



The National Board of Industrial Injuries



Facts about the National Board of Industrial Injuries

- The National Board of Industrial Injuries was established in 1898 for the administration of workers' compensation – 110 years ago in 2008
- The National Board of Industrial Injuries is an Agency under the Ministry of Employment
- The National Board of Industrial Injuries processes workers' compensation claims in accordance with the Workers' Compensation Act and makes advisory statements in cases regarding private insurance claims, in accordance with the Damages Liability Act. Furthermore the National Board of Industrial Injuries, in co-operation with the Ministry of Employment, performs tasks of servicing the Minister and preparing legislation
- The National Board of Industrial Injuries is run on the basis of a contract
- The National Board of Industrial Injuries is financed by the processing fees charged from the employers' insurance companies for workers' compensation claims and from lawyers and insurance companies etc. for advisory statements
- The National Board of Industrial Injuries has about 400 employees, including 11 Heads of Division, 46 legal consultants/deputy heads, 147 decision makers, 122 skilled office workers and 44 medical consultants affiliated with the Board
- The National Board of Industrial Injuries processes a total of about 55,500 claims each year
- About 40,000 new industrial injuries are reported each year, of these about 21,000 are accidents at work (about 80 per cent are recognised) and 19,000 are occupational diseases (about 20 per cent are recognised)
- There are requests for resumption and revision of about 10,000 workers' compensation claims each year
- About 12 per cent of the decisions are appealed
- About 1 per cent of the decisions are reversed by the National Social Appeals Board
- The National Board of Industrial Injuries makes about 125,000 decisions on workers' compensation claims each year
- The National Board of Industrial Injuries makes about 5,500 statements on private compensation claims each year

The Workers' Compensation Act

The purpose of the Workers' Compensation Act is to grant compensation to injured persons or their surviving dependants in connection with industrial injuries (section 1 of the Act).

Thus the purpose of the Workers' Compensation Act is not to provide general social protection. The Workers' Compensation Act is a superstructure to the general social legislation in Denmark.

In the event of illness, a Danish citizen/wage earner is entitled to receive treatment from a general practitioner or in Danish hospitals. These rights are vested in the Danish Health Act. However, certain forms of treatment are not covered by the Health Act. This applies, for instance, to treatment by a physiotherapist or chiropractor. On certain conditions the Workers' Compensation Act covers expenses in connection with these types of treatment.

Wage earners are entitled to daily sickness benefits in the event of illness. The rules for daily sickness benefits are administered by local authorities, in accordance with a particular Act and independently of the National Board of Industrial Injuries.

Similarly, if injured persons find it hard to return to their previous work after a period of illness, the local authorities try to help them re-enter the labour market by way of work testing and perhaps rehabilitation. If injured persons are unable to return to the labour market on normal terms, it is the local authority that grants flex jobs and anticipatory pensions on the basis of the social legislation. Regardless of the above issues, the National Board of Industrial Injuries makes decisions on any loss of earning capacity caused by the industrial injury.

Who is covered by the Workers' Compensation Act?

- People who are engaged by an employer to carry out work in Denmark (paid, unpaid, permanent, temporary work)
- Members of the employer's family are protected under the Act when they work in such a way that they are in the same position as other employees
- Self-employed persons and assisting spouses who have taken out protection
- Employees working on Danish ships
- Live-born children if the mother's work prior to the birth of the child has caused a disease in the child
- A foetus or child where it is later established that the parents' work prior to conception or after the delivery had a harmful effect on the foetus or child
- People in special residential institutions
- People under education, under certain circumstances
- People who are temporarily posted abroad in the services of an employer
- People carrying out civic or municipal duties
- People attending to positions of trust in the workplace
- People attempting to save human life

What is covered by the Workers' Compensation Act?

An industrial injury within the meaning of the Workers' Compensation Act is an accident or occupational disease which is a consequence of the work or the working conditions.

Accident

A personal injury caused by an incident or exposure occurring suddenly or within 5 days.

Occupational disease

- Recognition on the basis of the list of occupational diseases (enclosed)
- Recognition after recommendation by the Occupational Diseases Committee if the disease, according to the most recent medical documentation, meets the requirements for inclusion on the list or the disease must be deemed to have been caused, solely or mainly, by the special nature of the work.

The Occupational Diseases Committee

The Occupational Diseases Committee is appointed by the Minister for Employment. The Committee is composed of a Chairman from the National Board of Industrial Injuries and eight other members recommended by the National Health Board, the Working Environment Authority and the parties to the labour market. Certain of the medical consultants affiliated with the National Board of Industrial Injuries will typically attend the meetings.

At least every two years, the National Board of Industrial Injuries must negotiate with the Occupational Diseases Committee the new diseases meeting the requirements for inclusion on the list of occupational diseases.

Furthermore, about 200-300 workers' compensation claims are submitted to the Occupational Diseases Committee each year. Usually submission of a claim to the Committee requires that the National Board of Industrial Injuries believes this will not be futile. The Board's affiliated

medical consultants take part in the assessment of the claims. More than 50 per cent of the submitted claims are recognised after recommendation by the Committee.

History

1899: The first compiled Act, the Danish Industrial Injuries Insurance Act, took effect

1916: The second principal Act. More employees were covered by the Act. Short-term harmful exposures were included

1933: The Accident Insurance Act. Five occupational diseases were included

1976: List of occupational diseases

1978: The fourth principal Act

1989: The National Board of Industrial Injuries was established

1992: The fifth principal Act. Took effect on 1st January 1993

2003: The 2003 reform. Took effect on 1st January 2004

The reform in 2003

In the spring of 2003 the Danish Parliament (Folketing) passed a workers' compensation reform for the purpose of ensuring that injuries occurring as a consequence of work were recognised as industrial injuries. Furthermore the intention was to do something about overuse injuries in particular and reduce case processing times.

The reform, which took effect on 1st January 2004, led to the following changes:

- A new accident concept
- A less strict occupational diseases concept
- Shorter time limits for case processing
- Cover for new groups (self-employed persons and assisting spouses)

The old accident concept before 2005:

- "A sudden and accidental, external influence on the body which is unintentional on the part of the injured person and has a harmful effect on the body which can be established"
- Short-term injurious effect
- Sudden lifting injury

The new accident concept:

- "A personal injury caused by an incident or exposure which occurs suddenly or within 5 days"

Condition for inclusion on the list before 2005:

- Diseases which, according to medical and technical experience, are brought about by specific influence to which certain groups of people, through their work or working conditions, are more exposed than persons not having such work

Condition for inclusion on the list as from 1st January 2005:

- Diseases which, according to medical documentation, are brought about by specific influence to which certain groups of people, through their work or working conditions, are more exposed than persons not having such work

Thus the documentation requirements have become less strict.

The reform has led to an increase in the number of recognised occupational diseases, in particular

- hearing diseases
- lung diseases
- cancer diseases
- shoulder and neck/shoulder diseases
- elbow diseases
- forearm diseases including carpal tunnel syndrome
- mental diseases

However, the number of reported occupational diseases also increased significantly from 2004 and onwards, from approx. 14,000 in 2004 to approx. 19,500 in 2007.

The benefits under the Act

The benefits available under the Workers' Compensation Act are –

- reimbursement of certain expenses for medical treatment, retraining and aids, etc.
- compensation for permanent injury
- compensation for loss of earning capacity
- transitional allowance to surviving spouse in the event of death
- compensation for loss of breadwinner
- special compensation for surviving dependants in the event of death caused by wilful action or gross negligence

Medical treatment, retraining and aids

Expenses for medical treatment or retraining become payable if such procedures are necessary in order to achieve the best possible cure and if the expenses cannot be defrayed under the normal health legislation or as part of treatment in a public hospital. So the obligation of the insurance company to pay for medical treatment or retraining is secondary in relation to other health legislation or other insurance schemes.

Usually medical treatment that merely has a temporary, soothing effect is not reimbursed. Retraining will be offered under medical control, in immediate connection with the medical treatment, as part of the post-treatment plan.

After the reform it is also possible, to some extent, to reimburse future medical expenses.

Expenses for aids may be reimbursed when this is necessary in order to ensure the outcome of the medical treatment or the retraining, in order to diminish the effects of the industrial injury, or to determine in more detail the extent of the loss of earning capacity and the degree of the permanent injury. The obligation of the insurance company to pay for aids under the Workers' Compensation Act is primary in relation to other social or health legislation.

Compensation for permanent injury

The permanent injury is rated on the basis of the medical nature and extent of an injury, and the discomfort in the injured person's lifestyle caused by the industrial injury is taken into consideration. The discomfort caused by an injury is largely assessed in the same way for everyone, ir-

respective of occupation, age, gender, and income etc., the discomfort of a certain injury in principle being considered the same for different people.

The permanent injury is assessed on the basis of the effects of an injury. The way in which the permanent injury came about is in principle of no consequence for the assessment. For instance it is irrelevant whether low-back pain came about as a consequence of many years of lifting work or was caused by a blow to the low back.

The permanent injury is assessed on the basis of the guiding permanent-injury rating list of the National Board of Industrial Injuries. The decision maker can ask for a statement from one of the medical consultants affiliated with the National Board of Industrial Injuries. Compensation for permanent injury becomes payable if the permanent injury is rated at 5 per cent or more.

Compensation for loss of earning capacity

If the industrial injury has reduced the injured person's ability to make a living through work, the injured person is entitled to compensation for loss of earning capacity. There has to be a loss of earning capacity of at least 15 per cent. If the occupational situation has not been clarified, the National Board of Industrial Injuries can make a temporary decision on compensation for loss of earning capacity, e.g. during rehabilitation.

Transitional allowance

If the industrial injury causes death, the surviving spouse or cohabiting partner is entitled to a transitional allowance if the marriage was contracted before the occurrence of the industrial injury and the relationship existed at the time of the injured person's death, or a quasi-marital relationship had existed at least 2 years prior to the death.

Compensation for loss of breadwinner

A spouse or cohabiting partner who receives a transitional allowance is entitled to compensation for loss of breadwinner if the person in question, on the death of the injured person, has experienced a deterioration in his/her financial situation. The compensation is determined on the basis of the extent of the financial support and the surviving dependants' chances of supporting themselves, taking into consideration age, health, education, occupation, support situation and financial circumstances.

If the deceased is survived by children who were supported by the deceased, each child is entitled to a monthly benefit until its 18th birthday. The benefit may be extended till the child's 21st birthday if it is under education.

Special compensation

If the death was caused by wilful action or gross negligence, it is possible to grant a special compensation to survivors who were particularly close to the deceased.

The assessment takes into account the nature of the wilful action of the person in question and the suffering or offence that must be deemed to have been inflicted on the survivor or survivors.

Who pays?

All employers are liable to provide protection under the Workers' Compensation Act. Failure to do so is punishable by fine.

The liability to provide protection is met by taking out industrial injuries insurance with an insurance company and paying contributions to the Labour Market Occupational Diseases Fund (AES). The Fund is a publicly controlled independent institution, run by a Board composed of the parties to the labour market.

Self-employed persons and assisting spouses are entitled, but not obliged, to take out protection under the Workers' Compensation Act.

For each claim, the National Board of Industrial Injuries charges insurance companies or the AES with a processing fee.

Claims management

Accidents at work are typically reported by the employer, who has a duty to do so. Occupational diseases are typically reported by the doctor, who has a duty to report occupational diseases. Injured persons may also report industrial injuries themselves.

The claim form should be sent to the insurance company or the National Board of Industrial Injuries.

The insurance company can process the claims themselves if the injured persons resume their work within 5 weeks from the occurrence of the injury and the insurance company finds that the effects of the injury cannot give grounds for compensation in excess of reimbursement of expenses towards medical treatment and aids.

The insurance company can decide questions regarding payment of medical expenses, aids and accompanying expenses. If the insurance company is in doubt or the injured person disagrees with the assessment made by the insurers, the claim is forwarded to the National Board of Industrial Injuries.

If the claim is forwarded to the National Board of Industrial Injuries, the Board makes a decision to recognise or turn down the claim and decides whether or not to pay any medical expenses and compensation.

The processing of the claim involves injured persons or their surviving dependants as well as the employer, the insurance company/the AES, and authorities and doctors.

Prior to the decision on permanent injury, the claim is typically submitted to the medical consultants affiliated with the Board.

The assessment of loss of earning capacity takes its starting point in the injured person's actual occupational situation, e.g. any decrease in earned income or the local authority's granting of rehabilitation, flex job or anticipatory pension.

The insurance company/the Labour Market Occupational Diseases Fund pays the compensation.

Case processing times

Under the Workers' Compensation Act, decisions to recognise/turn down a claim and to pay any compensation must in principle be made within one year from the day that the industrial injury was reported to the National Board of Industrial Injuries. For occupational diseases to be submitted to the Occupational Diseases Committee the time limit is 2 years.

According to the 2007 performance contract between the National Board of Industrial Injuries and the Ministry of Employment,

- 90 per cent of reported new claims had to be concluded within one year
- by the end of 2007 no claims should be older than 2 years from the date of notification to the Board.

In the last 3 months of 2007, targets were met by more than 90 per cent. The Board is expecting to maintain this level in 2008.

At the beginning of 2007, the Board was processing more than 10,000 workers' compensation claims which were or would be 2 years old in the course of 2007. At the end of 2007 there were only 271 claims that were more than 2 years old. In 2008 the Board is keeping to the intention of concluding claims within 2 years.

The significant focus on concluding the oldest claims in 2007 has, however, influenced the average case processing time in workers' compensation, which increased from 7.4 months in 2006 to 9.3 months in 2007. At the same time the average claim age has fallen. In 2008 the Board focuses on reducing the average case processing time.

Appeal/resumption

Appeal

The parties to the case, i.e. injured persons, any surviving dependants and the insurance company, may complain of all decisions made by the National Board of Industrial Injuries. The complaint must be submitted to the National Social Appeals Board within 4 weeks from receipt of the decision letter. The employer is allowed to complain only of the decision to recognise or turn down the claim.

In connection with an appeal, the National Board of Industrial Injuries is under an obligation to reassess obvious legal and factual errors. Otherwise the claim is forwarded to the National Social Appeals Board.

Resumption

If requested by the injured person or surviving dependants,

- claims that are turned down can be resumed up to 5 years from the date of the decision letter
- the question of compensation can be resumed up to 5 years from the date of the decision if there have been significant changes. It is possible, under very special circumstances, to disregard the time limit.

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