

DISABILITY IN ACCIDENT INSURANCE

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Abstract

The upcoming amendment to Act No. 266/2006 Coll., on Employee Accident Insurance, which is to enter into effect on 1 January 2013, enshrines the migration of the accident insurance stock, currently provided for by the Kooperativa and Česká pojišťovna insurance companies, as well as the actual implementation of the employee accident insurance to the Czech Social Security Administration (CSSA) or, where appropriate, the respective District Social Security Administration (DSSA). According to the current legislative intentions, the decision-making concerning the benefits shall fall under the competence of DSSA's. The Assessment Service doctors shall assess, in particular, the damage to health and the degree of damage to health, in order to determine whether benefits shall be granted under the employee accident insurance scheme. In addition to the existing role in assessing the entitlement to the sickness insurance and pension insurance benefits, including disability pensions and the disbursement of these benefits, CSSA shall – as a new task – also monitor the accident insurance benefits and consequently, the disability pensions arising from a work accident or occupational disease. This is a significant change since, at present, CSSA makes no differentiation as to whether a person has become disabled as a result of a work accident or occupational disease. There is no legal regulation in force that requires CSSA to monitor the number of disabilities as a result of work accident or occupational disease. Due to the absence of valid data, it is not possible to determine the costs of disability pensions granted on the grounds of work accidents and occupational diseases. It is thus of high importance that, when preparing the bill, the legislator took account of the need to provide for the obligation of the Czech Social Security Administration to monitor the data concerning disability due to work accident or occupational disease.

Key words: *accident insurance; accident; occupational disease; disability*

INTRODUCTION

The issue of work accidents and occupational diseases is a traditional institute within Czech law. The first development of accident insurance dates back to 1887. Act No. 1/1888 Coll., on Accident Insurance for Workers, which

was part of the so-called Taaffe reform in social security (Tröster et al. 2010), was adopted upon the territory of the Czech lands, under the then Austro-Hungarian Empire. The insurance was designed as a statutory scheme, initially for the case of a work accident and later (from 1932) also for the case of an occupational disease.

Little by little, it has developed into a complex system. The main carrier was the specially established Accident Insurance Company, intended for Bohemia or, where appropriate, Moravia and Silesia (Bruthansová et al. 2010). After World War II, this Act was replaced with Act No. 99/1948 Coll., on National Insurance, which remained in force until 1956. The range of issues related to indemnification for bodily harm, employer's liability, work accidents and occupational diseases and occupational safety is very extensive and, like in the present legal regulations, in the past it was also fragmented into several legal acts. The last stage of changes was triggered by the adoption of Act No. 262/2006 Coll., the Labour Code, and of Act No. 266/2006 Coll., on Employee Accident Insurance, which, however, has not yet entered into effect. As a result, the employer's liability for work accidents and occupational diseases continues to be covered by the transitional provisions of the Labour Code until the entry into effect of the Employee Accident Insurance Act. To be more specific, the complexity of changes in the overall concept of the issues concerned made it necessary, contrary to the initial expectations of the bill proposers, to table multiple amendments to the Accident Insurance Act even before its entry into force, which is quite unconventional; based on the last plans, the entry into force is now (after several postponements) scheduled for 1 January 2013 (Štaňková 2010).

Characteristics of the existing legal regulations governing employee accident insurance

At present, the statutory employer's liability insurance for damage in relation to work accident or occupational disease is governed by the initial provisions of Section 205d of the already repealed Act No. 65/1965 Coll., the Labour Code, and Implementing Decree No. 125/1993 Coll., as amended, based on the provisions of Section 365 of Act No. 262/2000 Coll., the Labour Code. This insurance is based on the employer's objective liability for damage caused in relation to a work accident or occupational disease. It is structured as a compensation for damage amounting to the difference between the employee's income before the damage and his/her income after the accident to be increased, where applicable, with the amount of the disability pension

drawn on the same grounds, and it is carried out by two domestic insurance companies – Česká pojišťovna, a. s., and Kooperativa pojišťovna, a. s., VIG. The employer's liability insurance is designed on a non-profit basis; any financial damage incurred by the insurance companies from carrying out the insurance scheme is covered from the national budget and, by analogy, any surplus is returned back to the national budget. The costs of the insurance companies are fixed by law at 13.5% of the insurance premiums collected. In 2009, the administrative costs amounted to CZK 829 million. A reduction in the administrative overhead from 13.5% to 9% was prepared in terms of a legislative proposal by the Ministry of Finance in autumn 2009. During the legislative process, however, it was concluded that the proposed decrease of this rate cannot be implemented through an amendment to the applicable Decree No. 125/1993 Coll., as amended, but through a legal regulation only, because the authorisation to issue or amend a decree, as appropriate, was repealed by the Labour Code as of 1 January 2007. It is estimated that 13.5% of the insurance premiums in 2011 could amount to ca. CZK 0.9 billion and its reduction by one-third would correspond to ca. CZK 0.3 billion, which would increase the revenue for the national budget.

As already mentioned above, the body of law includes also Act No. 266/2006 Coll., on Employee Accident Insurance, as amended (hereinafter referred to as "EAIA"), which is to replace, effective as of 1 January 2013, the existing legal regulations applicable to the statutory employer's liability insurance for damage in relation to work accidents. The valid, but not effective, regulation of indemnification for work accidents under EAIA constitutes a fundamental systemic change, which shifts liability for the implementation of accident insurance to the state, changes the nature of the insurance and introduces new elements, which are standardly present in the accident insurance schemes in developed countries. These elements include, inter alia, accident prevention, incentives for employees to return to work, incentives for employers to improve the level of occupational safety and health or introduction of a post-accident physiotherapy scheme (Bruthansová et al. 2010). The existing system of indemnification for work

accidents and occupational diseases as well as the concept of compensations for lost earnings are abandoned; the objective liability of employers for damage in case of a work accident or occupational disease is abolished. It is a form of accident social security with an own system of benefits provided, in which the employee becomes the insured person. Its complementary concept remains unchanged; this means that accident insurance would, similarly to the employer's liability insurance for damage in relation to work accident or occupational disease, be a complement to the health, sickness and pension insurance schemes. The implementation of the accident insurance is to be the responsibility of CSSA as an organisational unit of the state, which is also in charge of implementing the other types of social insurance (i.e. sickness and pension insurance).

Characteristics of the existing legal regulations governing disability assessment

Act No. 155/1995 Coll., on Pension Insurance, as amended (hereinafter referred to as the "PIA"), covers pension insurance for old-age, disability and death of the breadwinner. Since 1 January 2010, a new three-stage system of disability and disability pensions was introduced by Act No. 306/2008 Coll., amending the PIA with effect from 1 January 2010 (Šimák 2010; Molek et al. 2011). The implementing legal regulation to the Pension Insurance Act, issued based on the authorisation provided in the provisions of Section 108 (1) (b) of that Act, sets out more detailed rules for disability assessment with effect from 1 January 2010. Specifically, this implementing regulation is the Ministry of Labour and Social Affairs (MoLSA) Decree No. 359/2009 Coll., laying down the percentage rate of decrease in the ability to work and the particulars of an invalidity assessment and regulating the assessment of ability to work for the purposes of disability (the "Disability Assessment Degree"). Disability pensions are now granted in three benefit stages depending on the recognised degree of disability (first, second and third-

degree disability). Consequently, recognition of disability is relevant for the granting of the disability pension. The assessment of the health condition, the decrease in the ability to work and the disability is carried out by the District Social Security Administration (medical assessor) in connection with the disability pension procedure:

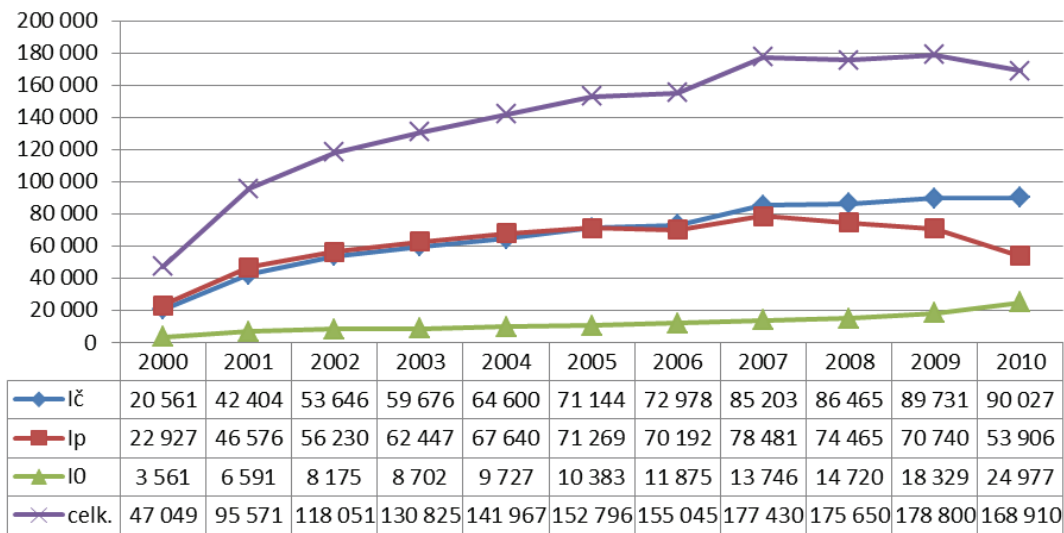
- a) during fact-finding medical examinations, carried out for the needs of the authority, which decides on the disability pension entitlement;
- b) during monitoring medical examinations, which are intended to check whether the conditions for the entitlement, i.e. disability, still persist.

The Medical Assessment Service of the social security system – a doctor of the District/Prague Social Security Administration (PSSA) or, as the case may be, the CSSA doctor for the purposes of a complaint procedure, or the MoLSA assessment committee for the purposes of legal proceedings, assess on a case-by-case basis whether the specific case constitutes a first, second or third-degree disability (Čeledová and Čevela 2010).

In the context of the provisions of Section 38 (b) of the PIA, the DSSA/PSSA doctor also gives their opinion on the causal connection between the disability and the work/non-work accident and the occupational disease. When assessing the causal connection between the disability and the occupational disease, the DSSA doctor builds on the assessment of the respective occupational disease centre recognising the occupational disease or, in case of an accident, from the prescribed (work) accident report.

Developments in the disability recognition process since 2000

The number of assessments delivered each year for the purposes of pension insurance has been rising since 2000, for both fact-finding and monitoring medical examinations. The number of delivered disability assessments has increased more than three times within a decade since 2000. The situation is documented in Graph 1.

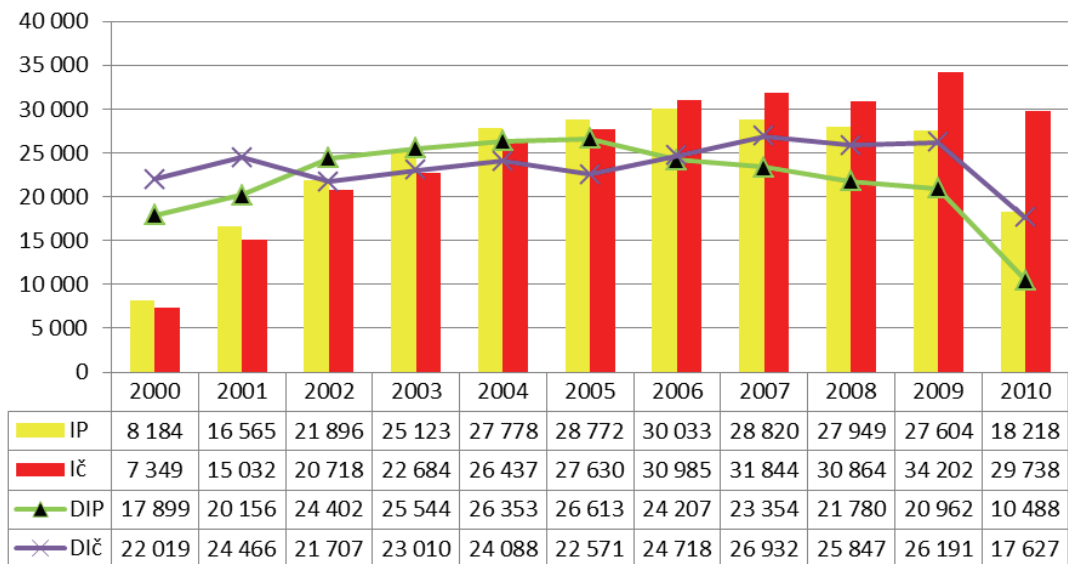


Source: CSSA, 2011

Legend:

IČ – Partial disability and, for 2010, first and second-degree disability; IP – Full disability and, for 2010, third-degree disability; IO – No degree of disability recognised; celk. – Total disabilities

Graph 1. Development of disabilities in 2000–2010



Source: CSSA, 2011

Legend:

IP – Full disability and, for 2010, third-degree disability; IČ – Partial disability and, for 2010, first and second-degree disability; DIP – Full disability pension and, for 2010, disability pension for third-degree disability; DIČ – Partial disability pension and, for 2010, disability pension for first and second-degree disability

Graph 2. Difference in the number of newly granted disability pensions and the newly recognised disabilities in 2000–2010

The outputs from the activities of the Medical Assessment Service and the disability assessments cannot be fully comparable with the outputs from the granting or payment of disability pensions (mainly due to the differences in time, benefit treatment as well as in the data collection method), but only converging, particularly as regards the comparison between the newly granted disability pensions and the newly recognised disabilities. The situation is documented in Graph 2.

Work accidents and disability

In addition to assessing the entitlement to the sickness insurance and pension insurance benefits, including disability pensions and the disbursement of these benefits, CSSA shall monitor also the sickness benefits granted on the grounds of a work accident. The main source for work accident statistics in the Czech Republic is the statistical compilation “Nem Ůr 1-02” concerning the incapacity for work due to illness and accident. This compilation is completed by all economic operators with more than 25 employees/insured persons. In order to complete the picture on all incapacities for work, the Czech Statistical Office builds on the data provided by CSSA, which include data for employers with 25 or less employees (who are not among the respondents receiving the compilation) and for self-employed. The provision of data concerning work accidents and occupational diseases is governed by Act No. 89/1995 Coll., on State Statistical Service, which, in the provisions of its Section 2, defines the concepts of individual, confidential and anonymous data; furthermore, under its point (p), it provides for the principle of providing individual data, which guarantees their protection. Consequently, the only sources of data on work accidents in the Czech Republic are the “Nem Ůr 1-02” compilation and administrative data from the CSSA databases (Bruthansová et al. 2010).

In case of disability pensions, by contrast, the grounds for recognizing disability due to work accident or occupational disease have not been monitored at all in the last ca. 15 years. CSSA monitored these data on a global level

until 31 May 1992, as the disability pensions granted on the grounds of work accident or occupational disease were, based on the applicable legal framework, increased by 10% pursuant to the provisions of Section 30 (7) of Act No. 100/1988 Coll., on Social Security. After that date, when calculating the pension amount in accordance with the provisions of Section 30 (5) of the Social Security Act, the basic pension assessment amount continued to be increased accordingly, for several subsequent years, in case of employees who became disabled as a result of a work accident suffered when carrying out job tasks in or in direct connection with category I employment. At the same time, however, CSSA makes no differentiation as to whether a person has become disabled as a result of a work accident or occupational disease. There is no legal regulation in force that requires CSSA to monitor the number of disabilities as a result of work accident or occupational disease. While the attending physician, when completing the incapacity for work certificate, indicates with a tick mark – based on the information provided by the patient – that the incapacity for work concerns a work accident, such indication is only relevant as a signal towards the sickness insurance carrier; it does not give rise to any legal claims or sanctions, as appropriate (such as for the physician). Work accident is a legal rather than medical category. Only the employer or, in case of a dispute, the competent district court as the court of first instance, decides on what does or does not constitute a work accident. The opinion of a physician, whether attending or a specialist, is not relevant for the recognition of a work accident. The aforesaid implies that only the employer has knowledge and information of the job tasks to be carried out by a specific employee and, as a result, only the employer can give an opinion on the possible causal connection (Bruthansová et al. 2010). Table 1 shows the number of work accidents in the period 2004–2009 broken down to work accidents with and without incapacity for work. Table 2 subsequently shows the number of fatal work accidents in the period 2004–2009.

Table 1. Work accidents in 2004–2009

Year	Work accidents with incapacity for work	Work accidents without incapacity for work
2004	81,688	27,555
2005	82,042	28,997
2006	82,296	29,243
2007	77,233	28,806
2008	71,281	28,650
2009	50,173	23,158

Source: VÚBP, 2010

Table 1. Work accidents in 2004–2009

Year	Number
2004	185
2005	163
2006	152
2007	187
2008	174
2009	105

Source: VÚBP, 2010

DISCUSSION

Act No. 266/2006 Coll., on Employee Accident Insurance, was adopted in 2006, but has not yet entered into effect. Initially, it was to enter into effect on 1 January 2008; however, its entry into effect was postponed first by Act No. 218/2007 Coll. until 1 January 2010 and then once again, until 1 January 2013, by Act No. 289/2009 Coll. In the period since the approval of the Employee Accident Insurance Act, there have been changes in the substance as well as in the legislative and technical aspects. It is therefore necessary to review the entire Act and amend those provisions, which would be very difficult to implement in practice, thus simplifying the entire domain of the accident insurance. Under the Act, the implementation of the employee accident insurance is now to be the responsibility of CSSA as an organisational unit of the state, which is in charge of implementing also the other types of social insurance, in the extent of the existing limits of the Act. The accident insurance agenda will be implemented at the level of DSSAs (i.e.

the primary decision-making on all benefits under the new system, which will include: *accident supplement, accident settlement, accident allowance, pain and suffering compensation, allowance for difficult self-fulfilment within society, compensation for treatment-related costs, compensation for funeral-related costs, lump-sum allowance for the survivor and accident allowance for the survivor*), including the activities carried out by the doctors of the Medical Assessment Service, who will assess the damage to health and the degree of damage to health for the purposes of the accident insurance. The accident insurance benefits will be paid by DSSAs through the CSSA's central account. The accident allowances shall be paid on a monthly basis, the other benefits shall be on a lump-sum basis. A similar solution shall be put in place as in the sickness insurance system, including the organisational structure and the arrangements for the required activities such as the appeal procedure, the methodological and conceptual guidance, etc. It is important to mention the new responsibility of CSSA to keep records of work accidents and

occupational diseases, collect data on their sources, causes, circumstances of their occurrence and consequences, as provided for by EAIA, including the CSSA's obligation to prepare regular reports on the developments in the accident insurance, expenditures for benefits as a result of work accidents and occupational disease, as appropriate, etc. As already mentioned above, due to the absence of valid data from the Czech Social Security Administration, it is currently not possible to determine the costs of disability pensions granted on the grounds of work accidents and occupational diseases.

Consequently, from the relatively large number of work accidents with incapacity for work, it is also impossible to derive how many of them resulted in disability or the financial amount of the pensions paid. In addition to the existing social insurance benefits (sickness and pensions insurance), CSSA shall also pay the accident insurance benefits starting from January 2013. It is essential to ensure that these data are also monitored, due to the anticipated considerable financial commitments of the state in relation to the disability pensions granted for a work accident. At present, only the sickness benefits arising from work accidents are statistically monitored. In case of disability pensions, the grounds for disability recognition have not been monitored at all in the past 17 years. The situation with commercial insurance companies as the carriers of the existing accident insurance scheme is not much better; neither these insurance companies monitor in a greater detail the grounds for the indemnification paid. The activities of the two insurance companies (with Kooperativa and Česká pojišťovna controlling ca. 80% and 20%, respectively, of the accident insurance "market") in the field of the accident insurance are nowadays actually limited to the settlement of the occurrence of losses and the payment of indemnifications. However, they do not deal with any prevention at all. Consequently, there is currently no effective system in the accident insurance scheme that would secure valid data for the participating entities (commercial insurance companies, CSSA). This is all based on the fact that there is no legal regulation providing for complex monitoring of the relevant data (Bruthansová et al. 2010).

CONCLUSION

Since 2000, the disability figures have been rising until the adoption of the new legal regulation effective as of 1 January 2010. A comparison between the results of the disability recognition process for 2009 and 2010 showed an increase by 5% in the share of non-recognised disabilities, a decrease by ca. 1% in the share of first-degree disabilities, an increase by ca. 5% in the share of second-degree disabilities and a decrease by ca. 7.5% in the share of third-degree disabilities.

These disability recognition figures, however, do not make it possible to determine disability as a result of a work accident. Under the upcoming amendment to the valid Employee Accident Insurance Act, which is to enter into effect as of 1 January 2013, the district social security administrations shall decide on all accident insurance benefits and make the payments through a central CSSA account. The doctors of the Medical Assessment Service shall assess, in particular, the damage to health and the degree of damage to health, in order to determine whether benefits shall be granted under the employee accident insurance scheme. CSSA shall take over the payment of accident allowances from all of the existing payers. The Employee Accident Insurance Act also provides for new important responsibilities of CSSA in the field of prevention and physical therapy; the doctors of the Medical Assessment Service shall now assess the degree of damage to health for a much larger group of employees suffering damage. The transfer of the accident insurance scheme to CSSA starting from 2013 must be accompanied with the implementation of a corresponding data collection system in order to ensure complex records of disability pensions granted as a result of a work accident or occupational disease. The introduction of a software-based system in CSSA where the indicated cases of disability pensions shall contain a variable to clearly distinguish such case from other types of disability pensions will make it possible to very accurately monitor the state's expenditures in the field of accident social insurance. Another important step is the introduction of a system to distinguish or specify in more detail the long-term incapacity for work in order to prevent confusion or combining incapacity for work due to a work

accident with the later progress of an already diagnosed disease when the person concerned continues to receive compensation benefits for a work accident, although their diagnosis is no longer directly related to the work accident (Bruthansová et al. 2010). In spite of the fact that the number of work accidents in the Czech Republic is decreasing year by year, this issue certainly deserves increased

attention due to its society-wide health, social and economic impacts. Monitoring of data concerning an incapacity for work and disability for work accident will not only make it possible to identify the economic costs incurred, but also contribute to improvement of preventive measures in occupational safety and health.

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