



Legal protection for labour with occupational cancer in social security rules (comparative study)

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Abstract: Acknowledging the rights of labours in all sectors of the state during the period of suspension requires review and follow-up by workers, and during the statute of limitations period for polygamy, the worst was financial or non-financial rights, such as treatment, operations, and other industrial ones. It is a duty for workers, free of charge, and it is used to preserve their rights in all circumstances, so how about rights in the malady times.

Keywords: occupation, labour, cancer, rights.

الحماية القانونية للمصابين بالسرطان المهني في قواعد الضمان الاجتماعي (دراسة مقارنة)

الخلاصة: الإقرار بحقوق العمال في جميع قطاعات الدولة خلال فترة إيقاف العمل يتطلب مراجعة ومتابعة من قبل العمال، وخلال قانون فترة تقييد تعدد الزوجات وكان الأسوأ الحقوق المالية أو غير المالية مثل العلاج والعمليات الجراحية والصناعية الأخرى. إنه واجب (خدمة) للعمال، مجاناً، ويتم استخدامه للحفاظ على حقوقهم في جميع الظروف، فكيف بالحقوق في زمن المرض.
الكلمات المفتاحية: مهنة، سرطان، حقوق.



The risk of occupational cancer is not limited to individuals who deal with cancerous materials, but rather it transcends them and infects their families and individuals residing in places adjacent to workplaces that expose the environment of society as a whole to contamination with carcinogenic substances. It is limited to dependent workers. It represents those who are governed by the rules of labor law, as in the three research countries. First branch and then we take the comparative to study this subject because it is so important when we see the legal remedies to the large number of patients with this disease caused by the labour environment.

Section one: Social and monetary compensation and its extent

The compensation that proves the right socially, which is monetary payments (In addition to in-kind performances) is determined by the negative material effects of the injury, specifically its negative repercussions on income, where the amount of the worker's income depends on his earning capabilities and the ability to earn is affected by occupational disease, which claims to link the legislator in general to the compensation value and his non-earning status and the degree of severity in application of the principle of social solidarity .

First: compensation for occupational disease

We will present the occupational disease compensation in the comparative research countries separately: –

A – Iraq: Where the labor's contract is suspended from the date of his injury until his recovery or proof of his disability from occupational cancer, that is, the employer does not pay a wage, except on the day of the injury (the suspicion of occupational cancer), which means that he is referred to the specialized medical committee and the employer pays him the full wage and for the days in which the delivery to the approved medical center is delayed. Which entails that the Social Security Institution, in the event it is proven that the worker has cancer



and a temporary loss of ability to work, i.e. earn, pay an injury leave compensation for the duration of his treatment equal to the full wage that was paid for the last contribution.

b-Lebanon:

Under (the Social Security Law: A 34/1), the insured worker who suffers an occupational disease and is temporarily unable to work is entitled to receive compensation for the wages in the amount of three quarters of the average daily wage if he was admitted to the hospital and half of the average wage the daily wage for the last year of work and the worker is entitled to This compensation is from the eleventh day of the date of cessation of work, so the employer is obligated to pay the full wages during the first ten days, and compensation must be made for the entire procedure if entitlements or accessories such as tips are added to it.

C- Italy:

The compensation in Italian law differs in the case of temporary disability from total disability in the event of an occupational disease, and it includes the injured worker if he did not pay any social security contributions.

As the maximum limit for guarantee compensation is paid, and the labour's right to claim continues for a limitation period not exceeding three years, and compensation for occupational disease is the maximum limit of compensation that can be increased by collective agreements, but cannot be combined with other compensation such as childbirth or ordinary illness except for old-age compensation, noting the continuation of the owner Work to pay the worker's wages for three days until the worker is deemed to have an occupational disease. On the fourth day, the worker is entitled to pay security compensation, and it is calculated as follows: –

1-60% of the worker's average wage for the last twelve months as compensation for the first three months.



2–75% of the average wage for the twelve months as compensation for the last three months.

Second: The obligations of the added guarantee departments to the workers (patient)

The period of treatment and hospitalization, which we discussed in reference to the countries of the research, results in either a complete recovery of the patient and his return to his work, or if the worker has suffered a disability or if the treatment did not lead to a correct result, which led to death.

A – Iraq

The Iraqi legislator divided the above-mentioned cases into entitlements divided as follows:

1– Impotence

With reference to the specialized medical authorities, which estimate the degree of loss of the worker's ability to work after hospitalization, or the decrease in this ability, the compensation is estimated on the basis of it. The degree of disability is measured between 35%–99%. Therefore, compensation for the disability caused by occupational cancer is of three types.

Class I – Compensatory bonus

In the event that the injury results in a disability of less than 35%, which means that the worker is entitled to a compensating bonus granted in one payment on the basis of the balance resulting from the percentage of his partial over-age affected by a total amount equal to the full injury retirement salary for four years (Social Security Retirement Law for labor's: A 56). The compensation base for compensatory compensation is:

The average wage of the worker for the year of work, the fixed percentage of compensation 80%, the degree of disability in the last 48 months)



Notes the decision of the second judicial authority in the file numbered 32 Supreme 1973 in the text (If the injury does not cause a defect, the worker is not entitled to the compensatory reward) Noting that the worker is assumed to be equivalent to his work in proportion to the wage that he stopped working on the basis of illness in it, and the injury does not affect his position in the project.

The second category: partial disability pension

If the dispensation resulting from an occupational disease results in a permanent partial disability, which permanently weakens his ability to perform work, ranging from 35 to 99%, then he is entitled to retirement with partial disability, while noting the medical references to report the decrease in the disability and the entitlement to retirement according to the new examination.

It means decreasing a wage that estimates what he is entitled to in terms of social security compensation for partial disability, but the problem is widespread in the application of the Labor and Social Security Law and the harmonization between them. The right to terminate the work contract of the employer in the event that the worker proves to be incapacitated by 75, which follows the inability of the worker to return to work after two years of hospitalization for incurable and malignant diseases and it is proven that his capacity has decreased by more than 75%, which requires removing the conflict between the two texts in force.

The third category: Total Disability Pension

It is a disability that transfers completely and permanently between the worker and his practitioner of any other profession from which he earns his living, and it is estimated at 100% (in case the successor is not eligible for death pension)

2- Death retirement If the injury to an occupational disease leads to the death of the worker, his family shall receive the full injury pension, which represents 80% of the average wage of the temporary worker in the last year of his work or during his work if it was less than one year

3- Retirement in case of recurrence of injury In the event that the worker suffers from an occupational



disease, whether it is itself (also an occupational cancer) or another occupational disease that prevents him from working, the following rules shall be taken into account:

- 1- If the percentage of the first and second injuries are combined, and both of them were less than 35%, a cash reward will be given based on a disability percentage
- 2- b- If the new injury is added to the old one and it has reached 35%, then he shall be entitled to a partial disability pension, with no return to the compensation he had previously received.

3- If the new injury is added to a disability of more than 99%, and then the worker is completely disabled, which means that he is entitled to a full retirement pension, we could see that the, the amended (Lebanese Insurance Law: A 35) lists three cases of permanent disability, and the cases are as follows:

1- total disability

Where the insured who suffers an occupational disease and results in a permanent total disability are entitled to receive compensation for life, the value of which is equal to two-thirds of his annual earnings.

2- Partial disability

If it is proven that the worker has an occupational disability after medical supervision in the retirement fund by at least 30%, he is entitled to retirement for life.

3- Partial disability less than 30%

A one-time partial disability compensation of less than 30% of the total disability shall be paid, and it shall be equivalent to the value of three annual installments of the partial disability compensation to which he is entitled, if such compensation was required for the degree of disability.

4- Additional compensation



The Lebanese legislator came with a humanitarian ruling, where he added an additional compensation, the amount of which is determined in the internal system of the guarantee fund, if the permanently disabled person, after recovering from illness, needs attention and assistance from another person, which is what we did not find in the other comparisons of laws.

It is noted that the Lebanese legislator has come up with the provisions related to the limits for the payment of compensation in the following cases: –

One-time compensation amount

If the worker's disability rate was estimated by the medical authorities at less than 16%.

2- Monthly expense compensation

If the worker's different disability calculation is 16% or more, while estimating the difficulty of redeveloping the worker's abilities again, therefore, it is preferable to preserve his previous work, to reduce his wages by the amount of compensation and to be reviewed annually.

It is noted that the amount of compensation for occupational diseases is reconsidered after no less than fifteen years, in order to re-estimate the weakness if the worker's ability to perform the work is calculated and the compensation is adapted on its basis.

3- move retirement, including:

A – retirement living

It is noted that in the event of total disability, he pays the worker a compensation of the full amount of his wages in order to continue a normal life.

b- Unemployment of occupational disease



If the worker is forced to leave his work for a reason related to the occupational disease of less than 80%, he will be paid a compensation to help him live until he gets a job.

4- The deceased's heirs shall be compensated the amount of the value of his full wage for his average annual wage if they were of his male and female children, but if they are entitled to other than those such as fathers, brothers and sisters, he shall pay them at the rate of 60% of the value of the deceased's annual wages.

Second: Determining the worker's responsibility for occupational cancer caused by his occupational fault

Most of the legislation defines almost specific obligations, by means of specialized texts that are determined within the framework of the worker's experience and competence where the degree of technical knowledge plays an important role in assessing his behavior because the degree of specialization would affect the extent of the technical level achieved by the specialized worker. The specialization obliges him to exert care and foresight in the implementation of his commitment to the extent that corresponds to his technical level so that his conduct is measured in the same manner as those who are in the same work at the same technical level, not to mention what is included in the professional customs and norms, which are often known to the employer on the basis of his money from The ability to test the worker before employing him, and since we have presented the worker's rights resulting from his occupational cancer, the extent of these rights remains with the labour's occupational fault .

1- Investigation to determine responsibility

The procedure that is taken is to report the possibility of the worker suffering from symptoms of disease and determines if the project has medical services to determine it, such as the presence of a doctor or inform the specialized social security institution of the worker's illness for the purpose of



presenting it to the medical authorities for identification, while the employer bears responsibility for the delay in reporting the injury in the two laws. The Iraqi and Lebanese legislators have obliged the Italian legislator to inform about the injury, whether from the worker personally or his representative, within a period not exceeding fifteen days, to initiate contacts between the National Industrial Social Security Corporation and the employer in order to verify the knowledge of the reasons leading to that on the one hand and to determine the level of Injury and loss of ability and its amount to perform work.

The national industrial social network and the employer in order to verify the knowledge of the reasons leading to this on the one hand and to determine the level of injury and loss of ability and its amount to perform the work. According to the investigations conducted by the competent committees in the social security institutions, the responsibility is transferred to a specific party for the injury of the worker with a specific occupational disease, and where the injured worker's right is subject to loss, it is necessary to examine the type of right that still remains the degree of the error committed. 1- The right that the worker loses. If it is proven that the worker is responsible for an occupational disease in his actions, he loses his right to compensation or reward, and the Social Security Institution may return to him the cash compensation that it paid in advance, if the administration decides to do so, and thus does not withdraw to health care and treatment, not to mention that it does not extend to retirement.

The act leading to the amount of the right to compensation:

The act that leads to the loss of the right to compensation is assumed either if it was (intentionally) i.e. the worker intended to contract this serious disease or that he had contracted occupational cancer as a result of (obscene misconduct), not in the sense that he had committed a serious and provocative act. To denounce, normal misconduct is not sufficient to deprive the worker of compensation, but is supposed to justify severe censure of the perpetrator, accordingly, the injured worker loses his right in the comparative laws if the



committee proves the existence of an act that is one of the Prior to the criminally responsible. As for the Lebanese law, the worker loses his right in the following cases:

- a- If he tries to obtain or obtains a right that does not belong to him by cheating.
- b- If the act that led to his illness is considered a felony or a misdemeanor if he has committed an intentional mistake to benefit from the offerings.

In Iraq, he loses his right in the following two cases.

1- The labour deliberately injures himself, usually in order to benefit from compensation and from time to contract.

2- The injury occurred due to obscene misconduct, and provided that this act was intentional on the part of the laborer, here it is not sufficient for the act to be reprehensible on the part of others. It is not limited, such as the explicit and willful violation of work regulations and instructions, such as the worker refusing to wear protective clothing despite being warned of the danger of the nature of the work or refusing to implement the employer's orders and removing the protective clothing while dealing with materials as an example of obscene misconduct, and that he has been harmed, which is Attempts to acknowledge others without justification.

second branch: Medical care and social compensation

in kind It is not easy to determine the medical care provided by the competent authorities as social compensation in kind for a disease with a serious occupational injury, but it is possible to refer to the stages of commitment of institutions in the countries of comparative research in the cases of occupational disease in general. First: the medical treatment service in the case of occupational cancer, the treatment stages of the affected person begin when the patient is diagnosed throughout the period of temporary incapacity to perform work, which includes the following:



- A– Clinical examination, whether in the hospital or at home, which means that the patient should be referred to specialists in the aforementioned disease.
- B– B – Biological and biological analyzes or presentation to the radiologist, and with the development of science, other types of examination appeared, such as magnetic resonance and computed tomography, we see that this includes compensation in kind.
- C– Surgical operations that the patient's condition requires, whether they are for one stage or more, due to the seriousness of the disease and the possibility of it spreading to more than one site in the body prior to its discovery. D– Medication and treatment required by all operations after they are performed, which requires either giving the sick worker dates for review or keeping him in the hospital for the purpose of medication E – Tissue transplantation required for the therapeutic tasks of cancer patients to determine the extent of its type (benign or malignant tumor) and the degree of its progression in the patient's body (spread), which requires the presence of acquaintance with social security institutions and advanced laboratories in the field of technical analysis.

Second: the complementary medical service:

The competent medical authorities advise that there should be a complementary medical service from their support. In general, the research countries are committed to this, and since occupational cancer patients are often treated by eradication (except for leukemia), the following medical service follows:

1– Physiotherapy

It is provided by medical authorities whose mission is to return the affected member to work.

2– Prosthetics and plastic surgery

The patient's condition may require that one of his limbs be replaced with a prosthetic one, or that he assists the worker whose surgery or cancer has led to a deformity in his body, which requires his help to integrate into



society and his attempt to return him to work, or it may be one of the requirements for a natural return to life, such as plastic surgeries for the nose or grafting.

3- Complementary therapy

Cancer treatment is often completed by exposure to radiation in order to reduce the tumor or prevent it from appearing, and it is noted that radiotherapy or chemotherapy may be basic and not complementary, meaning that the type of cancer that the worker suffers is surgically removed, but rather uses the method of treatment with sessions that extend between successive periods such as leukemia and lymphatic glands, or if its imposition has reached an advanced stage, noting that the treatment of these requires adding doses of blood.

4- Medicinal medicines, that are required to be available from the medical authorities and which the patient's condition requires to be taken, such as the right antibiotics and so on

Third: The limits of social compensation in kind

The comparative legislator's adoption of the enumeration method for the obligations of social security institutions to compensation in kind, he wanted it to be comprehensive in order to treat the injury of an occupational accident, and we find through the study of the comparative countries that they headed in two directions to the limits of compensation.

A-Italy and Lebanon's legislations

They specified medical treatment from the beginning of determining his illness and until his recovery, but they stipulated that this should be during the period of temporary disability.

B- Iraqi legislations

Continuing treatment for the injured worker from the date of notifying the insurance institution until his recovery or death. It is noted that the worker is obligated to follow the instructions of the social security institutions and



not be subjected to deprivation of their services and compensation, unless he withdraws or complies.

Conclusion:

The importance of protecting workers against work risks arises when those risks threaten their lives with annihilation and that recalling texts aware of the importance of what they may go through in countries that represent relatively high levels of exposure to occupational diseases to compare them by offering legal treatments for the doctrinal contribution to push those confrontations.

There is no doubt that cancer as an occupational disease must result from exposure for long periods of time to work whose nature is dangerous or to the danger of the materials used in it. Therefore, preventive measures such as replacing dangerous materials or closing workplaces are the best way to reduce injury, as the strength of these measures follows the mandatory legal rules that It was necessary to amend the texts of the Iraqi Labor Law in a way that would allow the inspection committees to take stricter measures when making mistakes or refusing to implement obligations related to (occupational health and safety) and to incur a heavier penalty than the fine stipulated in our law in force.

The suffering of Iraqi workers, especially after the events of the changes of 2003 and the weakness of administrative oversight and even the defect of leaving the application of the rules of the Labor and Social Security Law (similar to the rest of the laws) may leave them with no recourse other than to bow to the final authority of the employer in order to gain.



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