

Article 22 of the Constitution of the ILO

Report for the period 1 June 2012 to 31 May 2017, made by the **Government of Finland**

on the

EMPLOYMENT INJURY BENEFITS CONVENTION, 1964 (No. 121)

(ratification registered on 23 September 1968)

Direct Request, 2012*Reform of legislation on occupational accidents and diseases*

In connection with preparing for the reform of legislation on occupational accidents and diseases, a separate tripartite preparatory working group discussed supporting a change of workplace with a benefit akin to a daily allowance in a situation where an employee is unable to work at his/her original workplace because of health issues caused by moisture damage even though he/she has not been diagnosed with an occupational disease within the meaning of the relevant legislation.

The working group discussed a draft for a fixed-term experimental Act under which it would be possible, subject to certain criteria, to pay an employee a benefit for a maximum period of six months when he/she is in a job trial or job coaching with an employer other than his/her own. The Government was prepared to contribute EUR 7 million to the costs over a period of three years. However, the parties never reached a consensus needed to provide a basis for drafting a bill. The Government found it inadvisable to take such a contentious matter forward, particularly as it would have involved creating a completely new type of benefit.

It is important to note in this context that employees who develop an occupational disease because of exposure to moisture damage are entitled to compensation for medical care, rehabilitation and loss of income under the Occupational Accidents, Injuries and Diseases Act just like for any other occupational disease. The workplace relocation allowance that was discussed would have been intended for persons not diagnosed with an occupational disease and would have been funded separately from the occupational accident insurance system.

The allowance discussed would have been intended for persons who are suffering from symptoms evidently caused by exposure to moisture damage and are unable to work in a workplace with moisture damage. Such persons are fully able to work in other circumstances and therefore do not satisfy the criteria for a disability. Accordingly, they are usually not entitled to compensation for loss of income paid out of health insurance nor to occupational rehabilitation or disability pension paid out of employment pension insurance. Persons with occupational diseases are by default not entitled to occupational rehabilitation or to compensation for loss of income other than on a temporary basis, if their occupational disease does not prevent them from working in circumstances without exposure. For such persons, it is essential to be able to find a new workplace involving no exposure due to moisture damage. Such persons have access to labour market services.

Article 8. Occupational diseases

The new Occupational Accidents, Injuries and Diseases Act did not change the principles of compensation for occupational diseases. Finland still employs a 'mixed system' as described in Article 8(c), including both a list of occupational diseases and a general definition of occupational diseases in legislation. The Occupational Diseases Decree contains a list of exposure agents and diseases caused by them that may be considered occupational diseases. The list is neither exhaustive nor restrictive; any disease may be deemed an occupational disease if it can be causally linked with sufficient probability to an exposure at work.

If an employee is diagnosed with an illness suspected of being occupational in origin, an occupational disease investigation will be launched. The illness will be examined and treated in the public health care system, in most cases initially in occupational health care, where the potential exposure agents can be investigated. In this case, occupational health care will perform the primary health care tests for diagnosis and differential diagnosis. The patient will then, if necessary, be referred to the Institute of Occupational Health or to an outpatient clinic in occupational medicine or occupational diseases in their area. A referral may be made by an occupational health physician, any other physician familiar with the patient's working conditions or a hospital specialist who suspects that the illness may be occupational in origin.

The employer's insurance company will be notified of the suspected occupational disease, and the insurance company will make a decision (which may be appealed) as to whether the illness is an occupational disease compensable under law and what kind of compensation the patient is entitled to.

The procedure is the same regardless of whether the illness is included in the list of occupational diseases or not. The purpose of the list of occupational diseases is to provide a quick reference for diseases that have been proven by medical research to have a probable causal link to the physical, chemical or biological agents detailed in the list. These diseases are compensable as occupational diseases if the employee can be shown to have been exposed to the relevant agent in his/her work to such an extent that it may be the principal cause of the disease and no other cause for the disease can be clearly demonstrated. In other words, accepting a disease not listed in the aforementioned list as an occupational disease requires a higher level of proof in the individual case of the causal link between exposure and illness, because the illness is then not generally recognised as being a typical occupational disease.

I LEGISLATION AND REGULATIONS

The new Occupational Accidents, Injuries and Diseases Act (459/2015) entered into force on 1 January 2016. It replaces the former Employment Accidents Insurance Act, Occupational Diseases Act and Act on Rehabilitation Compensable under the Employment Accidents Act. The new Act applies to accidents occurring on or after 1 January 2016. The legislation previously in force continues to apply to accidents that occurred prior to that date and occupational diseases contracted prior to that date.

The purpose of the new Act was to reform the structure of legislation regarding accident insurance and occupational diseases, bringing the provisions up to date to comply with the current criteria for legislation. The new provisions are more detailed than before. The new Act did not change the essential content of the system of insurance cover for employment accidents and occupational diseases nor its fundamental structures such as the funding system, how it is implemented or who is

entitled to claim compensation because of an occupational accident or disease. Also, no significant changes were enacted to the types or amounts of compensation. A major change in the amounts of compensation apply to low-income workers. The minimum level for compensation for loss of income was raised by about 10%. If a worker's earned income is less than EUR 14,080 (at the 2017 prices), compensation for loss of income will be determined on the basis of that minimum annual earned income. The reform was enacted on a cost-neutral basis to the greatest extent possible.

All employees in a private or public service employment relationship, without exception, are covered by statutory occupational accident and disease protection as before, and so are agricultural entrepreneurs under the separate Occupational Accident and Disease Act for Farmers (873/2015). Similar insurance cover for private entrepreneurs continues to be voluntary. Benefits for entrepreneurs and agricultural entrepreneurs continue to be commensurate with the benefits available for employees.

An unofficial translation of the new Occupational Accidents, Injuries and Diseases Act is appended (Annex I).

II-V.

Nothing new to report.

VI.

A copy of this report has been sent to the following labour market organisations:

1. The Confederation of Finnish Industries (EK)
2. The Central Organisation of Finnish Trade Unions (SAK)
3. The Finnish Confederation of Professionals (STTK)
4. The Confederation of Unions for Professional and Managerial Staff in Finland (Akava)
5. Local Government Employers (KT)
6. The Office for the Government as Employer (VTML)
7. The Federation of Finnish Enterprises

Statements of the labour market organisations

SAK, STTK, Akava:

The Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK) and the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) note in a joint statement that the new Occupational Accidents, Injuries and Diseases Act entered into force at the beginning of 2016. It was not the purpose of the Act to change the established practice of compensation in cases of occupational accidents and diseases. Under section 16 of the Act, an event is compensable if a causal link can be medically proven between the event and an injury or disease, unless otherwise provided below. Evaluation of a causal link particularly concerns medical findings and observations, the manner in which the event occurred, and the patient's previous injuries and diseases. It is the consensus of insurance medical consultants that the treatment necessitated by an accident along with any complications, such as a post-operative infection or thrombosis caused by immobilisation, are compensable. Accident insurance companies have now changed their established practice and no longer compensate for the

complications of treatment necessitated by an accident. This has happened even in cases where the procedure in question would never have been performed had the accident not happened and where the procedure in question was essential for recovery from the accident. This has the effect of undermining the entitlement to compensation and the financial position of employees injured in occupational accidents. The trade union confederations also note that events previously compensated as accidents are increasingly being interpreted by insurance companies as not being compensable accidents. For instance, there are cases in which a twisted ankle was not considered a compensable injury.

The trade union confederation refers to the statement made by Akava in 2012 concerning the health risks of microbial exposure from moisture damage and problems with income security and note that no progress has been made. Finland should enact detailed provisions regarding employees exposed to microbes from moisture damage at the workplace and regarding obligatory action by employers in such situations. Legislation should also be specified as regards the obligations of insurance companies. There are still serious shortcomings in Finland concerning the social security of employees exposed to microbes due to moisture damage and/or their toxins in indoor air (sick building syndrome).

An employee who falls ill due to microbial exposure from moisture damage often has no recourse to social security after the employer's sick pay obligation ends. In many such cases, the Social Insurance Institution (KELA) will not pay the employee a sickness allowance as per social insurance. KELA does not necessarily consider an employee to be disabled so as to qualify for a benefit even if the employee is unable to work in his/her workplace because of a disease caused by the workplace environment. If the employer cannot assign the employee to another workplace environment and the employee is unable to return to his/her previous job, the employee may suffer a complete loss of income, his/her symptoms not being considered sufficient for an occupational disease diagnosis and hence for compensation for disability caused by an occupational disease.

The concept of compensation for moisture damage exposure as an occupational disease involves problems that should be solved urgently. Because medical evidence on causal links between moisture damage and patient symptoms is sketchy, only few cases can be reliably determined to be occupational diseases. What makes it more difficult to identify cases and to claim compensation is that it is difficult for employees falling ill to gain access to the required tests and that insurance companies differ widely in their compensation practices.

Many employees suffering from symptoms due to microbial exposure from moisture damage do not get the protection they require and fall through the cracks in the social security safety net if their symptoms are limited to their original workplace.

In Finland, buildings with significant moisture and mould damage such as to constitute a health risk can be found particularly in the public sector (schools and hospitals). As early as in 2012, the Audit Committee of the Finnish Parliament noted in its report 1/2012 that 12% to 26% of the floor area of buildings in the education and health care sectors had sustained significant moisture and/or mould damage ('Rakennusten kosteus- ja homeongelmat' [Moisture and mould problems in buildings], Audit Committee of Parliament 2/2012). In its report, the Audit Committee required the Government to take action to correct the situation and to improve the legal protection of those falling ill due to exposure. Neither building repairs, medical investigation of causal links nor improvement of the legal protection and social security of those falling ill have been undertaken.

Efforts were made to resolve the problem in connection with the preparation of the Occupational Accidents, Injuries and Diseases Act that entered into force in 2016, but due to the opposition of employers the matter progressed no further, and the Government did not propose action to improve the social security of affected workers.

With regard to the studies on asbestos and its health hazards and treatment, the trade union confederations note that the screening, monitoring and treatment of persons exposed to asbestos in their employment history have declined due to reduced resources. Legislation should be specified and resources added to bring examination and treatment measures for persons thus exposed to an adequate level.