Sec. 2 of the Act of 13 October 1998 on the social security scheme (OJ 2016, Item 963, consolidate text) (hereinafter referred to as: Act on ZUS).

¹⁷ Cf. Decree by the Labour and Social Policy Minister of 19 Dec 2002 concerning the recognition of an incident which occurred during accident insurance period as an accident at work, legal qualification of the incident, the sheet template for an accident and the time of issuing the sheet template (OJ of 2013, Item 1618 consolidate text).

¹⁸ According to labour law, compensation liability is also supplemented with various solutions in the field of social security such as social insurance against accidents at work or occupational diseases or allowances in the event of an employer's insolvency. W. Piotrowski, *The right to compensation in the light of the standards of the Labour Code and the Polish Constitution* [at:] Z. Góral (ed.), *The issues of contemporary labour law – The anniversary book of Professor Henryk Lewandowski*, Warsaw 2009, p. 401.

¹⁹ Article 11 of the Accident Act.

²⁰ Article 13 of the Accident Act.

²¹ Article 11, Section 2 of the Accident Act.

Long-term damage to health is considered to be such impairment which affects the functioning of an organism for a period exceeding 6 months, but can improve²². Permanent or long-term damage to health as well as its relation to an accident at work or an occupational disease are determined by a medical examiner or a medical board²³. One-off compensation is payable in the amount of 20% of the average remuneration for each per cent of permanent or long-term damage to health and can be increased if the health condition deteriorates²⁴.

Reimbursement of medical costs in the field of dentistry, preventive vaccination and supply of orthopaedic appliances is due if it is necessary to cover the effects of an occupational disease. Coverage of medical costs, preventive vaccination and medical appliances being orthopaedic items is conducted from the resources of the post-accident fund.²⁵ Health services within the scope of dentistry and protective vaccination are rendered by healthcare providers with whom the director of the regional branch of the National Health Fund branch signed an agreement for the provision of healthcare services²⁶.

Short-term benefits:

An insured person is entitled to a sickness benefit under accident insurance regardless of the insurance period from the first day of incapacity for work²⁷. Sickness benefit is always 100% of the assessment basis²⁸. An average monthly remuneration paid for the period of 12 calendar months preceding the month in which incapacity for work occurred, accounts for the basis of the sickness benefit assessment due to an insured person who is an employee²⁹.

The rehabilitation benefit is due to an insured person who remains unfit for work after the sickness benefit has finished, and further treatment or rehabilitation give them a chance to be able to work again³⁰. This benefit, like sickness benefit, is granted in the amount of 100% of the assessment basis and is paid by the payer of contributions (i.e. the employer) or by the Insurance Company (i.e. ZUS)³¹. This benefit is due for the period necessary to restore the worker's capacity to work.

The compensating benefit is intended for an insured person being an employee whose remuneration has been decreased as a result of permanent or long-term damage to health.³² This benefit is granted for the period of vocational rehabilita-

²² Article 11, Section 3 of the Accident Act.

²³ Article 16, Section 1 of the Accident Act.

²⁴ Article 12, of the Accident Act.

²⁵ Article 23, Section 1 of the Accident Act.

²⁶ Article 23, Sec. 3 of the Accident Act.

²⁷ Article 8, Sec. 1-2 of the Accident Act.

²⁸ Article 9, Sec. 1-2 of the Accident Act.

²⁹ Article 36, Act of 25 June 1999 on cash benefits under social security in case of a disease or maternity (OJ 2016, Item 372 consolidate text).

³⁰ Article 6, Sec. 1, Item 2 of the Accident Act.

³¹ Article 10 of the Accident Act.

³² § 1 of the Regulation of CM of 27 Dec 1974 on the conditions of occupational rehabilitation that apply to a compensatory benefit and detailed rules of granting this benefit (OJ of 1974, No. 51, Item 325) (hereinafter

tion³³. Vocational rehabilitation is carried out in the company or inter-factory vocational rehabilitation centre or in the current workplace on the position that will be adapted to the needs of an employee's adaptation or to his training for a specific job³⁴. The compensating benefit is 100% of the remuneration which provides the basis of the sickness benefit assessment³⁵.

Long-term benefits:

Disability pension for incapacity for work is granted to an insured person who became unfit for work as a result of an occupational disease³⁶. This benefit is granted regardless of the length of the accident insurance period and irrespective of the date of the occurrence of incapacity for work caused by accident at work or an occupational disease³⁷. The right to disability pension due to an occupational disease, which has already ceased because incapacity for work has discontinued, shall be restored in the event of reoccurrence of this incapacity regardless of the period which has elapsed since the right to pension ceased³⁸. Disability pension for incapacity for work shall not be lower than 80% of the assessment basis – for an individual completely incapable of work, 60% of the assessment basis – for an individual partially unable to work³⁹. Significantly enough, the workplace is obliged to employ workers who have already had occupational rehabilitation in accordance with their occupational qualifications and in conditions consistent with the doctor's indications⁴⁰.

In accordance with Article 17 of the Labour Code, an employer is obliged to facilitate professional employee development. It is unjustified, pursuant to Article 45 § 1 of the Labour Code, to terminate an employment contract or terminate the working conditions or payment terms by an employer who, relying on the lack of the required professional qualifications, prevented the employee from raising such qualifications⁴¹. The training allowance is granted to an insured person with reference to

referred to as: Regulation of CM concerning rehabilitation and compensatory benefits).

³³ Article 6, Sec. 1, Item 3 of the Accident Act; § 1 Regulation of CM concerning rehabilitation and compensatory benefits.

³⁴ § 1 of the Regulation of CM concerning rehabilitation and compensatory benefits; It should be noted that if the necessity of occupational rehabilitation is caused by a work-related accident or an occupational disease, an employee is entitled to a compensatory benefit under accident insurance, and in other cases, the compensatory benefit under sickness insurance shall apply.

³⁵ § 10, Sec. 1 of the Regulation of CM concerning rehabilitation and compensatory benefits.

³⁶ Article 6, Sec. 1, Item 6 of the Accident Act.

³⁷ Article 17, Sec. 2 of the Accident Act.

³⁸ Article 17, Sec. 4 of the Accident Act.

³⁹ Article 18, Sec. 1 of the Act on social security due to work-related accidents and occupational diseases.

⁴⁰ § 11, Sec. 1 of the Regulation of CM concerning rehabilitation and compensatory benefits.

⁴¹ A. Ludera-Ruszel, *The lack of professional qualifications as a substantiated cause of termination* "Monitor Prawa Pracy", No. 11/2012, p. 571; A. Ludera-Ruszel, *Raising professional qualifications by employees based on the Labour Code and selected special acts*, Warsaw 2015, p. 68: In the judgement issued on 19 February 2009, II PK 156/08, the Supreme Court expressed the view that when assessing the reasons given by the employer as justification for a specific termination, the Court should have regard to, inter alia, the reasons for which the employee behaved in a particular way. Consequently, one cannot put allegations to an employee about not having required professional qualifications, when the employee was prevented by the employer from raising these qualifications that in the circumstances of an individual case can be classified

whom retraining was stated as appropriate due to the inability to work in the current profession, due to an occupational disease⁴².

This allowance is due regardless of the accident insurance period and irrespective of the date of the occurrence of incapacity for work caused by accidents at work and work-related diseases⁴³. The training allowance under accident insurance shall not be lower than 100% of the assessment basis⁴⁴, that is, the employee's remuneration. The training allowance is granted for the period of 6 months⁴⁵.

A survivor's pension under accident insurance is granted to eligible family members of an insured person or a pensioner who died as a result of an accident at work or of an occupational disease⁴⁶. A survivor's pension is granted regardless of the length of the accident insurance period and irrespective of the date of the occurrence of incapacity for work caused by accident at work or an occupational disease⁴⁷. A survivor's pension⁴⁸ for one eligible person amounts to 85% of a benefit that would apply to a deceased person, and for two eligible individuals - 90% of a benefit that would apply to a deceased person, and for two or more eligible individuals - 95% of a benefit that would apply to a deceased person⁴⁹.

An attendance allowance is granted to a person entitled to a retirement or disability pension under accident insurance⁵⁰. Such a person must be considered to be completely incapable of working and independent living or has attained the age of 75 years⁵¹. In order to get a benefit, it is required to submit a relevant application to the Social Insurance Institution (ZUS)⁵². If ZUS issues an unfavourable decision, the decision can be appealed against within one month⁵³. Such an appeal shall be lodged in writing or verbally into a record through the organizational unit to the district court⁵⁴. Appeal proceedings are free of charge⁵⁵. The amount of the attendance allowance⁵⁶ is PLN 106.41 per month⁵⁷.

as a failure to observe the obligation to facilitate workers in raising their professional qualifications pursuant to Article 17 and 94, Item 6 of the Labour Code.

⁴² Article 6, Sec. 1, Item 7 of the Accident Act.

⁴³ Article 17, Sec. 2 of the Accident Act.

⁴⁴ Article 18, Sec. 1 of the Accident Act.

⁴⁵ With a possibility of extension to subsequent 30 days.

⁴⁶ Article 17, Sec. 5-6 of the Accident Act.

⁴⁷ Article 17, Sec. 2 of the Accident Act.

⁴⁸ To determine the amount of these benefits and their payment, the provisions of the Act on old-age and disability pensions from the Social Insurance Fund (FUS) shall apply accordingly. Article 1, Sec. 1 of the Accident Act.

⁴⁹ Article 73, Sec. 1, Act on old-age and disability pensions from FUS.

⁵⁰ Article 19, Sec. 2 of the Accident Act.

⁵¹ Article 75, The Act on old-age and disability pensions from FUS.

⁵² § 3, Regulation of the Minister of Labour and Social Policy of October 11, 2011 on the proceedings regarding pension scheme (OJ of 2011, No. 237, Item 1412).

⁵³ Article 118, Sec. 7 of the Act on ZUS.

⁵⁴ More precisely, to the Labour and Social Security Court.

⁵⁵ Cf. Article 121. Sec. 1, Act on old-age and disability pensions from FUS.

⁵⁶ A person entitled to a pension under accident insurance shall be granted attendance allowance under the terms and in the amount specified in the Act on old-age and disability pensions from FUS. Article 19, Sec. 2 Accident Act.

⁵⁷ Article 75, Sec. 2, Act on old-age and disability pensions from FUS.

Conclusion

A worker who contracted an occupational disease is entitled to a number of benefits included in the Law on social insurance concerning accidents at work and occupational diseases. The catalogue of these benefits includes: one-off compensation, coverage of the cost of dental treatment, preventive vaccination and orthopaedic equipment, sickness benefit, rehabilitation allowance, compensatory allowance, disability pension for incapacity for work, training allowance, a survivor's pension and attendance allowance. Significantly enough, in the event of an employee's death, his family is also entitled to benefits, i.e. a one-off compensation and a survivor's pension. Therefore, in case of an occupational disease (or occupational disease related death) of the employee, this employee and his family are secured with numerous benefits provided by law. However, it should be noted that receiving any of the benefits requires presenting a medical certificate confirming the contraction of an occupational disease, so the path to these benefits is not easy and granting the benefit is not obvious. In addition, the amounts of these benefits are not high at all. Therefore, although there is a wide range of benefits available for employees in case of contracting an occupational disease, the likelihood of being granted a benefit applies to about a half of the cases whereas the amount of a benefit is usually insufficient.

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