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LEGAL BASIS FOR DETERMINING THE NEED FOR FINANCING PREVENTIVE AND REHABILITATION MEASURES IN RELATION TO THE CLASS OF OCCUPATIONAL HAZARD AND TYPE OF ECONOMIC ACTIVITY

One of the central tenants of Kazakhstani State policy is protecting and developing its labor potential, meeting both domestic and global community demands for workforce preservation. Successful developed nations follow one simple rule in regards to this matter – investing in human health preservation is both rewarding economically as well as socially; under EU-WTO Agreement mandate, hazards to life and health be assessed periodically and evaluated; this article describes valid approaches and regulatory regulations applicable when it comes to evaluating professional hazards.

Our study utilized both general and specialized research methods. Its methodological framework consisted of using various legal analysis/synthesis/dialectic/social approaches; we combined all these forms of scientific investigation in order to demonstrate our study's uniqueness while supporting its conclusions.

Research results: modifications were proposed for methods for deciding whether or not to fund preventive and rehabilitation actions related to occupational hazards and types of economic activities.

Kazakhstan needs to review their existing financing mechanisms of social insurance systems of industrial accidents to encourage employers in improving safety and working conditions within their enterprises. Proposed changes will serve to enlighten and support employers as they look towards strengthening workplace conditions for safety improvement.

Key words: occupational hazard, type of economic activity, preventive and rehabilitation measures, occupational safety.

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Кәсіптік тәуекел сыныбына және экономикалық қызмет түріне қатысты алдын алу және оңалту іс-шараларын қаржыландыруға қажеттілікті айқындаудың құқықтық негіздері

Қазақстанның мемлекеттік саясатының орталық бағыттарының бірі оның еңбек әлеуетін қорғау және дамыту, ішкі және әлемдік қоғамдастықтың жұмыс күшін сақтау қажеттіліктерін қанағаттандыру болып табылады. Табысты дамыған елдер бұл мәселеде бір қарапайым ережені ұстанады – адамдардың денсаулығын сақтауға салынған инвестициялар экономикалық және әлеуметтік пайда әкеледі; ЕО-ДСҰ келісімінің мандатына сәйкес өмір мен денсаулыққа қауіп мезгіл-мезгіл бағалануы керек; бұл мақалада кәсіби бағалау кезінде қолданылатын қолданыстағы тәсілдер мен нормативтік ережелер сипатталған қауіптер.

Біздің зерттеуіміз жалпы және арнайы зерттеу әдістерін қолданды. Оның әдістемелік негізі құқықтық талдау/синтез/диалектика/Әлеуметтік жұмыстың әртүрлі тәсілдерін қолданудан тұрды; біз зерттеудің бірегейлігін көрсету және оның нәтижелерін қолдау үшін ғылыми зерттеудің барлық осы түрлерін біріктірдік.

Зерттеу нәтижелері: кәсіптік зияндар мен экономикалық қызмет түрлеріне байланысты профилактикалық және оңалту шараларын қаржыландыру туралы шешім қабылдау әдістеріне өзгерістер енгізу ұсынылды.

Қазақстан жұмыс берушілерді өз кәсіпорындарындағы еңбек қауіпсіздігі мен еңбек жағдайларын жақсартуға ынталандыру үшін өндірістегі жазатайым оқиғалардан әлеуметтік сақтандыру жүйелерін қаржыландырудың қолданыстағы тетіктерін қайта қарауы қажет. Ұсынылған өзгерістер жұмыс берушілерге қауіпсіздікті жақсарту үшін еңбек жағдайларын жақсартуға бағытталған білім мен қолдауға қызмет етеді.

Түйін сөздер: кәсіби тәуекел, экономикалық қызмет түрі, профилактикалық және оңалту шаралары, еңбекті қорғау.

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Правовые основы определения потребности в финансировании превентивных и реабилитационных мероприятий применительно к классу профессионального риска и виду экономической деятельности

Одним из центральных направлений государственной политики Казахстана является защита и развитие его трудового потенциала, удовлетворение потребностей как внутреннего, так и мирового сообщества в сохранении рабочей силы. Успешные развитые страны следуют одному простому правилу в этом вопросе – инвестиции в сохранение здоровья людей приносят как экономическую, так и социальную выгоду; в соответствии с мандатом Соглашения ЕС-ВТО, опасности для жизни и здоровья должны периодически оцениваться; в этой статье описываются действующие подходы и нормативные положения, применимые, когда дело доходит до оценки профессиональных опасности.

В нашем исследовании использовались как общие, так и специализированные методы исследования. Его методологическая основа состояла из использования различных подходов юридического анализа/синтеза/диалектики/социальной работы; мы объединили все эти формы научного исследования, чтобы продемонстрировать уникальность нашего исследования и поддержать его выводы.

Результаты исследования: были предложены модификации методов принятия решения о финансировании профилактических и реабилитационных мероприятий, связанных с профессиональными вредностями и видами экономической деятельности.

Казахстану необходимо пересмотреть существующие механизмы финансирования систем социального страхования от несчастных случаев на производстве, чтобы стимулировать работодателей к улучшению безопасности и условий труда на своих предприятиях. Предлагаемые изменения послужат просвещению и поддержке работодателей в их стремлении улучшить условия труда для повышения безопасности.

Одним из главных приоритетов государственной политики Казахстана является сохранение его трудового потенциала. Решение этого вопроса отвечает потребностям международного сообщества. Развитые страны следуют простому правилу: инвестирование в сохранение здоровья человека – отличная инвестиция и экономически выгодная. Соглашение ЕС-ВТО обязывает оценивать риски для жизни и здоровья. В этой статье рассматриваются обоснованные и нормативные подходы к оценке профессиональных рисков и управлению ими.

Исследование проводилось с использованием как общих, так и специализированных методов исследования. Основой методологической базы является сочетание общенаучных и специализированных методов анализа, таких как правовой анализ и синтез, а также диалектический и социальный подходы. Сочетание упомянутых выше методов научного исследования позволило нам доказать уникальность нашего исследования и подтвердить сделанные нами выводы.

Результаты исследования: предложены изменения в методах определения того, следует ли финансировать профилактические и реабилитационные мероприятия в связи с профессиональными вредностями и видами экономической деятельности.

В Республике Казахстан необходимо пересмотреть действующие механизмы финансирования системы социального страхования от несчастных случаев на производстве. Эти предложения побудят работодателей улучшить безопасность и условия труда на своих предприятиях.

Ключевые слова: профессиональный риск, вид экономической деятельности, профилактические и реабилитационные мероприятия, охрана труда.

Introduction

Today's world faces numerous daunting obstacles such as climate change, new technologies, international conflicts and pandemics that create occupational risks and economic uncertainties that require companies to take preventive and rehabilitation measures in various sectors of their economies. Unfortunately, however, many organisations lack sufficient knowledge on determining financing needs accurately for such measures.

This research material investigates aspects of organizational and legal nature pertaining to funding of preventative and rehabiliation measures related to occupational hazards and specific types of economic activities, which is undertaken within the scope of implementation of Scientific and Technical Program BR11965728 " Economic problems of safe work and institutional transformations of the insurance mechanism in the Republic of Kazakhstan" funded via programtargeted funding approach through Republican Research Institute for Labor Protection.

This study seeks to develop a method for estimating financing needs associated with preventive and rehabilitation measures by considering occupational risks as well as types of economic activities.

One of the earliest forms of social security can be seen through government programs that offer benefits to employees injured while performing professional activities. Production hazards were especially pressing during industrialization's early days; as production hazards proliferated and industrial hazards insurance began taking form in 19th-century, with various systems for compensation occurring throughout Europe – even to this day! There is not one compensation scheme covering occupational diseases and injuries which is identical across Europe Furthermore, reform initiatives remain relevant as do regulations related to occupational safety.

This study can have practical ramifications for companies and organizations facing professional risks as well as government agencies developing financing policies in response to economic instability. Furthermore, this research helps organizations and societies more efficiently utilize resources while decreasing risks posed by them to their business operations and societies as a whole.

Research methods

At various stages during writing of this article, numerous issues pertaining to legal and regulatory approaches for occupational hazards assessment and management were considered and analysed.

Assessment of funding needs for prevention and rehabilitation depends upon occupational risk class (ORC) classification as well as type of economic activity, among other criteria.

Methodological foundation consists of both general scientific research methods as well as specific legal, dialectical and sociological techniques used for legal analysis and synthesis, comparative legal norm comparison as well as statistical data processing. Analyzing the regulatory framework involves reviewing existing legal acts and regulatory documents related to financing preventive and rehabilitation measures in terms of occupational risks and types of economic activity. Through our analysis we can ascertain the primary legal framework and norms which may influence funding of such activities. Comparative Analysis of Legislation from Different Countries: To gain a fuller understanding of this issue and identify best practices and solutions, this research includes an examination of legislation from multiple nations regarding financial needs for preventive and rehabilitation measures at occupational risks.

Expert interviews were used during this research project in order to obtain expert assessments and create financing recommendations for preventive and rehabilitation measures, through interviews conducted with lawyers, financial specialists, and representatives from organizations engaged in professional risk management.

Parallel with this research was an analysis of judicial practice. Court decisions and precedents in relation to financing preventive and rehabilitation measures related to occupational risks are studied to gauge their efficacy as legislative norms are evaluated for their impact.

Methodological approaches also incorporate multidisciplinary methodologies, including sociological research and risk management practices, in order to understand more fully how legal considerations relate to economic consequences.

Research methodologies allow for in-depth analyses of legal aspects, economic factors and professional risk management mechanisms which contributes to practical recommendations and amendment of legislation in this area. Studies often use both general and specialized methodologies – legal analysis/synthesis/dialectic approaches among them – that help demonstrate innovation while validating scientific results.

Results and discussion

There are two primary forms of protection against occupational risks in global practice, state social insurance and mandatory private measures mandated by law. Each system offers their own set of advantages and disadvantages; their choice will ultimately depend on each country's unique economic, social and legal environments.

As this topic addresses an urgent matter of protecting employees and society against financial risks related to professional duties performed, this topic was selected because its importance lies within social and economic policy that influences citizens' wellbeing and economic sustainability.

This study employs various research techniques commonly utilized by scholars, such as legal analysis, synthesis and dialectical methods; comparative legal norms analysis; data processing statistics; and methods of comparative legal analysis. Employers should employ these methods in order to verify scientific findings and promote innovation within research. All employers should protect their workers from potential occupational accidents. Individuals may opt to self-insure by covering personal property themselves or through an independent cooperative or non-public insurance provider, while some jurisdictions enact tort laws requiring employers to compensate injured workers immediately. Social packages are offered in most international locations - including Kazakhstan as a part of an overall social insurance scheme or independently (Zholdasbayev S., 2005:6).

At that time, both social support and protection systems were implemented. Reevaluation has become necessary due to current demographic trends such as reduced workforce percentage, urbanization, migration and decreasing profit levels as seen with decreased government income or an increase in public debt.

Insurance issues facing those working in informal sectors remain an intractable social problem, particularly those working industries with higher risks than usual and without protection. Although numerous national and international initiatives exist for informal migrants who lack protection and remain exposed without access to any form of social protection; neither private nor public insurance systems offer viable solutions at present. Legally regulated compensation systems offer various advantages, including protection of workers' rights; standardization of processes; compliance with transparent and fair procedures. Unfortunately, such systems often lead to bureaucratic complexity and associated high administrative costs for both enterprises and governments alike.

An assessment of compensation systems' effects on safety at work and worker health enables one to measure their efficacy. Studies demonstrate how effective compensation systems encourage employers to comply with safety regulations as they bear financial liability for workplace injuries and illnesses sustained by their employees. But modern challenges, including advances in technology, medicine, working practices and medical science may require changes in compensation systems as they adapt with contemporary changes such as technology advancement, medicine use and working practice shifts; potential applications could include more efficient use of data analytics for risk detection as well as prevention techniques or improved processes which facilitate payments quicker or increase employee service in terms of employee health benefits and service for employees alike.

Compensation systems designed to cover occupational injuries and diseases play a vital role in providing workers with safety at work as well as social protection. Their efficacy depends on meeting legislative framework requirements while remaining transparent, accessible, adaptable to modern challenges, accessible, adapting well over time to evolving work practices and accessible. Enhancement of compensation systems may contribute to enhanced workplace safety as well as employee well-being and quality of life.

Modernizing occupational injury insurance structures is further underscored by global trends that are spreading worldwide, such as:

Occupational hazards are experiencing dramatic transformation due to emerging technologies and innovations in occupational medicine as well as improvements to recovery procedures.

Changes brought on by global competition have resulted in altered employment practices. A consequence is a reallocation of labor resources away from industry to service industry sectors.

Emergence of unconventional employment arrangements such as temporary, contract and part-time work arrangements as an indicator of workplace transformation; increase of individual entrepreneurs. Furthermore, innovative technology has contributed to decreased manual work demands; Education levels have caused positive alterations in society that have had profound ramifications on workplace dynamics, such as increased presence of female employees due to longer life expectancies and decreasing birthrate. These developments include more women entering the workplace as a result, older workforce due to longer life spans and decreasing fertility rate and an overall reduction of births per woman working (Abroskin 2004: 1).

Even as globalization occurs, compensation systems for work-related injuries and diseases continue to be judged according to various criteria. Definitions of occupational risks differ across nations, while many nations have adopted uniform standards for classification and assessment as well as protective measures when hazards emerge.

This method for dealing with this issue follows all global norms and expectations. Most advanced nations share an accepted principle where investing in efforts to protect human life and wellbeing can bring economic returns that make investing an excellent strategy. An agreement between European Union and World Trade Organization adheres to this belief by mandating assessments of potential health hazards to both people and goods traded across borders.

Rethinking occupational safety management is one of the key goals outlined by the recent state policy on occupational safety. The transition away from cost-based management towards modern hazard-based approaches allows us to prioritize an active plan to safeguard employee health and safety at work while cutting costs simultaneously (Tatibekov 2006:16).

At this juncture, it is vital that specific strategies be devised that encourage companies to implement measures aimed at increasing worker safety and working conditions.

Mining industries are among the worst affected, as 57.1 percent of their workforce work under unsafe or hazardous conditions, more than twice that found across Kazakhstan's average of 39.7%. Coal, brown coal and peat extraction firms particularly suffer, as 80.2% work in such conditions while 39.7% for Kazakhstan average workers do so as well as 54.4% who face challenging working conditions due to sound, ultrasound and infrasound waves 45.3% exposure aerosols having fibrogenic effect 32.87% inadequate lighting 31.50% intensity 28.9%). (Roik 2014:15).

OSHA stands for Occupations Hazard Analysis and refers to any risk which may endanger employee health or lead to their deaths during job duties. OHA measures these hazards using empirical metrics like probability that employees become injured within certain time frames (usually one year) or by computing financial losses and expenses; CORA RK uses an extensive gauge called PRA that measures proportion of industrial accident insurance premiums relative to total wage fund size as one method (International Labour Organization Convention, 1952:online.zakon.kz).

Occupational hazards are evaluated primarily using relative indicators. Coefficients for occupational injuries are calculated by tallying cases where employees were injured for at least one day and disabled for longer, as well as fatality counts per 1000 employees. Furthermore, occupational disease rates (measured by number of confirmed occupational diseases per 10,000 employees), severity coefficient estimates per victim are all also used as methods to evaluate occupational hazard assessments (Beveridge W., 1942:120)

However, in accordance with an order from the Minister of Labor and Social Protection of the Population of Kazakhstan dated September 11,2020 No.363 On Approval of Rules for Occupational Hazard Management>> the morbidity assessment includes a thorough analysis of temporary disability sheets submitted by employees within this profession. This analysis includes various parameters including total duration (which involves adding all days of disability); number of acute respiratory viral infection diagnoses per year directly counting cases directly diagnosed); presence of chronic illnesses etc. (Yanova S.Yu., 2000:88).

Information provided herein is insufficient and fails to take into account key aspects, including workplace environment and occupation of worker or specific illnesses which could become occupational diseases.

There are no minimum standards that are mandatory or universal when it comes to current methodology approaches used to assess occupational hazards, which is true across professions (positions) and for every workplace in existence today. (Zhepetsky Yu., Serafinskaya A., 2004:19).

Thus these approaches fail to properly represent the true degree of occupational risks within an enterprise.

Current Kazakhstani methodology for evaluating occupational risks lacks all of the information needed to accurately evaluate any particular work which might be dangerous, according to authors (Tompa E. Trevittik S. McLeod K. Grainer D. Kranig A., 2007: 88). As sources, interviews with people experienced with dangerous areas, analyses of past incidents, official reports about work or dangerous events as well as interviews with employees can all provide vital sources. Employer employees provide especially vital insight when it comes to unofficial events occurring due to actions, emissions and hazards as they provide information directly.

Mining enterprises face significantly higher rates of injury, death and occupational disease than their national peers. Injury risks in underground coal mines for instance are four times greater than average while metal ore operations outstrip them by two. Fatality rates increase 4.4x to 5.6x while occupational illness risks skyrocket 55-3x on average nationwide in Kazakhstan; and their accident rate far outpaces national average rates in Kazakhstan (Gräiner, D., Kränig, A. 1998: http://www.ilo.org/safework_ bookshelf/english?d&nd=170000102&nh=0).

Direct and indirect expenses and losses associated with occupational hazards vary significantly, from employer expenses incurred for compensation of workers under hazardous or harmful working conditions to contributions made early retirement funds, National Fund, Social Insurance of Republic of Kazakhstan contributions as well as compensation payments due to occupational diseases or work accidents (Ison 1998: http://www.ilo.org/safework bookshelf/english?d&nd=170000102&nh=0). Other direct costs could be lost working time caused by industrial accidents as well as additional paid leave or reduced hours being awarded employees who work under such hazardous environments (ISSA:http://www.issa.int/Observatory/Country-Profiles). Indirect costs might include industrial accidents causing lost working time as well as additional paid leave or reduced hours granted employees who work under hazardous working conditions incurred from employers as expenses incurred from employers who pay them or reduce hours worked in such environments incurred from employers paying workers who work under hazardous working conditions (Munich RE 2000).

Kazakhstan currently has various mechanisms in place to effectively manage occupational hazards, including:

Social insurance for industrial accidents is mandatory and pensions for workers exposed to hazardous or potentially dangerous working environments may also be available as pension benefits, while financing measures to address potential hazards will need to be put in place as well.

Any violations of state labor protection regulations and norms could lead to administrative fines being levied against violators. An effective approach for providing social insurance against accidents at work is differentiating insurance premiums accordingly, evidenced by shifting rates as well as rebates and levies which total up to 40% of total tariff. These factors depend on indicators reflecting safety and working conditions as well as occupational risk categories ranging from 0.2% up to 8.5% that differ depending upon type of economic activity and working environment (Ministry of Health and Sports 2012:86).

This approach has several significant downsides. Insurance rates depend on your type of business activity and it may be difficult to adapt and customize the hazard evaluation of each enterprise. Furthermore, enterprises don't take full advantage of discounts available on insurance rates.

Current methods of establishing insurance rates based on total economic exposure analysis do not take into account how employers' finances may be burdened due to individual occupational hazards present at an entity as well as how these relate with professional hazards inherent to each profession or condition of insured employees (Anell A., Glennård A., Merkur S. Sweden, 2012: 122).

European insurance policies allocate part of premiums towards preventive measures within their mandatory framework, creating an interest to such measures as preventive measures are being allocated as part of mandatory policies. One interesting case in Poland includes allocating up to one percent from an occupational accident fund towards preventative measures.

Simultaneously, both this expense and total amount paid in insurance premiums contribute to reducing tax bases and optimizing taxes in insurance organizations. Furthermore, funds allocated towards creating an emergency prevention fund also play an integral role (Action Plan of the Federal Ministry for Economic Cooperation and Development of Germany (BMZ), 2013:15).

Organizations managing accident insurance programs take preventative steps, including technical control, safety training courses and consulting services. Insurance organizations in some EU member states can use insurance funds to donate or issue premiums in support of safety actions and high standards, or help subsidise bank loans to invest in occupational safety – this is true, for instance, in France and Italy. Public and private accident insurers offer these events... Global Disability Action Plan: Better Health for All People with Disabilities. German Federal Ministry for Economic Cooperation and Development's Inclusion Action Plan for Persons with Disabilities. At our firm, we believe it to be critical to realign financial resources allocated for Kazakhstan's insurance fund established through compulsory occupational accident social insurance.

Given that the Ministry of Health of Kazakhstan can only meet 10% of total rehabilitation service demands, it seems appropriate for an employee who experiences a loss of occupational capabilities to compensate the Social Protection Committee up to an amount equaling two per cent of his or her insurance premium for expenses associated with social rehabilitation of incapacitation caused by accidents or incidents (Resolution of the Government of the Republic of Kazakhstan «On the Approval of the Concept for the Development of Healthcare in the Republic of Kazakhstan until 2026», 2022)

Rehabilitation outcomes can be achieved largely through applying principles and techniques from rehabilitation medicine, physiotherapy and occupational therapy; speech therapy; the distribution of specialized equipment; psychosocial counseling and caregiver training as well as measures that facilitate return into employment can further help enhance health and functionality abilitation encompasses measures taken to safeguard individual's social benefits (Resolution of the Government of the Republic of Kazakhstan «On the Approval of the National Project «Quality and Affordable Healthcare for Every Citizen «Healthy Nation», 2021). Within Europe, this supplement to health insurance system compensates for additional expenses not covered by public healthcare systems.

Divide projected insurance expenditures based on whether an employee has experienced social or personal challenges that require resolution, then use funds allocated towards social rehabilitation strategies like:

- Restorative and reconstructive surgeries to restore appearance or body parts using implants or other means are performed regularly by professionals in Reston and Alexandria. - Sociopsychological interventions aim at the restoration of mental and psychological well-being for victims as well as improving interaction within groups or relationships.

- Professional and vocational rehabilitation involves creating new work or reinstating lost skills or knowledge for individuals before their reentry to the labor market.

Conclusion

1) Increase efforts of authorized bodies (labor executive authorities) by organizing seminars and providing advice regarding preparation and submission of required documentation.

2) Another effective means of improving financing mechanisms is through advocating new methods for assessing occupational risks. Responsibility for this measure lies with both producers and providers as these hazards stem from workplace design/organisation decisions.

3) Adopting methods utilized by European nations in environmental protection can reduce manufacturer responsibility for pollution to the environment if top technology and manufacturing solutions are utilized.

4) Enhancements to ERP methodology through application of uniform minimum requirements when assessing production factors to identify occupational hazards for every position and workplace within an enterprise.

5) Establishing processes for monitoring RPA implementation by specialized organisations that allow evaluation of its timeliness, applicability and financial benefits while measuring any changes compared with measures already in place to mitigate hazards at each enterprise.

Implementation of these proposals, in our opinion, would improve mechanisms used to assess financing requirements related to RCC and EAC repairs or rehabilitation measures.

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