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TOPIC 3
OCCUPATIONAL RISKS: SOCIAL PROTECTION AND EMPLOYERS' LIABILITY

FINLAND FINNISH REPORT

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I. GENERAL QUESTIONS

1. In Finland, work accidents and occupational diseases are compensated through the statutory accident insurance system.

Finland's first Act concerning work accidents goes back to 1895, when Finland introduced a system, which was largely in line with the German model. Under the 1895 Act, employers in certain industries, which were enumerated in the statute, were directly responsible for accidents caused in the course of work. In addition, employers were obliged to insure their workers for the risk of death or permanent invalidity. In 1917, a new Act was passed, in which the list of industries covered was extended. Accidents that took place on certain work trips and while performing an employer's errands were compensated as work accidents. The compensation became almost entirely based on insurance.

The 1925 Act on Workmen's Accident Insurance meant that some occupational diseases become coverable. However, the Act still comprised only bodily work and the work of apprentices. The protection was extended to cover a part of foremen in an Act passed in 1935.

The present Employment Accidents Insurance Act dates from 1948. Subsequently, the Act has been amended a number of times, with e.g. an extensive reform of the compensation benefits in 1982.

The Occupational Diseases Act was thoroughly reformed in 1989. The forms of compensation are the same as those for work accidents.

2. Being the oldest form of social insurance, the statutory accident insurance scheme is part of the Finnish social insurance system. Its implementation is largely delegated by legislation to private accident insurance companies. The statutory accident insurance is defined by law and, consequently, neither its content nor compensations are negotiable e.g. between the insurance company and employer or employee. An employee is entitled to compensation even when the employer fails to take out an insurance.

According to The Employment Accident Insurance Act, it is the employers who are obliged to pay the insurance premiums. The employees do not pay anything in this social insurance.

Complying the EU directives formally adopted in 2000 and the deregulation of premiums since 1999 each company applies its own premiums. However, the general principles in premium assessment are defined by the Employment Accident Insurance Act. The calculation basis for insurance premiums must be such that the premiums are in reasonable proportion to the costs arising from the insurance, taking into account the risk of accident and occupational disease involved in the employment concerned. The insurance premium is determined according to two basic systems, the tables or general rates and the special rates. The principle is that the premium must reflect the risk, which means that the payment system supports work on behalf of work safety activities.

3. The Employment Accident Insurance Act covers all employees with an employment relationship. Any person who performs work against remuneration for another person under the latter’s supervision is deemed to be an employee. Government employees are not insured, but enjoy the same protection pursuant to special legislation. The Farmer's Employment Accidents Insurance Act (1981) covers the employment accident security for rural self-employed persons. Also professional sportsmen are insured under a separate statute.

Under the Employment Accidents Insurance Act, family members living permanently in the household of the employer are not insured. In addition to a spouse, family members include grandparents, and children and their spouses. Living in the same household means that the family member does not pay any compensation to the employer for accommodation and expenses. The statutory insurance does not cover such leading officials of a company who are, alone or with their family members, major shareholders of the company in question.

An employer is obliged to take out statutory workers' compensation insurance if he has employees who work for him for at least 12 days a calendar year. If it is obvious, by the commencement of the employment relationship that the 12-day time limit will be exceeded, insurance must be taken out immediately. If an employer has failed to take out workers' compensation insurance and there is an accident, the Federation of Accident Insurance Institutions (FAII) pays indemnity to the employee, and, then debits the employer concerned for the additional insurance premium.

4. The risks covered by the statutory insurance are the following.

Work accident means an accident due to an unexpected, sudden external event which causes injury or illness to an employee while he or she is working, in circumstances related to his/her work or in his/her work place, when going on errands for his/her

employer or while protecting or trying to protect property or his/her employer or while saving or trying to save human lives in the course of his/her work.

Occupational disease means a disease which is probably primarily due to physical, chemical or biological factors associated with work done during a period of employment.

According to a separate decree, there are certain injuries that also are covered as work accidents. They have developed in a shorter, ca. 24 hours time, and, they are due to work movements e.g. chafes, pain in muscles and tendons.

From 1993 physical assault due to the work is also compensated as a work accident.

In a narrower sense the term contingency, used in the questionnaire, may refer to occurrence of pension. For this, see the account given below under item 20.

5. Also commuting accidents, which take place during journey from home to work, or vice versa, are compensated for.

6. Compensation for accident injuries takes priority over other forms of statutory compensation and pensions, such as sickness insurance. This means that the injured worker is first paid the compensation he is entitled to on the basis of statutory accident insurance in full and the benefits of other social insurance is paid if he is entitled to them.

7. As a ground for termination, absence from work must be kept apart from disability to work.

Absence from work may in some exceptional circumstances cause that the contract of employment can be regarded as cancelled. Under the Employment Contracts Act (2001), if the employee has been absent from work for a minimum of seven days without notifying the employer of a valid reason for the absence for this period, the employer is entitled to consider the employment contract cancelled from the date on which the absence began. If it has been impossible to notify the other contracting party because of an acceptable impediment, the cancellation of the employment contract shall be null and void. - Since a work accident is likely to be regarded as a valid reason for absence, this provision will hardly apply to an absence due to such a reason. Neither would a work accident, if not caused on purpose by the employee himself, constitute a “proper and weighty reason”, which is the general requirement for terminating an employment contract under the Act.

If, however, an accident or disease results in prolonged disability to work, a dismissal ground may be at hand. This presupposes that the employee’s working capacity is substantially reduced for a long period, in practice for a year or so. A further requirement is that the employee cannot be placed in alternative work suitable for his or her skills and condition.

II. RESPONSIBILITIES OF THE EMPLOYER

8. The employer’s general obligation of prevention is provided for in the Occupational Safety and Health Act (2002). The sanctions attached to the obligation are criminal responsibility, liability in damages and administrative enforcement.

9. The employer is in charge of all occupational safety and health at the workplace. The employer’s obligations are stipulated in the new Act much in line with the EU Framework

Directive on Safety and Health of Workers (89/391). Thus, the obligation to improve the working environment and to follow the general principles of prevention, as set out in Art. 8(2) of the Directive, are incorporated in the Finnish Act as well.

According to the Occupational Safety and Health Act, employers are required to take care of the safety and health of their employees while at work by taking the necessary measures. For this purpose, employers shall consider the circumstances related to the work, working conditions and other aspects of the working environment as well as the employees' personal capacities. Safety should be ensured already in the planning stages of the work and work premises. In addition, risks and disadvantages have to be monitored continuously and if necessary, measures should be taken to analyse and prevent accidents, health hazards and other risk situations. The employer must make the employee familiar with the conditions of the workplace and the correct working methods, as well as any occupational safety regulations. The employee in turn has to follow instructions and notify superiors or occupational safety and health representative of defects noticed.

There are two important tools, which under the Act shall be used in the systematic preventive safety activities of the workplace. First, a risk assessment has to be carried out as a basis for all other safety measures. The risks are mapped, their level and probability are assessed and decisions are then made on the actions to eliminate or manage them. Risk assessment aims at identifying risks caused by the work and facilitates the employer's activities in ensuring the safety and health of the employees. Second, the employer establishes an occupational health and safety action programme in the workplace, which includes information on risks and ways of minimising them, as well as how occupational safety and health has been organised, and the assignment of responsibility. The action programme aims at developing working conditions according to the needs and resources of the workplace.

In addition, the Occupational Safety and Health Act contains a number of more detailed provisions, such as those on instruction and guidance, providing personal protective equipment, cooperation between employers and employees, ergonomics of the workstation, prevention of threat of violence, elimination of harassment, chemical, physical and biological agents, and so on. Various Governmental Decrees have been issued by virtue of the Act to implement European Directives on specific aspects of occupational safety and health.

At the enterprise and plant level occupational safety and health is more and more integrated into the companies' all operations, and it is carried out in close cooperation with the management and personnel.

General issues, such as drafting an occupational health and safety action programme, and specific questions and risks are also treated with the employees concerned or their representatives within the system of workplace participation. The responsibility for taking the necessary measures rests, however, with the employer, who has the final decision making power. Apart from the internal control exercised by the cooperation bodies, the labour inspection authorities monitor the safety and health situation of the workplace.

10. It is obvious that the activities of all members of the management at all levels of the organization may have an impact on the physical and mental well-being of the personnel. This is reflected in that all superiors, including employees' nearest foremen, have a responsibility for the safety implications of their decisions.

Sec. 17 of the Occupational Safety and Health Act prescribes, that the employer may place another person to represent him or her *(employer's substitute*) and take care of the duties imposed on employers in the Act. No formal decisions to this effect are required. The said

provision prescribes, however, that duties of the employer's substitute shall be defined accurately enough taking into account the employer's line of business, the nature of the work or activities and the size of the workplace. The employer shall ensure that the substitute is sufficiently competent, he or she has received an adequate orientation to the duties and that he or she also otherwise has appropriate capabilities for attending to the duties referred to here.

Looking at court practice in criminal cases, we notice that the emphasis of responsibility for breaches against safety and health at work duties has been placed on the middle and low management of firms and establishments. Representatives of top management have seldom been punished for these violations.

11. The principal organization, which provides safety and health expert services to employers, is the occupational healthcare. It is governed by a specific Act passed in 2003.

The purpose of occupational healthcare is to ensure a safe working environment, the prevention of work-related diseases and accidents and the working and functional capacity of employees. Employers are responsible for arranging preventive healthcare for their employees. Employers may organise occupational health services themselves or through a private supplier. Municipal health centres are responsible for selling occupational health services to employers who request them.If necessary, employers may also arrange for medical treatment and other healthcare services in connection with occupational healthcare.

The tasks of occupational health professionals include:

- Analysis of working conditions by regular access to places of work

- Assessing and monitoring work-related health hazards and the health of employees through medical check-ups.

- Drawing up proposals for the improvement of health conditions in the workplace or on employee's requirements for adjusting to work.

- Monitoring and providing rehabilitation advice for handicapped workers.

- Planning and follow-up of measures for maintaining employees' working ability.

The Social Insurance Institution reimburses employees for 50 percent of the costs of arranging for occupational health 60 percent of the expenses of a workplace analysis.

12. Under Sec. 3 of the Occupational Safety and Health Act, any employer who uses under his supervision workers employed by someone else, e.g. workers supplied by a temporary work agency, shall observe the provisions of the Act regarding employers' duties in the course of the work performed in the user undertaking. Furthermore, the user undertaking has specific duties of information vis-à-vis the workers concerned and their employer. The provisions, complemented with a Governmental Decree (782/1997), are designed to implement the EU Directive on the safety and health of workers with a temporary employment relationship (91/383/EEC).

Employees of a sub-contractor do not normally perform work under the supervision or control of the undertaking using the services of the sub-contractor. As regards the safety and health of such workers, see below in 13.

13. The Occupational Safety and Health Act contains specific provisions applicable to so called *shared workplaces.* These are workplaces, where more employers than one or more self-employed workers than one operate there simultaneously or successively in such a way that the work may affect other employees' safety or health. One of the employers is supposed to exercise the main authority at such a workplace (*host employer*). The rules cover a situation where, for instance, employees of a sub-contracting firm perform work in the premises of a client undertaking.

At a shared workplace all employers and other parties shall in adequate mutual cooperation and by information ensure that their activities do not endanger the employees' safety and health. The host employer shall ensure that the external employers carrying out activities at the workplace and their employees have received the necessary information and instructions on the hazards and risk factors concerning the work at the workplace. The host employer is also in charge of the coordination of the activities of the parties operating at the workplace, the arrangements for traffic, the general order and cleanliness of the workplace, the other general planning of the workplace, and the general safety and health of the working conditions and the working environment (see Sec. 49-51 of the Act).

III. PARTICULAR PROBLEMS

14. The concept of health, as defined in Sec. 1 of the Occupational Safety and Health Act, comprises both physical and mental health of employees. This means that the general obligations of the employer, concerning risk assessment, work design, instruction and guidance etc., entail the prevention of psychic risks also. Such risks are in the forefront in the regulation of exposure to stressing workloads (Sec. 25), harassment (Sec. 29) and lone working (Sec. 30).

15. As a general rule, smoking at workplaces is forbidden in Finland, with the exception of effectively isolated and ventilated smoking rooms. Small restaurants have been another exception, but as from July 2007 restaurant workers will enjoy the same protection against exposure to cigarette smoke as other workers.

16. There are specific rules on the requirements concerning the occupational safety and health of young workers under the age of 18 years (Young Workers Act, 1993). By virtue of the Act, a Governmental Decree has been issued, containing a list with 11 occupations, which are forbidden from young workers (work with psychiatric patients, work entailing exposure to radiation or explosive substances, slaughter work etc.).

As regards pregnant women, all work is forbidden during a period of two weeks before the expected time of birth and two weeks after giving birth.

17. The Supreme Court decided in its judgement 1998:87 that an employer (a company running a pulp factory) could not be made responsible for damage incurred to a worker who had got a lung disease as a result of exposure to asbestos. The exposure had taken place in 1954-1975, and at that time there had not been binding regulations on asbestos or other sufficient knowledge of the hazard. Therefore no fault could be found on the side of the employer for not taking precautionary measures to avoid risk of illness. The Court also decided that strict liability could not be applied in such a case, mainly because general awareness of the dangers of asbestos was lacking.

It is another matter if the dangers of a substance are known, and only the results of exposure emerge later. Under Finnish law, an employer would be held liable for not preventing even such a risk.

18. These matters are regulated in the Act on the Protection of Privacy in Working Life (477/2001). Under Sec. 15 of the Act, the employer has no right to require the employee to take part in genetic testing during recruitment or during the employment relationship, and no right to know whether or not the employee has ever taken part in such testing.

Concerning HIV/AIDS, the general rules of the Act, relating to information concerning an employee's state of health apply. Processing such data requires that it is directly necessary due to the employment relationship or the nature of the work. In general, undergoing health tests are voluntary, but occupational healthcare legislation may in some cases provide otherwise, if a test is necessary for the prevention of a particular health risk entailed in the work. Job applicants cannot, however, be obliged to participate in any testing. Refusal to undergo a test may, of course, result in not getting the job, and then it is for the applicant to consider if he or she wants to present a claim based on the rules on discrimination on grounds of state of health.

19. If the work causes a serious risk to an employee's own or other employees' life or health, the employee has the right to leave off such work. The employer or his or her representative shall be informed as soon as possible.

Leaving off work shall not restrict working on a larger scale than what is necessary for safety and health. When leaving off work, it must be ensured that the danger that may be caused by this action is as low as possible (Sec. 23 of the Occupational Safety and Health Act).

IV. Compensation of employment injuries and diseases

20. The benefits under the statutory accident insurance are the following:

Medical treatment expenses are compensated up to their full amount. Medical care covers physical therapy, medical preparations, prostheses and other aids and their maintenance. Travel costs, which are necessary in obtaining medical care, are also included.

The cost of medical examinations, necessary to establish the existence of an employment accident or occupational disease, are also paid in full.

Once disability has continued for at least three days not counting the day on which the accident or the occupational disease occurred, *daily allowance* is paid to the insured. The amount of the allowance is, for the first four weeks, the same as the wage the employer is paying during the time of sickness. After four weeks it is one 360th of the annual earnings of the insured person. Daily allowance is paid for a maximum of one year after the accident or the occupational disease occurred, and it constitutes taxable income.

After one year the indemnity is paid as *an employment accident pension*. The accident pension for a totally disabled person is 85% of his annual earnings (70% after the age of 65). In the event of partial disability, a proportionate amount of full accident pension corresponding to the reduction in working capacity is paid.

If an injury due to a work accident or an occupational disease results in permanent general handicap, the insured is entitled to *an inconvenience allowance*. The purpose is to provide immaterial compensation for the personal inconvenience caused by injury or illness. Various injuries and illnesses are grouped into 20 disability categories according to their seriousness, on the basis of a ruling made by the Ministry of Social Affairs and Health. In categories 1-10 the allowance is a lump-sum indemnity and in

categories 11-20 the insured can choose between continuous and lump sum compensation. The injured party's age and sex affects the amount. Continuous payment is tied to the wage index.

Accident insurance legislation also includes an Act concerning *invalid rehabilitation care* for persons receiving accident compensation. The purpose of the rehabilitation care is to improve the capacity for work and daily activities and the income-earning opportunities of victims of employment accidents or persons suffering from an occupational disease. The rehabilitation is partly medical and partly occupational. The costs of rehabilitation are paid for in full.

A survivors' pension is paid to the dependants of a person, who was injured and had died on account of an employment accident or an occupational disease. The survivors' pension is made up of widow's pension and child's pension. Also *a funeral benefit* is stipulated by the law.

21. The compensation provided by the statutory accident insurance is quite comprehensive, as can be seen from the account given above. There are, however, certain losses, which are not fully covered by the insurance.

The maximum level of accident pension, which is paid after one year's disability to work, is only 85% of annual earnings. There is no insurance compensation for the pain and suffering caused by a work accident. Finally, no compensation is paid at all, if an injury or illness is not caused by an unexpected, sudden external event, which is how "work accident" is understood in the application of the Employment Accidents Insurance Act, and if an illness does not meet the legal criteria of a coverable occupational disease either. For instance, illnesses, which have their origin in psychological factors involved in the work, are usually not compensated for.

Due to these gaps in the insurance system, the employer's liability plays a complementary role in the provision of full compensation for all losses resulting from occupational accidents and diseases. The rules on employer's liability in damages are included in the Employment Contracts Act, and they are based on the ordinary principles of contractual liability.

Insurance compensation takes priority over other sources of compensation, including employer's liability. As a condition for insurance compensation, nobody's fault or negligence is required. For these reasons, an employee will have no benefit from waiving, wholly or partly, his or her right to insurance compensation and claiming damages from the employer instead.

22. There are no special funds established in Finland to compensate for harmful effects appearing in the long term after exposure to e.g. asbestos.

V. THE ROLE OF WORKERS' REPRESENTATIVES

23. The Finnish system of workplace cooperation in occupational safety and health matters is based on a representative model. The employer nominates *an occupational safety and health manager* for the cooperation concerning occupational safety and health, unless he wishes to take the position himself. Employees can choose *an occupational safety and health representative* and two vice representatives for

negotiations conducted with the employer and the occupational safety and health authorities. A representative has to be chosen, if there are more than 10 employees.

At workplaces with a minimum of 20 employees, *an occupational safety and health committee* comprising representatives of the employer, workers and clerical employees shall be established. It is the duty of the committee to promote safety and health at the workplace. The occupational safety and health representative has the right to attend the meetings of the committee and to speak there. When necessary, the committee presents the employer with proposals for improving working conditions, developing occupational health care as well as for the arrangement of occupational safety and health training and work guidance. In addition, the committee participates in activities, which aim at maintaining working ability as well as in occupational safety and health inspections at the workplace.

The safety and health representative enjoys an enhanced job protection. He also has access to information and documents concerning the safety and health situation of the workplace. Furthermore, he has a right to have time off from his ordinary work tasks for safety activities, and any loss of earnings due to carrying out such activities is compensated to him. A similar right is guaranteed to members representing the staff in the occupational safety and health committee. Appropriate training must be made available to the safety and health representative and the vice representatives. These statutory rights are complemented by provisions in collective agreements.

The safety representative and the safety committee are in practice in close cooperation with the provider of occupational healthcare services, which can be an external expert or an in-company body.