

WORK RELATED ACCIDENTS IN CONSTRUCTION SITES INVOLVING MIGRANT POPULATION

POLISH PERSPECTIVE

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GENERAL INFORMATION ABOUT THE POLISH LABOR MARKET



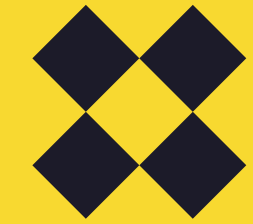
General information about the situation on the Polish labor market



TWO TYPES OF CONTRACTS UNDER WHICH WORK IS PERFORMED:

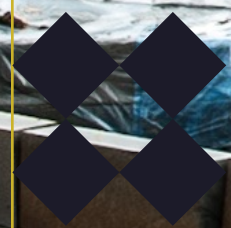
- A. Regular employment based on employment contract (ruled by the Labor Code)
- B. Semi-employment (civil contract – personal services agreement, ruled by the Civil Code, however subject to social security contributions)

WHAT IS “ACCIDENT AT WORK/ WORK RELATED ACCIDENT”?



An accident at work shall be considered a sudden event caused by an external cause resulting in injury or death, which occurred in connection with work:

- 1) during or in connection with the performance of the employee's **ordinary activities or instructions** from superiors;
- 2) during or in connection with the employee's performance of activities for the employer, **even without instruction**;
- 3) while the employee is at the employer's disposal **on the way between the employer's premises and the place of performance of a duty** arising from the employment relationship.



ACCIDENTS AT WORK – IMPORTANT DEFINITIONS



Fatal work related accident:

A fatal work related accident shall be considered an accident **resulting in death within a period not exceeding 6 months** from the date of the accident.

Severe work accident:

A severe work accident shall be considered an accident resulting in severe bodily injury, such as **loss of sight, hearing, speech, reproductive capacity, or other bodily injury or disorder** of health impairing the basic functions of the body, as well as an incurable or life-threatening disease, permanent mental illness, total or partial inability to work at an occupation, or permanent significant disfigurement or disfigurement of the body.

Collective work accident:

A collective work accident shall be considered an accident to which **two or more persons are injured** as a result of the same incident.



**BENEFITS FROM PUBLIC
SOCIAL SECURITY OFFICE
FOR INJURED IN WORK
RELATED ACCIDENTS**



BENEFITS FROM PUBLIC SOCIAL SECURITY OFFICE FOR INJURED IN WORK RELATED ACCIDENTS



a) An insured person who suffers a permanent or long-term injury as a result of an accident at work or an occupational disease shall be entitled to one-time compensation.

- *Permanent health impairment - such impairment of bodily functions that does not lead to improvement.*
- *Long-term health impairment - impairment of bodily functions for a period exceeding 6 months, which can be improved.*
- *The assessment of the degree of health impairment and its relationship to the accident at work or occupational disease is carried out after the completion of treatment and rehabilitation.*
- *One-time compensation shall be paid in the amount of 20% of the average salary for each percentage of permanent or long-term health impairment*

BENEFITS FROM PUBLIC SOCIAL SECURITY OFFICE FOR INJURED IN WORK RELATED ACCIDENTS



b) Family members of an insured person who died as a result of an accident at work or occupational disease are entitled to one-time compensation.

Family members entitled to compensation are:

- the spouse (not in the case of a declared separation)
- own children, children of the other spouse, adopted children, grandchildren, siblings;
- parents, adoptees, stepmother and stepfather, if they had a joint household with an employee or one could prove kind of a duty of care.

BENEFITS FROM PUBLIC SOCIAL SECURITY OFFICE FOR INJURED IN WORK RELATED ACCIDENTS



- Amount of compensation - minimum 9 times of the average salary.
- Accident insurance benefits shall not be paid when the exclusive cause of the accident was a proven violation by the victim of the regulations on the protection of life and health, caused by the victim intentionally or through gross negligence.
- Accident insurance benefits shall not be paid to anyone who substantially contributed to causing the accident by being drunk or under the influence of intoxicants or psychotropic substances.

BENEFITS FROM PUBLIC SOCIAL SECURITY OFFICE FOR INJURED IN WORK RELATED ACCIDENTS



c) sickness benefit/ allowance at 100% of the assessment base

(sick pay insurance is obligatory under regular employment and voluntarily under semi-employment – semi-employee shall specifically ask to have it paid)

**BENEFITS DUE FROM THE
EMPLOYER IN
CONNECTION WITH WORK
RELATED ACCIDENTS
(FOR REGULAR
EMPLOYEES ONLY)**



BENEFITS DUE FROM THE EMPLOYER IN CONNECTION WITH WORK RELATED ACCIDENTS (ONLY FOR REGULAR EMPLOYEES)



- A. An employee who is injured in an accident at work is entitled to compensation from the employer for loss or damage in connection with the accident to personal effects and items necessary for the performance of work, except for loss or damage to motor vehicles and monetary values.
- B. In the event of the death of an employee during the employment relationship or during the period of receiving after its termination of disability benefits due to illness, the family shall be entitled to a death gratuity from the employer.

BENEFITS DUE FROM THE EMPLOYER IN CONNECTION WITH WORK RELATED ACCIDENTS (ONLY FOR REGULAR EMPLOYEES)



The amount of the death gratuity :

- one month's salary if the employee has been employed for less than 10 years;
- three-month salary if the employee has been employed for at least 10 years;
- six months' salary if the employee has been employed for at least 15 years.

The death gratuity shall not be paid to the family members if the employer has insured the employee for life, and the compensation paid by the insurance institution is not less than the death gratuity due to the family. If the compensation is less than the death gratuity, the employer shall be obliged to pay the family the amount representing the difference between these benefits.

BENEFITS DUE FROM THE EMPLOYER IN CONNECTION WITH WORK RELATED ACCIDENTS (ONLY FOR REGULAR EMPLOYEES)



The one-time compensation paid by the employer for an accident at work (or on the way to and from work) and the compensation paid by the Social Insurance Institution are not deductible from the compensation for pecuniary losses or compensation for moral damage to which the injured party is entitled under the Civil Code.

The role of compensation is primarily its compensatory function, so there are no grounds for benefits received from other titles to significantly affect its amount. After all, a person injured by a tort is supposed to receive tangible compensation for the suffering he or she has undergone, the injuries suffered and their consequences for the future. **(Supreme Court verdict).**

- What about life insurance?

POSSIBILITIES TO CLAIM ADDITIONAL COMPENSATION FROM THE EMPLOYER



- a) Liability on the basis of fault - a violation of health and safety rules
- whether by act or omission
 - this includes rules that do not arise from the law provisions only, but also general principles of health and safety at work or rules for performing a particular type of work, also conduct contrary to the principles of social intercourse or good morals, i.e. moral norms generally accepted throughout society or social group
 - Violation of health and safety rules – not only the violation shall be proved but also the causal link between the violation and the accident. The burden of proof is on the employee.

Particularities of work related accidents in construction sites



b) Strict liability - the employer is liable to third parties (including other employees) for the damage caused by his employee

- Liability for the damage caused by the employee - no matter if the employee acted intentionally or unintentionally.
- Once act or omission of the employee was unintentional, the base for the liability of the employer is Labor Code. The victim may claim from the employer only. The employer can claim reimbursement from the employee up to a cup of three times salary. Once however the employer cannot satisfy the claim in full, the jurisprudence allows to claim directly from the employee who caused the damage.
- Once act or omission of the employee was intentional, the base for the liability of the employer is Civil Code. The employer can claim reimbursement from the employee up to full amount, however the victim can claim directly from the employee as well.

Particularities of work related accidents in construction sites



Once the accident was caused by the **semi-employee** the civil code provisions shall be applicable no matter whether the act or omission was intentional and unintentional.

Particularities of work related accidents in construction sites



c) Large construction sites where different operators work simultaneously.

- The precise cause of the accident may be difficult to determine, however the outcome of the criminal investigation frequently allows for the determination of guilt of a particular person or corporation (the employer is obliged to immediately notify the competent district labor inspector and the public prosecutor of a fatal, severe or collective accident at work, as well as of any other accident that caused the listed consequences, which is related to work, if it can be considered an accident at work.)
- The liable entity is determined by finding the person responsible for the act or omission and by the rules on liability of the employer. Quite often more than one entity can be held liable.
- Under Polish legislation, entities which carry out specific tasks related to construction must be covered by civil liability insurance; examples include construction managers and architects.

Particularities of work related accidents in construction sites



d) Subcontracting issues

Even the effective entrustment of an activity to a third party, which exempts the entrusting company from liability for damage caused by its professional enterprise performing the activity in question, does not exclude the entrusting company's liability for damage caused by its own negligence.

There is no general principle of joint liability of the investor and the general contractor for damage caused by the subcontractor's tort. While the investor is exempted from liability for damage caused to a third party by an enterprise, professionally engaged in the performance of entrusted works within the limits of accepted contractual obligations, this does not apply to liability for damage caused by his own negligence, independent of the contractor's misconduct.
(Supreme Court Verdict)

PROBLEMS PARTICULAR TO MIGRANTS

- Difficulties with the language
- Understanding one's own rights
- Frequently working without public insurance at all.





THANK YOU

