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TOPIC 3
OCCUPATION RISKS :
SOCIAL PROTECTION AND EMPLOYERS' LIABILITY

ISTRAEL

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I. GENERAL QUESTIONS

1. Please give general information on your system of protection/compensation for employment injuries and occupational diseases. When was it created? Which modifications were introduced in the system since its creation?

Historically the concern for health and safety at work was dependent upon interests of the employer. Employer's discretion was for the first time tackled in the year 1842 in Austrian empire, to which a majority of today's Slovenian territory belonged. In that year the decree limiting the work of children in factories was adopted.

Slovenian social security system is predominantly based on social insurance schemes. Historically the first modern social insurance scheme for employment injuries and occupational diseases was introduced in 1889. It was again an act of the Austrian empire. It was modelled according to the German act from 1884. In 1922 the Act on Insurance of Workers was adopted in the Kingdom of SHS (Slovenians, Croats and Serbs). It entailed provisions on accidents insurance (i.e. insurance for employment injuries and occupational diseases), but also on health insurance, old-age and death. Unemployment insurance was mentioned, but left to be regulated later on.

After the Second World War the Act on social insurance of workers and civil servants was adopted. It equalled all insured persons and broadened the scope of their rights. In 1950 the Act on Social Insurance of Workers, Civil Servants and their Families was adopted. Social insurance was nationalised. It was seen as the task of the state administration, which was also obliged to finance the system. In 1952 the Regulation on Establishment of Social Insurance Institutes and on Temporary Administration of the Social Insurance Means was adopted by the government. From that time onwards social insurance is divided into separate branches and regulated by separate acts.

However, there is no special scheme that would provide benefits in case of employment injury or occupational disease. **Compulsory (or statutory or public or social) health insurance (hereafter health insurance) as well as compulsory pension and invalidity insurance (hereafter pension and invalidity insurance) are unitary systems. They provide protection (benefits, rights) to the insured in case of risks not related to employment (e.g. sickness or invalidity not related to employment or occupation) as well as in case of employment injury or occupational disease.** Health insurance is regulated by the Act on Health Care and Health Insurance (*Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju – ZZVZZ*) from 1992 (Official Gazette No 9/1992, with later amendments). Pension and invalidity insurance is regulated by the Act on Pension and Invalidity Insurance (*Zakon o pokojninskem in invalidskem zavarovanju – ZPIZ-1*) from 1999 (Official Gazette No 106/1999, with later amendments).

Health and invalidity insurances do not only provide benefits of a curative nature, but those of a preventive nature as well. E.g. in health insurance preventive vaccinations, periodical systematic medical checks for specific groups of insured persons, medical rehabilitation is provided (which is also aimed to prevent worsening of the health position of the insured person). In this sense the occupational rehabilitation in the invalidity insurance system may be seen as part of preventive measures as well.

It goes without saying that the main concern for the prevention of employment injuries and occupational diseases is in the sphere of the employer (see point 8, below).

2. How is the system organized? How it is financed?

Health insurance as well as pension and invalidity insurance schemes are by their legal nature social insurances. Therefore most of the characteristic features of social insurances may be recognised. Among others, both schemes are compulsory, regulated by legislative act and contributions financed.

Health insurance is administered by the Institute for Health Insurance of Slovenia (*Zavod za zdravstveno zavarovanje Slovenije – ZZZS*). Pension and invalidity insurance is administered by the Institute for Pension and Invalidity Insurance of Slovenia (*Zavod za pokojninsko in invalidsko zavarovanje Slovenije - ZPIZ*). Thus, each branch has only one insurance carrier. In governing bodies of these institutes workers and employers are represented.

Legal rules on contributions may be found in acts dealing with specific social insurance scheme and in general Act on Social Security Contributions (*Zakon o prispevkih za socialno varnost – ZPSV*) from 1996 (Official Gazette No 5/1996, with later amendments). On one hand, the contributions for risks not related to employment or occupation are born by employers and employees. On the other hand, contributions for the risk of employment injury and occupational disease in health insurance and in invalidity insurance are born solely by the employer (that goes for the sickness insurance. In pension and invalidity insurance there is common contribution level, separate contribution levels for invalidity insurance as well as employer's contributions for employment injuries and occupational diseases should be introduced in the beginning of the year 2009).

There is a possibility in health insurance scheme as well as in pension and invalidity insurance scheme to raise the contribution level. To this end the level of safety and health at

work, number of employment injuries and occupational diseases and number of invalid persons in the branch or at the employer are taken into account. This could be a proper instrument to raise the level of safety and health at work (on the branch or employer level) and burden more those, who cause most expenses in the social insurances. However, due to low contributions for the risks of employment injuries and occupational diseases (in pension and invalidity insurance they still have not been set) and high costs of determining the branch level of safety and health at work (used to measure deviations at the certain employer) these possibilities have until today not been enforced.

3. What is the system's coverage[1]? What are the major exclusions from the system's scope (for example small enterprise, non industrial enterprises, home workers, domestic workers, casual workers)?

Scope of insured persons in Slovenian **health insurance** is very broad (in this perspective bordering to national health insurance). All active persons, receivers of social (security) benefits, all with income and permanent residence in Slovenia and every Slovenian citizen with permanent residence in the country are included. However, they are not all insured for the risk of employment injury and occupational disease.

Some of those, who are insured for health risks not related to employment or occupation, are also insured for the risk of employment injury and occupational disease. These groups are:

- all workers with employment contract in Slovenia, also posted workers if they are not insured abroad (for the EU the EC social security coordination rules have to be taken into account), and persons employed with foreign and international organisations, consular and diplomatic missions with their seat in Slovenia, if not otherwise stipulated by the international agreement,
- all self-employed persons, farmers if they have certain income, company owners with certain income, top athletes and top chess players. They have to pay the contributions themselves, since they have no employer.

Coverage in the **pension and invalidity insurance** is similar. In general all employees and all self-employed persons are included and insured also for the risks of employment injury and occupational diseases.

There are **no exclusions** from coverage on the grounds of the size of enterprise, private or public sector. Everyone is included, also home, domestic and casual workers if they concluded the employment contract. That goes for both schemes, i.e. health insurance and invalidity insurance. In addition, in health insurance every person permanently residing in Slovenia and having certain income is insured (only for the risks not related to work or employment). In pension and invalidity insurance also persons performing work in some other (than employment) relationship for which they receive payment at least in the amount of minimum pay are compulsory insured.

Furthermore, there are some groups of persons that are **insured only for the risks of employment (work) injury and occupational disease** (and not at the same time for risks not related to employment and occupation). They are insured in both schemes, i.e. health insurance and invalidity insurance. These groups are e.g.:

- pupils and students when performing practical lessons, production work or vocational practice and on technical training excursions,

[1] In many countries the coverage does not include all the workers. For example, under ILO Convention No. 121 the following categories of workers may be excluded: (a) persons whose employment is of a casual nature and who are employed otherwise than for the purpose of the employer's trade or business; (b) out-workers; (c) members of the employer's family living in his house, in respect of their work for him; (d) other categories of employees, which shall not exceed in number 10 per cent of all employees other than those excluded under clauses (a) to (c).

- children and adolescents with disturbances in their physical and mental development, engaged in practical lessons in training organizations or in obligatory practical work;
- persons engaged in voluntary practical work after their schooling, regardless of whether they receive remuneration or not,
- war invalids (military or civilian) and other disabled persons engaged in occupational rehabilitation and/or training during practical work and exercises;
- pupils and students when working through authorized students' hiring service organizations,
- persons serving a prison sentence, during work, vocational training and engagement in activities permitted by law. They are also insured for the risk of invalidity not related to work if it was caused by Force Majeure.

In both systems some persons are insured **only for the risk of employment (work) injury**, since they participate in short-term actions. They are e.g.

- persons who participate in organized work operations, rescue operations, or in protection and rescue operations in case of natural and other disasters,
- participants of youth camps in Slovenia, if they take part in the performance of tasks and assignments at such youth camps,
- persons who carry out the assignments within national defence, civil defence, monitoring and information service, general rescue services or communications units as well as in defence and protection training,
- persons who assist the police and the authorized officials of government authorities in implementation of tasks provided by law,
- persons who participate in sports or chess events as sportsmen or chess players, trainers or organizers within the framework of organized sports or chess activities;
- members of operational units of fire brigades of the voluntary fire-fighting organizations when carrying out their duties,
- members of mountain rescue service or divers organization, when they assist in protection of lives or averting the life or property threatening situations.

4. What are the contingencies covered by the system?

Health insurance scheme covers the contingencies of injury or disease (related to employment or not), maternity (health care benefits in kind during birth of a child) and death.

Pension and invalidity insurance scheme covers besides the contingency of old-age also the contingencies of invalidity, physical impairment, need to be nursed by other person and death.

5. Are commuting accidents covered by the system? If they are, how is a *commuting accident* defined?

The definition of the employment injury and occupational disease is entailed in the *ZPIZ-1* (act that regulates pension and invalidity insurance). The *ZZVZZ* (act that regulates health care and health insurance) relates to that definition. The definition encompasses also commuting accident.

Thus **employment injury** is defined as:

- an injury which was sustained as a result of direct mechanical, physical or chemical effect of short duration, as well as an injury sustained as a result of rapid change of

body posture, sudden loading of body or other changes in physiological condition of the organism, if such an injury is in causal relation to performance of work or activity on grounds of which the person concerned has been insured;

- an injury inflicted in the way described above, suffered by an insured person on his regular route from his residence to his workplace or back, on the way to perform his work assignments and on his way to commence work;
- an injury which is directly and exclusively a result of an unfortunate accident or Force Majeure during performance of work or activity on the basis of which the person has been insured.

Moreover, employment injury is also injury suffered by the insured person in connection to the enforcement of right to health care, provided such an injury is sustained:

- on persons regular route from his/her place of residence or employment to the place of medical examination or treatment, or while returning, or during his stay in the place where examination is conducted, if the insured person has been called or sent to the examination by a competent physician, a medical board or the Board of Examiners of the Institute for Pension and Invalidity Insurance, or in the case the person has not been sent to the examination but is seeking urgent medical help;
- on persons regular route from his/her place of residence or employment to the medical centre where he/she was sent for treatment, or while returning, or during his/her stay in such organisation during medical treatment which encompasses also medical rehabilitation;
- the same goes if the insured person was appointed as accompanying person to the patient, if the injury is in direct connection to this activity;
- on persons regular route from his/her place of residence or employment, or from the place where the insured person was subjected to examination or treatment, to the institution or organization where the insured person is to receive a prosthesis or other orthopaedic aids, prescribed by a competent physician, or while returning, as well as during his stay in such institutions or organizations.

6. What links exist, if any, between the employment injuries and occupational diseases protection/compensation schemes and the general sick pay/sick benefits compensation schemes?

As already mentioned above, there is no special employment injury or occupational disease protection/compensation scheme. The risk of employment injury or occupational disease is covered by **general** health insurance scheme and general pension and invalidity insurance scheme. Nevertheless, the access to benefits and their level is higher in case of employment injury or occupational disease, e.g. no co-payments for medical care benefits (i.e. benefits in kind) and sickness cash benefit is paid at the level of 100 % of the basis (see also point 20, below).

It should be mentioned, that the responsibility for providing income security is divided between the health insurance carrier and worker's employer. The **employer** is as a rule obliged to provide salary/wage compensation (sick pay) to the worker for the first days of absence due to injury or disease. In some cases the health insurance carrier pays the sickness cash benefit from the first day of absence onwards (e.g. in case of transplantations, care for the child or the spouse, isolation, for accompanying persons, for persons insured only for work accidents-i.e performing short term actions mentioned in point 3, above). Employers responsibility is stricter in cases of employment injury or occupational disease.

According to Act on Labour Relations (*Zakon o delovnih razmerjih – ZDR*, Official Gazette No 42/2002) the employer has to provide sick pay from his own funds to the absent worker

for the first 30 working days in each case. In case of injury or disease not related to employment the obligation of the employer is limited to 120 working days per year. No such limitation exists for cases of employment injuries and occupational diseases, where he has to pay for the first 30 working days in each case.

Worker is deemed more deserving and employer more responsible also by the determining the level of sick pay. In case of injury or disease not related to work the employer has to pay 80 % of the workers last month's wage. In case of employment injury or occupational disease he has to pay 100 % of the workers average wage in the last three months.

Special rules exist in case of so called recidivism, i.e. re-emergence of the disease after the seeming regaining of health. They are only important for injury or disease not related to employment.

7. Can an employee be terminated because of absence from work due to an employment accident or an occupational disease? In case such is possible, please describe the procedure which must be followed.

Employment contract may not be terminated solely on the grounds of absence due to an employment injury or occupational disease.

It may be terminated if the employee during the absence from work because of injury or disease (related to work or not) is not acting in accordance with the doctor's orders, performs lucrative work or departs from the place of permanent residence without authorisation. It may also be terminated in case of incapability to perform work due to invalidity, if there is working capacity left and there is no other suitable work for the disabled worker. In this case special procedure is prescribed, which is not yet fully in force.

II. RESPONSIBILITIES FOR THE EMPLOYER

8. Has the employer a general obligation of prevention? How it is sanctioned? Can he/she be prosecuted before a criminal jurisdiction?

The employer's responsibility for providing health and safety at work (and workers duty to act in accordance with occupational safety and health legislation) is already stipulated in the general Act on Labour Relations (*ZDR*). Special Act on Safety and Health at work (*Zakon o varnosti in zdravju pri delu - ZVZD*, Official Gazette No. 56/1999 and 64/2001) regulates specific obligations of the employer as well as rights and obligations of the worker.

In case the employer fails to provide safe and healthy work, he may be sanctioned by the Labour inspection. Labour inspector, acting in accordance with general Act on Supervision by Inspection (*Zakon o inšpekcijskem nadzoru - ZIN*, Official Gazette No. 56/2002) and special Act on Labour Inspection (*Zakon o inšpekciji dela – ZID* Official Gazette No. 38/1994, with later amendments), may order that the situation is brought in line with the legislation, forbid the employer to continue working process (in more serious cases, e.g. if there is immediate danger for life and health he is obliged to do so), order a fine, induce procedures before the court for minor offences or before the criminal courts or even start the procedure for termination of the employer. In emergency cases the decision of the labour inspector may be oral.

In Slovenian Criminal Code (*Kazenski zakonik-KZ*, Official Gazette, No 63/1994, with later amandments) there is a special article (Article 208) dealing with endangering safety at work. Anyone who in a mine, factory, working site, or any other working place destroys, damages or removes safety device and in this way causes danger for the life of people is punished with the prison sentence for up to three years.

Person, responsible for safety and health at work, who dos not introduce safety devices or does not care for their proper functioning or otherwise does not act in accordance with rules and legislation and in this way causes danger for the lives of people is sanctioned with the prison sentence for up to two years.

If the criminal offence is caused not with intend, but with negligence the prison sentence is up to one year.

On the other hand, if the criminal offence caused severe bodily injury of one or more persons the sanction is imprisonment for up to 5 years, or if the criminal offence was caused with negligence up to three years. If one or more people die, the sentence may be from one to twelve years or from one to eight years if the criminal offence was caused with negligence.

There is a special Act on Responsibility of Legal persons for Criminal Offences (*Zakon o odgovornosti pravnih oseb za kazniva dejanja – ZOPOKD*, Official Gazette No. 50/2004, with later amendments). Legal person (e.g. an enterprise) may be responsible for the above mentioned criminal offence of endangering safety at work (Art. 208 of the Criminal code). The sanction may be

- monetary fine (in cases where imprisonment for natural persons up to 3 years is prescribed up to 75 million Slovenian tolars which is over 300.000 EUR or up to 100 times the amount of damage or illegal gain. In cases where imprisonment for more than 3 years for natural persons is prescribed monetary fine amounts to minimum 2,5 million Slovenian tolars, app. 10.000 Euro or maximum to 200 times the damage caused or profit gained with criminal offence), or
- impound of assets instead of monetary fine (when for natural person imprisonment for more than 5 years is prescribed) or/and
- termination of legal person (if its activity was entirely or in major part used for criminal acts).

9. Which are the employer's obligations related to the protection of the workers' life and health? How are these implemented at the enterprise level and the plant level? What kind of control is made on their implementation?

According to already mentioned Act on Safety and Health at Work (*ZVZD*) every employer in Slovenia has to:

- issue a written safety statement,
- organise a system of technical safety (employ or conclude civil contract with one or more expert workers or authorised agencies, depending on the activity, working shifts and number of employees),
- organise health care (contract a medical doctor and provide preventive health examinations),
- adopt the fire safety measures in accordance with special act and regulations,
- adopt the first aid and evacuation measures in the event of danger,
- inform workers or their representatives about the introduction of new technologies or means of work, as well as any potential or actual dangers of injury or health impairment, and issue the safe working practice instructions,
- train workers in safe working practice,
- provide workers with personal protective equipment and ensuring its use if means of work or working environment are inadequate to ensure health and safety at work despite the safety measures being taken,

- undertake periodic examinations of the working environment, as well as examinations and testing of work equipment,
- co-operate with workers representatives,
- define any special health requirements that have to be fulfilled by workers engaged in a given work or work process, or when using specific substances or machines, based on the professional assessment of the authorised medical doctor,
- allow workers to handle hazardous substances only if they are accompanied with a Material Safety Data Sheet in Slovenian language (or if necessary into a language understood by workers) and he has to make sure that safety measures are implemented,
- notify the Labour inspection before starting the especially dangerous working process, about any occupational disease, collective accident, incapacity of a worker for more than 3 days and death caused due to employment injury or occupational disease.

According to *ZDR* (Act on Labour Relations) workers have the right to limited working time, break during the daily working time, daily and weekly rest, paid leaves and some groups of workers enjoy special protection. Rights of workers are in the same time obligations of the employer.

Control over the implementation of safety measures has the expert worker for safety at work with passed proficiency examination in safety at work, i.e. safety officer and labour (or in some cases other) inspectors.

10. Can the employer delegate his/her powers as regards occupation safety and health? To whom? With which effects?

The employer may delegate some tasks to the **safety officer** (expert worker for safety at work with passed proficiency examination in safety at work). His tasks are of:

- advisory nature (he has to advise an employer on planning, selection, purchase and maintenance of means of work; as well as on the fitting-out of the workplace and the working environment);

- supervisory nature (he has to conduct periodic inspections of the chemical, physical or biological risks in the working environment; periodic inspections and examinations of work equipment; as well as internal supervision of the implementation of the measures for safe working practice);

- normative nature (he has to develop instructions for safe working practice);

- educational nature (he has to prepare programmes and carry out employee training in safe working practice);

- monitoring nature (he has to monitor the situation regarding employment injuries, occupational diseases and work-related diseases, as well as identify their causes and prepare reports for the employer together with any proposed preventive measures);

- and he has to set out the professional basis for the safety statement.

Specific tasks are provided by the competent **medical doctor**. He has to

- take part in the assessment of health risks at the workplace and in working environment;

- inform workers as to the hazards and risks linked to their work in the workplace, as well as provide health education to workers;

- identify and investigate causes of occupational diseases and work-related diseases;

- perform preventive health examinations of workers in accordance with the Regulation on Preventive Health Examinations of Workers (*Pravilnik o preventivnih zdravstvenih pregledih delavcev*, Official Gazette No. 87/2002);

- provide medical services for workers with occupational diseases;

- organise the provision of first aid, rescue and evacuation of workers in cases of an employment injury or collective accident;

- identify causes of work-related disabilities and propose appropriate preventive and curative measures; take part in the process of occupational rehabilitation and advise on the selection of other suitable work;

- propose to employer measures of protection of health of workers exposed to severe danger of injury or health impairment;

-advise employer on safe working process;

- keep records and collect data on the health of workers in accordance with special regulations.

Safety officer is directly responsible to his/her employer. In any case the **employer is finally responsible** for providing healthy and safe work. Delegating expert tasks of safety at work to safety officer does not free the employer from his responsibility. Also workers' obligations in the field of health and safety at work do not affect the principle of responsibility of the employer.

11. Are there external bodies which can collaborate with the employer with a view to improving health and safety records at the enterprise or the plant level? If such bodies exist, please, explain their nature and competence.

It has already been mentioned, that the employer may conclude an employment contract with the safety officer or a civil contract with an outside expert or an outside expert company (with special working permit). The role of the expert medical doctor, who is as a rule not employed by the "employer", was also explained above.

The employer must also collaborate with the labour inspection and worker's representatives. In addition, there are special bodies on the national level, dealing with health and safety at work, i.e.

- Council for health and safety at work (established by the government and performing tasks like preparing national program, strategy on exercising uniform policy on preventing employment injuries and occupational diseases, preparing legal text etc.)
- Sector for the health and safety at work at the Ministry of labour, family and social affairs (exercising e.g. tasks of monitoring , educating, researching and providing expert opinions on health and safety et work)
- Chamber to which safety officers and authorised medical doctors may affiliate (performing tasks of monitoring and supervising the work of the members, adopting code of professional ethics etc.).

12. Which are the employer's obligations as regards safety and health of workers of third parties, for example workers placed at his/her disposal by a temporary work agency, or employees of sub-contractors who perform work within the employer's premises?

The definition of a worker (and of employer) is for the purpose of health and safety at work the broadest one in Slovenian legal system. Worker is not only a person who performs work under the employment contract. Worker is any person who performs work for the employer

on any legal bases. In generally the *ZVZD* applies to all persons, who are socially insured for employment injuries and occupational diseases and any other person present in the work process.

As regards the temporary work agencies, the user ("employer" as in question) has to inform the employer (temporary work agency) before the work of the worker starts about all conditions which have to be fulfilled by the worker for the performance of work. He also has to submit to the temporary work agency the assessment of risk of injuries and health damages. Therefore, the user ("employer") has to provide health and safety at work also to such workers, who participate in his working process, but are employed by other (temporary work agency).

In case of sub-contractors we have to distinguish two possibilities. If the employer just provides facilities and the sub-contractor organises his/her own working process, the "employer" is not responsible for the health and safety at work for such workers. If the workers of sub-contractor are included in the working process of the "employer", than he is responsible for their health and safety at work.

13. How is the prevention of risks organized when two or several companies operate on the same worksite?

Special provisions exist in the case that on the same worksite work is performed by two or more employers. They have to conclude a written agreement in which they have to determine common health and safety measures as well as a worker responsible for executing those measures.

III. PARTICULAR PROBLEMS

14. Are psychic risks taken into account in order to determine the employer's responsibility (for example as regards the prevention of stress at work)?

We have a so called system of listing in Slovenia. That means that **occupational diseases** (for the purpose of health as well as pension and invalidity insurance) are certain diseases caused by a long-term direct influence of the work process and of work conditions at a specific work place or work which directly involves activities on the basis of which the person has been insured. Occupational diseases and work activities where occupational diseases may occur, as well as conditions under which they are deemed to be occupational diseases are determined by the minister responsible for labour in cooperation with the minister responsible for health. Diseases not listed can not be defined as occupational diseases. Stress is not on the list (although the trade unions are advocating that it should be included).

At least theoretically the employer could be held liable under the civil (tort) law. However, it may be difficult for the worker to prove all the conditions of the tort law (especially the causal relationship, i.e. that the damage was caused due to work performance).

15. Is the employer required to take measures to guarantee that non smokers can work in a clean air environment?

According to the Act on Restriction of Use of Tobacco Products (*Zakon o omejevanju uporabe tobačnih izdelkov - ZOUTI*, Official Gazette no. 57/1996, with later amandments) smoking is only allowed in working premises designated by the employer, which have to be separated from other working premises.

Every worker has the right to demand from the employer to work in premises where air is not polluted with tobacco smoke. If employer is not in a position to comply with the worker's

demand to transfer him/her to another working premise, the employer is obliged to forbid smoking in the working premises of such worker.

Supervision is in the domain of labour inspection.

16. Does your national law restrict the employment of certain categories of workers in particularly hazardous works (e.g. the employment of minors or pregnant women, or of temporary workers)?

ZDR (Act on Labour Relations) provides special protection of:

- women (they are not allowed to perform underground work in mines)
- pregnant women and parents (pregnant women are not allow to perform certain work, limitations concerning working overtime and night work exist, parents have the right to parental leave and parental benefit-according to special act, right to work part-time and breastfeeding mothers have the right to special leave and benefit),
- minor workers (aged between 15 and 18 years of age are not allowed e.g. to perform certain work, night work, there are special rules concerning working time, rests and annual leave, which is prolonged),
- disabled workers (according to special rules),
- elderly workers (there are limitations of overtime and night work for workers above the age of 55 years, elderly workers also enjoy the right to a partial pension, if they already fulfilled the conditions for an old-age pension, and at the same time to work part-time).

17 Can the employer be made liable for health damages suffered by his/her workers because of the use of products or substances whose harmfulness was not demonstrated at the time of their use, or whose harmful effects can be appreciated only on the long term (for example, the use of asbestos)?

We have a special Act on Prohibition of Production and Traffic with Asbestos Products and Provision of Means for Restructuring of Asbestos in Non-asbestos Production (*Zakon o prepovedi proizvodnje in prometa z azbestnimi izdelki ter o zagotovitvi sredstev za prestrukturiranje azbestne proizvodnje v neazbestno – ZPPPAI*, Official Gazzette No. 56/1996, 35/1998, 86/2000, 13/2005).

Workers involved in production of asbestos products have the right to claim old-age pension under more favourable conditions (buying of missing insurance period is financed with the subsidy of the state's budget). Being exposed to asbestos is occpatioinal disease (workers have rights from health as well as pension and invalidity insurance) and the employer has to pay damages (with the subsidy of the state, which is also subsidary responsibile for paying damages).

18. Can the employer require from job applicants that they undergo genetic tests or HIV/AIDS tests in order to determine the worker's aptitude to be exposed to risks for which they would be particularly vulnerable?

No, the employer has no such right (prevention measures do not stretch that far). Already the Constitution of the Republic of Slovenia recognises the right to protection of personal information and stipulates that person's physical and mental integrity, privacy and personality rights are untouchable.

ZDR (Act on Labour Relations) expressly prohibits discrimination of a worker also on the grounds of his/her health situation. Employer has to provide a preventive health examination

before concluding the employment contact. However test of health fitness must not encompass circumstances not directly connected to work on the working place for which the employment contract is to be concluded. Already mentioned (point 10, above) Regulation on preventive health examinations of workers allows the authorised medical doctor to state whether the worker is

- fit to perform suggested work,
- fit with following limitations,
- temporary not fit (expected time and reasons)
- permanently not fit for suggested work,
- and he/she may suggest another work.

Medical doctor must not disclose the nature of illness or possible future illnesses to anyone without the workers explicit permission (or court order). He/she is also bound by legislation on providing health services to safeguard personal information as a professional duty.

19. Can the worker withdraw from a situation of work in respect to which he/she has reasonable grounds to think it presents a danger for his/her life or health?

Yes, it is workers right to decline to perform work if

- he/she is not informed beforehand of all potential risks involved, or if the employer has failed to provide the prescribed preventive health examination,
- he/she is exposed to an imminent risk to health or life because the prescribed safety measures have not been implemented. In such case he/she may also demand that the risk is abolished,
- he/she works beyond the full working time or performs night work if, in the opinion of the authorised medical doctor, such work would be damaging to his/her health.

The worker has, in case of serious and imminent danger to health and life, the right to take appropriate action to avoid the consequences of such danger according to his knowledge and the technical means available and leave his/her workplace, work process and working environment. Worker is not liable for any damage resulting from such action, except if he/she acted with intent or gross negligence.

The worker may extraordinary terminate the employment contract (i.e. with no period of notice) if the employer does not provide safety and health of workers at work. The conditions are that the worker has previously requested from the employer to eliminate the immediate and unavoidable danger threatening life and health. In case of extraordinary termination of the employment contract by the worker due to the reasons on the employer's side, the worker may be eligible for the unemployment benefit (if all the conditions according to the unemployment insurance scheme are met).

IV. COMPENSATION OF EMPLOYMENT INJURIES AND DISEASES

20. Which are the benefits payables under your national system of employment injuries compensation? How are they managed? Can they be refused, and if they can, in which cases?

An insured person in the **health insurance** scheme has the right to:

- medical services (e.g. medical diagnosis and treatment, medical rehabilitation) and medicinal goods (e.g. pharmaceuticals). If injury or disease is related to work (i.e. employment injury or occupational disease) co-payment by the insured person is not

required. The carrier of mandatory health insurance has to cover all the costs. In other cases (accident or disease not related to work) the mandatory health insurance carrier pays only certain amount and the insured person has to pay the rest, i.e. from 5 to 75 % of the price (or get private insurance for co-payments);

- transportation costs,
- sickness cash benefit (usually from the 31st day of absence from work onwards, for the first 30 days it is normally a responsibility of the employer to pay the benefit. See also point 6, above.). It amounts to 100% of the basis (average salary in the preceding year). In other cases (accident or disease not related to work) it amounts to 90% (disease) or 80% (injury) of the same basis;
- the person taking care of the funeral has the right to reimbursement of funeral expenses and
- his/her family members are entitled to the funeral grant.

Groups of persons insured only for the risks of employment (work) injury and occupational disease (see also point 3, above) are not entitled to sickness cash benefit. However, they are entitled to health services, transportation costs, reimbursement of funeral expenses and funeral grant.

An insured person in the **pension and invalidity insurance** scheme has the right to:

- Invalidity pension (*invalidska pokojnina*). Entitled are invalids of category I. (and elderly invalids of category II and III). Access to the right to invalidity pension is easier (no previous contribution period is required) and its level is higher if incapacity has been caused due to employment injury or occupational disease.
- Occupational rehabilitation (*poklicna rehabilitacija*), to placement on other working place, to work with shorter working time and to according cash benefits for these periods. These are rights of invalids with remaining working capacity (those of category II or III).
- Widow/widower's pension (*vodvska pokojnina*) and family pension (*družinska pokojnina*) for some other family members. In case the death of the insured person was caused by the employment injury or occupational disease the rights are easier accessible (no insurance conditions on the side of the deceased) and the amount is higher that it is in case of death due to risks not related to work.
- Supplemental disability benefit *(invalidnina*). It is provided for active insured persons and for pensioners with 30 to 100% of physical impairment (related or unrelated to employment or occupation) of organs or other parts of the body. The amount of disability benefit is correlated to the degree of impairment and is higher if the impairment is work related.
- Nursing allowance *(dodatek za pomoč in postrežbo)* is available to the recipients of old age, invalidity, family's and widow/widower's pension, with the permanent residence in Slovenia, should they need permanent help and the attendance of other persons to satisfy their basic needs.
- Beneficiaries with permanent residence in Slovenia, who receive an old-age pension, invalidity, family's and widow/widower's pension that is lower than the minimum pension for the full pension insurance period, and together with their family members, have an income per family member below a prescribed level (means-test), are entitled to supplementary allowance for the equalisation of resources *(varstveni dodatek).*
- Pensioners are also entitled to a yearly supplement (*letni dodatek*).

It should be mentioned, that invalidity is categorised in III categories:

- category I - insured persons with no working capacity left,
- category II - if insured person's working capacity for his/her own profession is reduced for 50 % or more,
- category III - if the insured person is not able to perform work with full working time, but is able work with at least half of the working time or his/her capacity for the profession is reduced less than 50% or is able to work within the profession on other working place with full working time (but is not able to work on the previously assigned working place).

Both schemes are governed by special public legal persons (i.e. institutes), where employees and employers are represented. They decide if the statutory conditions for acquiring the benefit are fulfilled and pay out (or guarantee benefits in kind) to the insured persons. If they are not, the benefits are refused. Intentionally causing social risks (also employment injury or occupational disease) for the purpose to be eligible to the social insurance benefits (to which a person would normally not be entitled) is criminal offence according to the Criminal Code (Article 210).

21. Is compensation limited in any form or the worker can be compensated in full for the damage he or she has suffered? Can the employee profit from an option between asking for limited compensation within the employment injuries system or for full compensation in accordance with civil law/common law?

Benefits in the social health insurance as well as in pension and invalidity insurance are of a limited amount. However, the worker may claim the (remaining amount to) full compensation from the employer according to civil (tort) law. And this is usually done in practice.

The worker has no freedom of choice between the compensation from the social security schemes and compensation from the employer. He/she may decide not to claim the compensation neither from the social security schemes nor from the employer. He/she may just claim compensation (benefits) from the social security schemes but not from the employer. However if he/she would claim just from the employer, the amount of benefits from the social security schemes (that would have been paid) would be deducted from the compensation that has to be paid by the employer.

22. Do you have any experience with regard to the establishment of special funds to compensate for damages to life or health arising out of the use of products or substances whose harmfulness was not demonstrated at the time of their use, or whose harmful effects can be appreciated only in the long term (for example asbestos)?

No such special funds exist in Slovenia. Compensations for the diseases caused by the asbestos have to be paid by the employer and/or by the state. See point 17, above.

V. THE ROLE OF THE WORKERS' REPRESENTATIVES AS REGARDS PROTECTION OF HEALTH.

23. How is the workers' participation organized in order to improve safety and health at work and to organize the prevention of accidents and occupational diseases at the enterprise level? Do you have ad-hoc committees established with a view to taking care of safety and health issues at the enterprise level or

the plant level? How are they made up? What are their responsibilities and faculties? What rights and guarantees are granted to workers who are members of these committees? Do they receive training so as to better discharging their tasks? Can they be assisted by external experts?

In Slovenia, we have a so called dual channel of workers representation. Workers are represented by trade unions and works councils (although some other forms of workers participation in management exist as well). In case the works council is not organised special workers' representative for health and safety at work at the enterprise level (at the employer) has to be elected and has the same rights as the works council. The elections procedure for the election of the works council according to the Workers' Participation in Management Act (*Zakon o sodelovanju delavcev pri upravljanju – ZSDU*, Official Gazette No. 42/1993, with later amendments) is applied.

Employer has to allow workers or their representatives (works council or special workers' representative for health and safety at work) to take part in discussions on all questions relating health and safety at work.

Works council (or special workers' representative for health and safety at work) and trade unions must be presented the safety statement, the report on health and safety at work and the executed safety measures prepared by the employer on the command of the labour inspection, and all the records relating to health and safety at work.

Works council (or special workers' representative for health and safety at work) must be consulted on any measure which might affect health and safety at work; the designation of a safety officer; the appointment of an authorised medical practitioner; the safety statement; and informing of employees.

Works council or special workers' representative for health and safety at work may:

- request that employer adopts suitable measures for reduction or elimination of health and safety risks in the workplace,

- request an inspection by the Labour Inspectorate if it is believed that employer has failed to provide adequate safety measures,

- be present at any inspection by the Labour Inspectorate or by any other body when such is inspecting health and safety at work.

Employer has to inform the works council (or special workers' representative for health and safety at work) and the trade unions at the employer about the findings, suggestions and measures taken by the inspection bodies.

VI. OTHER QUESTIONS

24. Please present any other question which in the law or practice of your country relates to this topic and which has not been addressed in the questionnaire above.

All relevant questions are addressed in the questionnaire above.

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