

Askarova A.O.,
Suleimenova S.Zh.

Concept of harm and the system of the legal methods of reparation of damages to the health of the employee in the labor (official) duties

Аскарова А.О.,
Сүлейменова С.Ж.

Қызметкерлердің еңбек (қызметтік) міндеттерін орындау кезінде өмірі мен денсаулығына келтірілген зиян түсінігі және өтемақы құқықтық әдістерінің жүйесі

Аскарова А.О.,
Сүлейменова С.Ж.

Понятие вреда и система правовых способов возмещения вреда, причиненного здоровью работника при исполнении трудовых (служебных) обязанностей

This article discusses the concept and procedure of compensation for harm caused to life and health of employees in the performance of labor (service) duties.

Key words: labor law, labor law, harm the life, health, employee, employer.

Бұл мақалада қызметкерлердің еңбек (қызметтік) міндеттерін орындау кезінде өмірі мен денсаулығына келтірілген зиян үшін өтемақы тұжырымдамасы мен тәртібі талқыланады.

Түйін сөздер: еңбек құқығы, еңбек құқығы, зиян келтіруі, денсаулық сақтау, қызметкер, жұмыс беруші.

В данной статье рассматриваются понятие и порядок возмещения вреда, причиненного жизни и здоровью работника при исполнении им трудовых (служебных) обязанностей.

Ключевые слова: трудовое право, трудовое законодательство, вред, жизнь, здоровье, работник, работодатель.

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Reparation of damages consists of the payment to the victim the money depending on the degree of occupational disability because of the industrial injuries, also consists of the compensation of extra expenses, lump sum cash payment in certain cases, compensation for moral harm. Precondition of the employer's liability for the damage to an employee is the causal relationship of the damage or other harm to the health with the performance of his job duties.

Employer's liability depends on the circumstances under which the employee got injured:

If the damage was because of the source of extra high hazard, employer should reimburse it in full, if unless he proves that the damage was caused by force majeure or intent of the victim, i.e. the employer is responsible even he is not guilty, for example if the damage is caused by accident;

If the damage was not caused by the source of extra high hazard, the employer is responsible only if he is guilty and he is free from the liability, if he can prove that damage was not because of him;

If the gross negligence of the victim contributed to the emergence or increase of the damage, depending on the degree of the victim's fault the compensation is reducing accordingly, i.e. there can be applied mixed responsibility of the employer and the employee.

The employer is obliged to assist in obtaining the documents required for submission of claims for damages and, where appropriate, to request them from other organizations.

The employer shall review the application for compensation for damage and make a decision within ten days. The decision is made by order of the organization. Order must be reasoned, it lists citizens who set compensation for the harm, its size for each family member and the timing of payments.

A copy of the order of the employer for compensation for damage or a reasoned written refusal has to be given to interested citizens within ten days from the date of giving the application with all necessary documents.

Forms and methods of compensation of damage for material responsibility.

The Party of the labor contract harmed another Party has to compensate it in accordance with the Customs Code of the Republic of

Kazakhstan and other legislative acts on the basis of the decision of the court or voluntarily.

RK Civil Code provides the following methods of compensation for pecuniary damage: full compensation for damages or compensation for loss in kind (provide a thing of the same kind and quality, fix the damaged item, etc.).

An employee may voluntarily pay damages in whole or in part. Voluntary compensation is made within the stipulated employment or collective agreement. The payment in installment of the compensation of damage is allowed in case of the agreement of the employee or employer. In this case, the employee provides written undertaking for damages with specific payment terms.

The amount of damage to the enterprise, institution, organization is determined by the actual losses on the basis of accounting data, based on the book value (cost) of material assets, net of depreciation on the established norms. In case of theft, shortage, destruction or willful damage to tangible assets the damage is determined by the state retail prices prevailing in the locality at the date of damage, and in cases where the retail price of tangible assets below wholesale prices – at wholesale prices. In the absence of data on retail prices of tangible assets the damage is determined on the damage, estimated in accordance with legislation. At catering (at work and at buffets) and commission trade amount of damage caused by theft or shortage of products and goods is determined by the prices set for sale (realization) of the goods and commodities.

The size of damages caused by the fault of a few employees, is determined for each of them according to the degree of guilt, the kind and the limit of liability, i.e. according to the general rule responsibility for the harm is individual. If the damage is caused by the joint actions of a few employees, there comes a shared responsibility. Each reimburse only the portion of the harm caused by his/her actions (taking into account the degree of culpability and the limit of liability). In case of damage caused by an employee or a few employees and other persons who are not in an employment relationship with the employer, the injured joint and several liability may be imposed only on the condition that the court verdict found that the harm caused by their joint deliberate. The day of the harm detection should be considered the day when the employer or superior in the chain of command authority became aware of the presence of the harm caused by the employee. The day of the harm detection identified in the inventory of ma-

terial assets, the audit or review of economic and financial activities should be considered as the date of the relevant act, or imprisonment.

Disposal of damages of the employer or superior authority reported to the employee. If the employee resists in view of unjustified deduction or improperly installed size of it, the payroll deduction can not be made. In this case, the question of the damage compensation considered by the court.

An employee has the right to appeal the decision of the employer or the superior authority to the employment dispute tribunal, if they violated the order established by the legislation of the damage compensation, as well as in other cases of illegal deductions from wages in compensation for damages.

Cases of causing injuries to health of employees, related with labor activity and lead to incapacity for work or death are subjects for investigation and recording in accordance with Labor Code of RK:

1) person, studying in educational institutions, conducting educational programs of technical, professional, after secondary education, high and post graduate education at the process of professional practice;

2) military, employees of special state bodies, involved to performing of works not related with passing military service, service in special state bodies;

3) person, used as labor under decision of the court;

4) personnel assets of military emergency unit, military security, members of voluntary crews for recovery from an accident, acts of elements, salvage of lives and property.

Investigated and subject to record as accidents at production, production traumas and other injuries to health of employees, related with performing labor duties, or performing other activities at own initiative and in the interests of employer, that lead to incapacity to work or death if they occurred:

1) prior to beginning or ending of business day at the process of arrangement of working place, production equipment, means of individual protection and other;

2) during business day or during business trip or at any other place, location of which is conditioned by performing labor and other duties, related with instructions of employer or corporate office;

3) in the result of impact of harmful or dangerous production factors;

4) during business day, in a way which is related with movement between maintenance object, to the work place upon instruction of employee;

5) in transport provided by employer during performing labor duties by an employee;

6) in personal transport upon availability of written consent of an employer to use it for business trips;

7) during period of stay upon instruction of employer at the territory of its own or other organization, as well as during protection of employer property or performing other actions at own discretion in the interests of employer;

8) prior to beginning or by the end of the business day of employees, working in shift mode, in a way from place of collection (place of living during shift) to work or back from work at the transport, provided by employer.

The cases are not recorded as production traumas, during the investigation of which objectively defined that they occurred due to the following:

1) upon performing upon own discretion of the injured, works or other activities not regulated by functional duties and not related with interest of the employer, including in the period of inter-shift breaks, breaks for feeding and rest, as well as due to alcoholic intoxication condition, application of toxic and narcotic substances (or their analogues);

2) in the result of premeditated infliction to its health or perpetration by injured criminal offence;

3) due to unexpected health impairment, confirmed by medical conclusion not related with impact of harmful or dangerous production factors.

On each accident injured or eyewitness should immediately inform employer or work manager. Responsible officers of public health organizations should inform employers and local body of labor inspection on each case of initial application with trauma or other injury of employees' health at production, as well as on cases of acute occupational illness – state body in the sphere of sanitary and epidemiological wellbeing of the population.

The responsibility for arranging investigation, execution and recording of accidents at production should be bear by employer.

In case of accident at production, the employer should:

1) arrange rendering of first medical assistance to injured and in case of necessity, relocation to the public health organization;

2) undertake immediate measures for elimination of development of the accident and impact of factors, caused the accident to other persons;

3) preserve the scenery at the place of accident prior to the beginning of investigation (condition of the equipment and mechanism, instruments of labor) in the same appearance as of the moment of accident under condition that there are no hazard to lives and health of other person, and the production downtime will not lead to emergency and also to conduct photo shooting of the accident place;

4) immediately inform on accident at the production, close relatives of injured and direct a notification to the state bodies and organizations, stipulated by the Code, other normative legal acts;

5) ensure investigation of accidents at production and recording of accidents in accordance with the Paragraph;

6) admit members of the Commission for special investigation to place of accident for investigation of accident at production;

7) conduct registration, recording and analysis of accidents and occupational illnesses at production.

Compensation for harm is done regardless of the involvement of the employee to disciplinary, administrative or criminal liability for the actions (inaction) of the injured employer. It should be borne in mind that the court is not allowed full exemption of the employee from the duties of compensation for harm. Court only allows taking into account the degree of culpability, circumstances and financial position the employee to reduce the size of damage to be compensated. Pecuniary harm is made by the deduction from the employee's salary, but should be kept at least 50% of wages.

According to the law compensation for damage caused to the employee is injured employee to pay sums of money in the amount of earnings, income, which was lost because of disability, and lump sum compensation for additional costs caused by damage to health. In case of death of the affected employee the right for compensation have disabled persons who were dependent on the deceased or having the right to receive maintenance from him; child of the deceased, who was born after his death, as well as a parent, spouse or other family member, if the person is not working or busy by taking care of children, siblings, grandchildren of the deceased have not reached eight years.

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