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TOPIC 3 OCCUPATION RISKS : SOCIAL PROTECTION AND EMPLOYERS' LIABILITY

SWEDEN

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GENERAL QUESTION

1. The first law on Social Security in Sweden was a law on industrial injuries in 1901, which only covered accidents that had happened in the industries. This law was replaced in 1926 by a law which covered accidents in all kinds of work. In 1929 another law was introduced covering certain occupational diseases. In 1955 these two laws were replaced by one law, which entered into force the 1st of July 1957. This law covered accidents in all kinds of work and some special diseases which were named in the law. This law was in force until 1977 when the Industrial Injury Insurance Act entered into force. This law covers any type of accident and disease that can occur at work. In order to qualify for compensation you first have to prove that there is a harmful factor in the work environment. Secondly, you have to prove that there is a causal relationship between exposure to a hazardous factor and the disease in question. Between 1988 – 1989 it was rather easy to qualify for work injury compensation, but in 1993 the law was changed and the requirements for evidence that an occupational injury had occurred became more demanding to meet. Even in 1992, before the law was changed, it became more difficult to get compensation for work injuries. After 1993 it became even more difficult to get work injuries compensation, especially for women and there was a discussion amongst the trade unions that the law must be changed. The law was therefore changed again with effect from the 1st of July 2002. The evaluation whether or not an occupational injury has occurred is now performed in one step. However, within the trade union movement, it is a belief that this relief in the rules of evidence will not result in more people being entitled to work injuries compensation.

According to law you are entitled to compensation for economic disability. There is also another system based on collective bargaining – the Supplementary industrial injury insurance – which gives you compensation for physical or psychological disability or so called non-pecuniary damages. The first Supplementary industrial injury insurance came in 1974. Before that you had to sue the employer before a court of law. After 1974 the rules of the insurance prohibit the employee from suing the employer, unless the latter has committed a crime. /see below/

2. Applications for work injury compensation granted by law are made to the Swedish Social Insurance Agency. If your application is rejected you can appeal to an administrative county court and from there to the Administrative Court of Appeal and finally to the Administrative Supreme Court. In both courts of appeal you need a review permit.

Applications for compensation from the Supplementary industrial injury insurance are made to a special insurance company, the No-Fault Liability Insurance, Incorporated. If the company rejects your application you can apply to a special committee, consisting of representatives from the parties of the labour market and from there to a special arbitral tribunal, also consisting of representatives from the parties on the labour market, but other persons. If you are unlucky it will take you lets say ten years to get all your compensation, that is if you get any at all. Both systems are financed by employer contributions. The legal system is also financed by taxes.

3. All persons engaged in gainful economic activity, i. e. even self employed persons are covered by the legal system. The private system is open to everyone so it depends on your employer if you are covered or not.
4. As I said before, accidents and all diseases are covered by the system.
5. Commuting accidents are covered by the legal system. Until 1993-07-01 /could be a later date depending on which collective insurance we are referring to/ commuting accidents where a car was involved were covered even by the Supplementary industrial injury insurance. Commuting accidents when you for instance slip on the pavement and break your leg, still are.

Commuting accidents are defined as an accident occurring on your way to or from work. For example, if you pick up your child at the day nursery on your way home, and an accident occurs on the way to the nursery, it is covered by the legal system. When the Industrial Injury Insurance Act was changed in 1993 it was proposed that commuting accidents should not be covered by the law. However, this proposal was never introduced due to the fact that it would amount to indirect discrimination because men mainly take the car to work, whilst women generally walk or take the bicycle. Since Sweden has a compulsory traffic insurance, men would receive compensation from that insurance while women would have no insurance.

6. There are no links now. Until the first of July 1993, a person with a work injury was entitled to a special sickness benefit covering the difference between sickness benefit and his salary. This payment was made after 90 days sickness (later 180 days).

7. If you get a pre-retirement pension you are forced to leave your work.

II. RESPONSIBILITIES FOR THE EMPLOYER

8. Yes, under the Swedish Work Environment Act. If the workplace is so dangerous that a worker is killed or badly injured the employer can be taken to court. In Swedish law there is a special crime /arbetsmiljöbrott/ which covers such cases . The Swedish Occupational Health and Safety Board can also inspect the workplace and if they find anything wrong, they can impose a fine.
9. The Work Environment Agency is responsible for the health and safety activities and supplement the relevant legislation, the Work Environment Act, with more detailed requirements, mainly in form of legally binding non-statutory Regulations. In the Work Environment Act it is said that the Work Environment shall be as important as the economic and the technology for the workplace. The employer shall therefore have environmental precautions for the workplace and he needs an organisation with competence and power for this kind of work. If he see some kind of risks in the workplace he has to eliminate the risk otherwise he can be fined.
10. The employer can delegate his power within the workplace to someone or a body he chooses, and that body will be held responsible. He can never delegate the whole responsibility. At the very end he is always responsible.
11. Most employers belong to a Company Medical Service, which is a professional and meant to be an independent resource qualified to identify and describe the connection between the work environment, work organisation, productivity and employee health.
12. The employer has the same responsibility for his own workers as for workers from other companies working on his premises. There are in this respect no differences between the workers in the same workplace.
13. The Work Environment Act section 3 § 7 stipulates how the prevention of risks is organized and who has the responsibility for that organization.

III PARTICULAR PROBLEMS

14. According to Swedish law stress at work, burnout, harassment or bullying can be classified as an industrial injury. It is nevertheless very difficult to prove that stress and harassment is a harmful factor at work, because there are some exceptions in the law covering psychical diseases. Sometime I think that the courts require so much proof that the law is meaningless.

The Swedish National Board on Health and Welfare has recently published a report saying that there is scientific evidence that work-related stress can lead to psychical disease. Hopefully it soon will be easier to get compensation for psychical diseases caused by stress.

15. Under the Swedish 1977 Work Environment Act the employer is required to ensure that conditions associated with occupational hygiene, such as air quality, are satisfactory. The 1993 Tobacco Act lay down rules on a ban on tobacco smoking in some work premises and the provision of non-smoking areas in

others. Many workplaces have introduced a total ban on smoking inside their buildings, even in rooms where employees work alone. In most workplaces there is therefore a special room where you can smoke. If there is no such room, you have to smoke outside the building.

16. There are no such restrictions but there are some exceptions. Under the Swedish Work Environment Act the Government can for example stipulate that pregnant women are not allowed to work in some workplaces. These women are, however, entitled to a special sickness benefit /havandeskapspenning/ from the Social Insurance Agency.
17. The parties of the labour market decided in 1987 that persons who had been exposed to asbestos and because of that suffered of loss of total lung capacity of up to 15 per cent, should receive non-pecuniary damages from the Supplementary Industrial Injury Insurance.

Persons who between 1981- 1987 could prove this loss of total lung capacity got 10 000 Swedish crowns as a non-pecuniary damages compensation.

It is important that the parties on the labour market in these cases can make an agreement because there is a problem to sue the employer. Under the Swedish law you might have passed the period of limitation if there is a long time between the exposition of the harmful product and the time when a person get ill.

18. No, the employer can not require such tests from a job applicant.
19. Yes the employee can refuse to work if he thinks the job is dangerous and the Safety Representative can stop the work if he think it is dangerous. The Safety Representative has to call for the Labour Inspector who has to make a decision about whether the work is dangerous or not. If he found it is not dangerous the employee will loose the salary referring to the time he did not work. If it is dangerous Labour Inspector can impose a penalty on the employer to change the workplace.

There is also, under the Co-Determination Act a possibility for the established union to set a priority right of interpretation, meaning that a certain work is dangerous. If the court than says that the work is not dangerous, the union will be fined in case the union would not have had a good reason for its view.

IV. COMPENSATION OF EMPLOYMENT INJURIES AND DISEASES

20. As I said before, there is a legal system and a system based on collective bargaining. The legal system compensates the economic loss. If a person gets pre-retirement pension because of a work injury he also get an annuity which correspond to the loss of income between the pension and the salary. The annuity is payable up to the pension able age.

The Supplementary industrial injury insurance compensates pre-pecuniary damages. With the exception of accidents at work, a person is only entitled to compensation from this insurance if his work injury has been classified as a work injury. This is, as the title says, a supplementary insurance.

21. Both the legal compensation and the collective based compensation are meant to be a full compensation. In practice it often is not.

22. Referring to asbestos there is an agreement with an industry in the south of Sweden / en eternitfabrik i Lomma/ that persons working with asbestoses in that industry should get compensation. Anyhow it was not a very good agreement.

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

23. In all workplaces with more than 50 employees there are to be Safety Committees dealing with health and safety activities. The committee must be involved as early as possible in the planning and decision-making process of the workplace. If there are more then five persons in the workplace there must be a Safety Representative

VI. OTHER QUESTIONS

24. There is now an investigation looking at the whole social security system. The aim is to see if there is a possibility to take the social security system out of the state budget and place it in the hands of the parties of the labour market. This question has been discussed in earlier investigations regarding work injuries compensation. The present investigation, however, concerns the whole social security system. The investigation is taking place because too many people are on sickness benefit and many blame the employer for that.