

SOCIAL AND LEGAL PROTECTION OF EMPLOYEES AGAINST WORKPLACE INJURIES AND OCCUPATIONAL DISEASES IN THE LEGAL SYSTEM OF SERBIA

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Abstract. *Occupational safety and health is one of the main goals, as well as challenges, for employers, employees and the state. Although this issue is primarily viewed in the context of labor protection of employees, their protection in the field of social security should not be neglected. This aspect of employee protection is analyzed in the scientific and professional literature, but to a much lesser extent than labor law regulations.*

This paper analyzes the legal framework in Serbia that regulate the social and legal protection of employees against workplace injuries and occupational diseases. In addition to analyzing the existing legal solutions, we provide a critical review and give recommendations for their improvement.

Key words: *occupational safety and health, workplace injury, occupational disease, social and legal protection*

1. INTRODUCTION

The purpose of social security is to protect people who, through no fault of their own, are unable to support themselves and their dependents through their job or property. It represents the legal expression of social policy and social relations that are concerned with organized social, financial, health and psychological protection of insured persons from certain social risks, according to the principle of financial contribution, reciprocity and solidarity [1].

Social risk can be defined as a harmful event or inconvenience that can happen to a person during their lifetime or work, and which cannot be overcome without organized help and involvement [2]. Legal regulations determine the condition, event or phenomenon, i.e. the danger of their occurrence, which has or may have certain individual and social, financial,

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health, biological, psychological and legal consequences. This condition, event, or phenomenon is what gives the insured persons, individual bodies and organizations rights, obligations and responsibilities in terms of preventing or eliminating consequences.

There are two groups of social risks - physiological (illness, age, death) and occupational (unemployment, disability, physical impairment). A distinction should be made between social risks and their causes. The causes of these social risks can be working conditions, fatigue, injuries at work, injuries outside work, occupational disease, or any other disease.

There are several basic features of social security [1]. First of all, it is the most important legal instrument of social policy which is used to implement organized social, financial and health protection of people. Also, it is determined by psychological reasons for working and living protection. Furthermore, a certain group of people, those who are insured, are legally protected against a variety of risks. This insurance implies financial, i.e. material participation of each policyholder, i.e. appropriate contributions to provide material resources commensurate with those contributions, and financial security when social risk arises. Social insurance is also characterized by the principle of reciprocity and solidarity in providing social and material security to policyholders, i.e. the principle of "spillover" of material resources among insured persons, in response to the needs of individuals exposed to specific social hazards.

Social and legal protection of employees is provided through social insurance, which is regulated by a series of laws and by bylaws. It should be borne in mind that not all forms of social insurance, notably health insurance and retirement and disability insurance, are equally important for preventing workplace injuries and occupational diseases.

2. WORKPLACE INJURY AND OCCUPATIONAL DISEASE AS SOCIAL RISKS

Workplace injury is a consequence of a sudden and unfortunate event beyond the control of the employee. As the very notion of social risk implies the danger of a harmful event that is beyond the control of the individual and does not depend entirely on their will [3], self-harm or injury caused by the employee cannot be considered a workplace injury.

Workplace injuries (as well as social risks in general) can negatively impact the property of the injured employee, their living standard, the opportunity to participate in community activities, and other things. [3]. This includes a decline in the quality of life of the injured. Maintenance of a healthy and safe workplace has an immeasurable effect on their productivity [4]. Therefore, the basis for exercising the rights within retirement and disability or health insurance will depend on the consequences of the workplace injury, namely whether those consequences are permanent or temporary.

With regard to occupational disease as a social risk, we should pay special attention to uncertainty as a component of social risk. There is always debate about whether an occupational disease is usually a risk that is truly completely unpredictable. Namely, occupational disease occurs in the case of particularly risky jobs, which include exposing employees to certain harmful effects that could have a detrimental impact on their health. Although our legal system does not specify which of the above jobs are most likely to experience these diseases (which could be done by an appropriate bylaw), the legislator has listed workplaces where occupational diseases occur as well as requirements for classifying these diseases as occupational [5]. This approach is logical because it is necessary to clearly distinguish the causal link between the dangers associated with a particular job and the disease.

According to the regulation, the risk ceases to be uncertain for the party that arbitrarily causes its realization [6], which means that if an employee knowingly causes the risk, they lose the right to certain social benefits. However, it is inconceivable that an employee would knowingly become aware of the potential for occupational disease. It is certainly possible that employees can contribute to risk occurrence with their inadequate, unprofessional and unsafe behavior. If the employee does not properly use safety equipment at work, they can contribute to the occurrence of the disease and the illness may only result from such conduct at a certain time. [7]. However, this could more likely be an employee's poor assessment or possible underestimation of the risks that such behavior causes in addition to poor assessment of the danger to their health [8]. If there is a risk of occupational disease, its negative consequences create the need to protect the community. Such protection is provided within the right to insurance and it is established before the onset of the occupational disease [6].

The occurrence of an occupational disease also involves certain costs that may be direct, such as healthcare costs, or indirect, such as reduced earning capacity as well as non-pecuniary damage. Non-pecuniary damage involves the impact on the employee's well-being, that is, their life and health, which must be assigned a certain value [9].

The Serbian legal system provides social and legal protection for workers against risks associated with occupational illnesses and injuries through health, retirement, and disability insurance.

3. TYPES OF SOCIAL SECURITY AND PROTECTION AGAINST WORKPLACE INJURIES AND OCCUPATIONAL DISEASES

3.1. General Remarks

As the social security system in Serbia consists of three branches, we shall observe the protection of employees through each of them. Social insurance can be divided into health insurance, retirement and disability insurance and unemployment insurance [10, 2].

Health insurance is regulated by the Law on Health Insurance [11] and can be compulsory and voluntary. Compulsory health insurance refers to the insurance of persons, regardless of their will, by which they are provided with the right to healthcare and financial compensation in connection with the use of healthcare. It is aimed at precautionary action to prevent diseases and other risks covered by this insurance, as well as corrective action to overcome the consequences that these risks lead to. Voluntary health insurance is an option for citizens who do not have compulsory health insurance, as well as for citizens who do have it but want a greater scope of rights.

The risks covered by compulsory health insurance are: illness and injury outside work and occupational disease and workplace injury. These risks may also be covered by voluntary health insurance, with more extensive coverage and greater scope of rights.

Compulsory health insurance includes the right to healthcare, the right to employee compensation during temporary incapacity to work, and travel expenses associated with the use of healthcare [11].

Retirement and disability insurance provides social and financial security for policyholders in the event of old age or loss of workability, and for their family members in the event of their death. It shall guarantee the protection of benefits and rewards for the employee's previous work in the event of the possible loss of working ability (disability) and inevitable aging. It is based on the principle of reciprocity and solidarity. This means

that it provides certain rights to insured persons in specific cases, regardless of their contribution to the insurance system.

In Serbia, retirement and disability insurance is regulated by the Law on Retirement and Disability Insurance [12]. This insurance covers the old-age risk, disability, physical impairment, carers allowance and death. On that basis, the following rights are exercised: the right to old-age pension - in case of old age, the right to disability pension - in case of disability, the right to financial compensation for physical impairment and the calculation of the length of service with increased duration - in case of physical impairment, the right to financial compensation for assistance and carer's allowance in case of such a need, and the right to the reimbursement of funeral expenses - in case of death of a family member [1].

One of the most serious social risks is unemployment. Although unemployment insurance is part of social insurance, it cannot be related to workplace injuries and occupational diseases. Therefore, it shall not be further discussed in this paper.

3.2. Health Insurance

Health insurance in Serbia is regulated by the Law on Health Insurance, which stipulates that compulsory health insurance includes both insurance in case of illness and accidents that occur outside of the job, and insurance in case of a workplace injury or occupational disease [11]. The law makes a clear distinction between the rights exercised on the basis of workplace injuries or occupational diseases and the rights exercised based on non-occupational illnesses or non-workplace injuries, with greater rights being granted in the first case. Thus, victims of workplace injuries and occupational diseases can exercise their rights from compulsory health insurance, regardless of the duration of compulsory health insurance. On the contrary, if a non-work-related injury or illness happens, the person must have been covered by insurance for at least three months in a row, or six months with breaks, within the previous 18 months.

One of the rights guaranteed under compulsory health insurance is the right to healthcare. The Law on Health Insurance stipulates that healthcare must be delivered in a way that it preserves, improves or restores the insured person's health status and their ability to work and satisfy their personal needs [11]. The right to healthcare includes, but is not limited to, measures for prevention and early detection of disease, examinations and treatment in case of illness and injury, medical rehabilitation in case of illness and injury, as well as medicines and medical devices. Such protection should be differentiated from the healthcare stipulated by the Law on Healthcare, which must be provided by the employer from its own funds, in order to protect health at the workplace. Namely, the employer provides and finances medical examinations in order to determine employees' workability, preventive examinations, first aid in case of workplace injury, etc. In that sense, the Law on Health Insurance stipulates that compulsory health insurance does not include specific healthcare for employees provided by the employer from its own funds, as a form of social care for the health of employees. In addition, health insurance does not provide medical examinations to determine health status, physical impairment and disability in proceedings with the competent authority, or to exercise certain rights with other authorities and organizations - which includes determining medical fitness at the request of the employer, except for examinations requested by professional medical authorities, etc. [11].

The length of mandatory health insurance is not a requirement for exercising the right to health insurance in relation to the risk of occupational disease or damage. However,

the right to healthcare (except in exceptional cases specified by law) cannot be exercised without paid contributions. Therefore, a policyholder who benefits from the healthcare system but for whom no contributions have been paid, bears the expenses of that healthcare, with the right to request reimbursement of costs from the payer of the contribution.

Another right of the employees is employee compensation during the temporary incapacity for work due to health reasons. Absence due to temporary incapacity for work is a right recognized by an employee in order to preserve and improve health and productivity, as well as to protect their financial and social security, bearing in mind that it also provides certain security of their income. Employee compensation during temporary incapacity for work is the right of the insured person, i.e. employee, from the compulsory health insurance. It belongs to them in legally determined cases, regardless of the payer of the salary, including the case when employees are temporarily prevented from working due to occupational disease or workplace injury. Although the right to compensation during temporary incapacity for work is a social insurance right, the employer must pay this benefit out of its own funds for the first 30 days in the event of an injury or illness that occurred outside of the workplace. Starting on the 31st day, however, such compensation will be provided by the Republic Fund for Health Insurance. On the other hand, when it comes to employees whose incapacity for work arose as a result of a workplace injury or occupational disease, compensation shall be provided by the employer from its own funds throughout the period of absence for the duration of the entire employment relationship. However, if the termination of employment occurs during the exercise of the right to employee compensation in case of temporary incapacity for work due to workplace injury or occupational disease, the payment is provided by the Republic Fund for Health Insurance from the date of termination of employment.

In the event of temporary incapacity for work owing to an occupational disease or workplace damage, the amount of salary compensation, including the one supplied from health insurance funds and the one provided from the employer's funds, shall equal 100% of the basic salary compensation. The amount of compensation guaranteed in this way is significantly higher than the amount guaranteed in the event of illness or injury outside work. Such compensation amounts to 65% of the basic employee compensation [11]. This certainly does not prevent the employer from allocating a greater amount than prescribed, which can be more favorable for the employee.

Although Serbian legislator does not make a clear distinction between total temporary incapacity for work and partial temporary incapacity for work, which is a concept applied in some other legislations, this division can still be recognized in some provisions of the Law on Health Insurance. Namely, if the professional medical body of the Republic Fund for Health Insurance determines that the employee's health condition has improved and that work will help them recover and be able to work more quickly, they may recommend part-time work, at least four hours a day. Such part-time work may not last longer than three months continuously or intermittently within twelve months from the date of commencement of part-time work [13]. In addition, a medical doctor, i.e. other professional medical body, is obliged to refer the policyholder to the disability commission if they assess that the health condition of the insured indicates loss of work capacity, which is not expected to improve, regardless of the duration of temporary incapacity for work. The doctor or other professional medical body has the same obligation in case of long-term incapacity for work caused by illness or injury, and no later than every six months of continuous incapacity for work, i.e. if the insured has been intermittently unable to work for twelve months in the previous eighteen months.

3.3. Retirement and Disability Insurance

While the rights of compulsory health insurance strive to preserve, improve or restore the health condition of the employee and their working ability, i.e. provide them with adequate financial security during the period when they are unable to work, the rights of compulsory retirement and disability insurance seek to provide financial support as a form of compensation for the permanent consequences of the realization of certain risks (for example, the risk of workplace injuries and occupational diseases). In that sense, employees, as well as deceased employees' dependents, may acquire appropriate rights from the compulsory retirement and disability insurance in case of employee death, disability and physical impairment which are a consequence of workplace injury or occupational disease [12]. In addition to employees, as well as other legally prescribed insured persons, appropriate rights in case of disability and physical impairment caused by a workplace injury or occupational disease are guaranteed to other persons listed in the Law on Retirement and Disability Insurance. These persons are not insured under regulations governing retirement and disability insurance and it is necessary to distinguish between them and employees, or other insured persons, given the fact that they are insured only in case of disability and physical impairment caused by a workplace injury or professional disease. In other words, they are not insured against all the risks provided by law. Accordingly, they are not obliged to pay the full amount of contributions, but the contribution rate prescribed for disability and physical impairment caused by workplace injuries and occupational diseases. The prescribed rate is four percent for retirement and disability insurance, and two percent for health insurance [14].

According to the Law on Retirement and Disability Insurance, disability occurs when the insured person suffers a complete loss of work capacity, such as when a professional military officer completely loses their ability to perform their job as a professional military officer or when a police officer completely loses their ability to perform their job as a police officer. These changes in health condition may be caused by a workplace injury, occupational disease, or injury or illness that occurs outside work, and cannot be eliminated by medical treatment or rehabilitation. In other words, the rights that can be acquired within the retirement and disability insurance based on the risk of disability are guaranteed only in the case of complete disability, when employment is terminated by force of law, and when there is no possibility of further employment.

The Labor Law states that if it is determined that an employee has their work capacity, their employment will be terminated regardless of their wishes or those of their employer. It comes into force on the day of delivery of the final decision on the loss of work capacity [15].

In Serbian law, the disability caused by a workplace injury or occupational disease is recognized through the fact that the policyholder can exercise the right to a disability pension regardless of the length of insurance, or their age, unlike the disability caused by non-work-related injury or illness [12]. Preferential treatment of workplace injuries and occupational diseases also exists when determining the amount of disability pension, given that the amount of disability pension in the event of disability caused by a workplace injury or occupational disease is determined under more favorable conditions compared to the disability pension intended for the event of disability caused by other factors.

The rights from the retirement and disability insurance, as well as the right to the disability pension, are exercised with the Republic Fund for Retirement and Disability Insurance.

In Serbian law, one of the rights from retirement and disability insurance is the right to financial compensation in case of physical impairment caused by a workplace injury or occupational disease [12]. Physical impairment occurs when the insured, i.e. the person to whom the rights are provided in the event of physical impairment caused by a workplace injury or occupational disease, suffers from the loss, substantial damage or significant disability of certain organs or parts of the body, which hinders normal body activity and requires greater effort in meeting everyday needs, whether or not it causes disability. Physical impairment does not constitute incapacity for work and disability, but the existence of one of these two factors does not in itself exclude the existence of the other, given that the same injury or illness can cause both disability and physical impairment, which in turn provides the possibility for exercising rights based on both of these social risks [10].

In order to exercise the right to financial compensation for physical impairment caused by a workplace injury or occupational disease within the Law on Retirement and Disability Insurance, the damage must be of appropriate intensity, which is at least 30%. Physical impairments are graded in eight different categories, depending on their severity. The fact that the policyholder did not suffer a workplace injury or occupational disease of at least 30% does not exclude the possibility of deterioration or occurrence of completely new damage, which can cause physical impairment exceeding the legal minimum of severity. It can also be a condition for exercising the right to appropriate financial compensation. Accordingly, the law provides such persons with the opportunity to exercise the right to appropriate compensation on that basis, depending on the new state of total physical impairment [12].

One of the insurance cases within the compulsory retirement and disability insurance system is the death of the policyholder. Family members of the deceased policyholder who suffered the consequences of a workplace injury or occupational disease acquire the right to a survivor's pension without preconditions regarding the length of pensionable service of the deceased policyholder. The same applies to family members of persons who are provided with rights in the event of disability and physical impairment caused by a workplace injury or occupational disease. With regard to other cases of the death of the insured, the precondition for exercising the right to a survivor's pension is at least five years of insurance or fulfilled conditions for an old-age, early retirement, or invalidity pension [10]. The Law on Retirement and Disability Insurance determines who is considered a family member who can exercise the right to an old-age pension - children, spouse, extramarital partner, parents who were supported by the insured person/beneficiary during their lifetime.

The right to carer's allowance is another right guaranteed within the compulsory retirement and disability insurance and, as such, it belongs to the insured, i.e. pension beneficiaries who, due to the nature and severity of their injury or illness, need support and care to meet basic living needs. This right is provided regardless of the fact whether the deterioration of health condition is caused by work-related or non-work-related injury or disease. Victims of workplace injuries or occupational diseases exercise this right under the same conditions as other insured persons or pension beneficiaries. It is prescribed that the insured, i.e. pension beneficiary, needs assistance and care to meet basic needs if they are immobile, or unable to move, eat or dress independently due to the severity of their permanent diseases and ill condition.

The right to compensation for funeral expenses is not a "typical" right from social insurance, but compensation for funeral expenses in the event of an employee's death is

prescribed as a work-related right. The expenses are paid by the employer to the family members of the deceased employee, in accordance with the general act. In this regard, if the death of the employee occurs as a consequence of a workplace injury or occupational disease, the employer shall reimburse the costs of funeral services [15].

The regulations on retirement and disability insurance also acknowledge the rights of persons whose residual work capacity has been determined. Loss of work capacity is not observed as an inability to perform any job, but there is a transfer of rights based on remaining work ability. The Law on Retirement and Disability Insurance prescribes the transfer of the right to temporary compensation based on the remaining work capacity of the unemployed beneficiary to disability pension in the amount of 50% of the total disability pension [12]. Also, the Law provides for the right of an employed user to be compensated for part-time work, i.e. for lower earnings in another suitable job, as well as on the basis of remaining work capacity and based on allocation to another suitable job and the risk of disability. Such workers are permitted to retain the amount of their benefit, provided that it cannot exceed 50% of the average salary per employee in the Republic of Serbia in 2002. However, since only current beneficiaries of retirement and disability insurance are now guaranteed the appropriate rights based on remaining work capacity as a result of the amendment of regulations in 2003, there is a need for alternative protection of persons whose remaining work capacity could no longer be determined in accordance with the regulations on retirement and disability insurance. There is a need to protect persons who do not have full work capacity, but who are also not eligible to acquire the rights covered by retirement and disability insurance. This is because the current Law on Retirement and Disability Insurance prescribes the right to a disability pension only in the case of disability, which implies a complete loss of work capacity. The adoption of the Law on Professional Rehabilitation and Employment of Persons with Disabilities has contributed to solving this problem. According to this law, a person with a disability is a person with permanent consequences of physical, sensory, mental or emotional impairment or illness that cannot be eliminated by medical treatment or rehabilitation. Such a person faces social or other restrictions affecting their work capacity and the possibility of employment or maintaining employment and has no or reduced opportunities to enter the labor market under equal conditions with others [15]. In this way, certain labor protection is provided to persons with reduced work ability, both for biological and professional reasons.

3. CONCLUSION

Considering the extent to which these risks are present in nature and society, it is crucial to identify, manage, and insure against these risks [18], as well to consistently follow the principles of prevention. In the Republic of Serbia, rights pertaining to the risk of workplace injuries and occupational diseases are realized within the framework of retirement and disability and health insurance, with certain benefits, such as more favorable (lenient) requirements for obtaining rights from compulsory social insurance, as well as in the scope of rights that insured persons are entitled to on this basis.

The existing system, along with a number of good aspects, has its shortcomings. For example, one of the flaws of such a system is that there are no specific contributions from the risk of workplace injury or occupational disease. There are significant differences in

the frequency of workplace injuries, as well as occupational diseases, depending on the branch of activity the employer is engaged in.

Reforms of the social security system regarding the risk of workplace injuries and occupational diseases could be implemented in several ways. In this respect, there are several possibilities available to the legislator, such as the creation of a new branch of social insurance dedicated to these risks, the establishment of an independent fund for insurance against workplace injuries and occupational diseases, etc. [16].

The improvement of the existing system, as a possible solution in the field of protection in the event of a workplace injury or occupational disease offered within compulsory social insurance, implies the integration of workplace injuries and occupational diseases into the systems of health and retirement social insurance. In this sense, such a solution would imply the payment of short-term fees guaranteed under the compulsory social insurance system from health insurance. Long-term fees would be payable from retirement and disability insurance. Consequently, this option would also involve the payment of employee compensation from compulsory social security funds during the temporary incapacity to work. For this purpose, an additional contribution could also be determined, which would be paid as part of the contribution for compulsory health insurance and which, as such, would be paid exclusively out of employers' funds [16].

One possible improvement is the payment of compensation for temporary incapacity to work from the employer's funds for the duration of the employment relationship and for the period of the entire work incapacity. The disadvantage of such a solution is that employees may report minor changes in their health conditions due to work-related causes.

With this in mind, it can be concluded that any significant change in the organization of the compulsory social security system would involve the investment of certain funds by the state. The economic factor would certainly play a significant role when choosing the implementation of any of these measures. For this reason, the state can only be expected to opt for some of these reforms when it is economically strong enough to address the complexity of the reform process.

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SOCIJALNOPRAVNA ZAŠTITA ZAPOSLENIH OD POVREDA NA RADU I PROFESIONALNIH BOLESTI U PRAVNOM SISTEMU SRBIJE

Bezbednost i zdravlje zaposlenih je jedan od glavnih ciljeva, a ujedno i izazova, za poslodavce, zaposlene i državu. Iako se ovo pitanje prevashodno posmatra u kontekstu radnopravne zaštite zaposlenih, ne treba zanemariti ni njihovu zaštitu u oblasti socijalnog osiguranja. U naučnoj i stručnoj literaturi se ovom aspektu zaštite zaposlenih posvećuje pažnja, ali u daleko manjoj meri nego kada je reč o radnopravnoj regulativi.

U radu se analizira pozitivnopravna regulativa Srbije kojom je uređena socijalnopravna zaštita zaposlenih od povreda na radu i profesionalnih bolesti. Pored toga što se sagledavaju postojeća pravna rešenja, daje se kritički osvrt na njih i predlažu pravci njihovog unapređenja.

Ključne reči: *bezbednost i zdravlje na radu, povreda na radu, profesionalna bolest, socijalnopravna zaštita*