SUSPENSION OF EMPLOYEE´S DUTIES AS A RESULT OF TEMPORARY INCAPACITY FOR WORK IN ACCORDANCE WITH SLOVAK LEGAL REGULATIONS

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Abstract: A sickness of an employee and his/her recognition as temporarily incapable for work has several important consequences in labor relations. If an employee sees a physician because of an ailment and thus is recognized as temporarily incapable for work based on the found health condition, the duties of such an employee is suspended and he will not go to work because of his/her illness and will not receive wages. The paper analyses the problematics of the rise and duration of temporary incapacity for work which follows certain legal guidelines. Since the question of financial support during temporary incapacity for work is of high importance for the sick employee, his title for financial compensation during temporary incapacity for work is pointed out in the paper. Even though the above mentioned type of hindrance to work is rather common, in reality there is inadequate knowledge of this field and that is why the issue is paid attention in our paper.

Keywords: employee, hindrance of work, temporary incapacity for work, income compensation during temporary incapacity for work, sick pay

1 Introduction

In the Slovak Republic employment is one of the basic labor relations. During employment there may occur situations which hinder fulfilment of responsibilities following from the contract, i.e. an employee may not be able to work or employer may not be able to allocate work. Such a situation means temporary suspension of employment without ending it completely. Slovak legislation in Act No. 311/2001 Coll. Labor Code as amended describes these situations as "hindrances of work on the employee's side" and "hindrances of work on the employer's side".

A sickness of an employee and his/her recognition as temporarily incapable for work has several important consequences in labor relations. If an employee sees a physician because of an ailment and thus is recognized as temporarily incapable for work based on the found health condition, the occupational activity of such an employee is suspended and he will not go to work because of his/her illness and will not receive wages. Based on assessed health condition the physician prescribes medication and the course of treatment. The employee becomes temporarily incapable for work and within his/her employment important personal hindrance of work arises according to § 141 Labor Code.

2 The definition of the term "temporary incapacity for work"

From the point of view of its duration an ailment may be short-term or long-term. As Matlák states: „short-term ailments are included in the term of incapacity for work. Long-term health conditions are connected in theory, legislation as well as praxis of social security with the term of disablement."[1]

The term of "temporary incapacity for work" is of interdisciplinary character. The term is not only used in healthcare but also in the field of industrial law in connection to a halt of work activity and suspension of work responsibilities, as well as in the field of law on social welfare in connection to financial liability or allowances, which belong to the employee based on his sickness insurance and meeting requirements given by the law during temporary incapacity for work. In everyday life we encounter alternative terminology such as temporary work incapability or the so called "PN".

In healthcare temporary incapacity for work follows from providing medical care. The issue of "temporary incapacity for work" is regulated by the law in § 12a Act No. 576/2004 Coll. on healthcare and on services connected to healthcare as amended and supplemented by later regulations (further on only "Act on healthcare"). This ruling sets out the issues of arisen temporary incapacity for work, the issue of legible person who decides about the temporary incapacity for work, it regulates the acknowledgement form for temporary incapacity for work, outings as well as other related issues. However, we would like to draw attention to the fact that a definition of the phrase is not provided within basic terminology.

Apart from the Act on healthcare, temporary incapacity for work is dealt with in Act No. 461/2003 Coll. on social insurance as amended by later regulations, in connection with the maximum duration of temporary incapacity for work as well as with the paid benefit of health insurance – sickness pay offered by Social Insurance Agency during the duration of temporary incapacity for work. It follows from § 33 and § 34 of the Act on social insurance that temporary incapacity for work concerns not only employees but also self-proprietors paying mandatory health insurance and people voluntarily health insured.

Since temporary incapacity for work also concerns an employee it is a paradox that the Labor Code does not define the term of temporary incapacity for work. Temporary incapacity for work is only mentioned in connection with several circumstances. Talking about the protection of employees in article 8 of the Labor Code, it grounds the right for financial support during incapacities for work of employees and apart from the mentioned it secures higher protection of employees in labor relations in the time of their incapacity for work because of sickness. We could find a note about temporary incapacity for work also in § 64 of the Labor Code when an employer may not lay an employee off during his temporary incapacity for work. Temporary incapacity for work is considered a protected period – making an employee redundant is forbidden. According to § 141 of the Labor Code an employer is obliged to pardon the employee's absence at work during his/her incapacity for work because of sickness or injury. Last we have to draw attention to one of the basic obligations of an employee according to § 81 of the Labor Code when an employee is obliged to act according to doctor's prescribed course of treatment to be entitled for compensation of pay during temporary incapacity for work.

Based on the above mentioned facts we can say that when defining the term of temporary incapacity for work itself, it is not possible to rely on a relevant legislation since the term itself in not defined by any Slovak legal regulation within healthcare legislation, any labor regulation or normative legal act within social welfare law. We could take an example of legal regulation in the Czech Republic which grounds positive as well as negative definition of the term of "temporary incapacity for work". According to § 55 (1 and 2) Act No 187/2006 Coll. on sickness insurance as amended by later regulations "temporary work incapacity is understood as a status which makes it impossible for the employee: a) to continue in the insured work activity due to health disruption or other reasons not stated in this law and when such health disruption lasts for more than 180 days, also another up to now insured work activity; b) to meet the requirements for a job candidate if the temporary incapacity for work arose within the protected term or if the work incapacity lasts after ending the up-to-now insured work activity, even if the insured is not a job candidate. It is not considered temporary work incapacity if the insured is treated a) in a night sanitarium during intoxication after using alcohol, narcotics or psychotropic substances, with an exception of using these substances without own infliction, c) and offered healthcare in his/her own interest based on cosmetic or esthetic reasons paid by the insured."

Because there is no legal definition of the term of temporary incapacity for work, it can be concluded from the phrase itself that it is a time during which an employee cannot work for a certain time because of health reasons (sickness or injury).

[1] Matlák, J.: *Právo sociálneho zabezpečenia*. Aleš Čeněk s.r.o., 2009. p. 159

Because we are talking about temporary incapacity for work it is expected that the ill employee will recover soon and be able to continue performing his/her work responsibilities. The opposite of work incapacity is work capability as "a relationship between life and work functions of given person, between his/her work capability on one hand and requirements placed upon him by the work activity which he/she is to perform on the other hand. At the same time it depends on the purpose why is such a relationship i.e. work capability or incapacity being found out and evaluated, and also it depend on the fact how is such a relationship for such purpose adjusted and normatively defined."[2]

3 Assessment of temporary incapacity for work and its duration

Causes and length of duration of temporary incapacity for work are varied. Concerning the causes, incapacity for work may be stated because of a sickness, injury, work injury, occupational disease, another general ailment or the reason of ordered quarantine precaution.

Depending on the diagnosis, the course of the sickness, duration and substance of treatment, the attending physician (general practitioner or specialized doctor in gynaecology and obstetrics when offering non-resident care or a doctor of a healthcare facility) decides upon the length of duration of temporary incapacity for work and issues an acknowledgement stating temporary incapacity for work. In the decision process the doctor assess the employee's capacity for the given work including the influence of work and work environment on his health condition. Based on the assessed health condition of the employee the physician prescribes medication and the course of treatment.

The temporary incapacity for work starts on the day when the attending physician found out about the disease which makes him state the incapacity for work. An exception is a situation when healthcare is provided to an employee after finishing his shift because that is the case when temporary incapacity for work starts on the next day. (§ 12a (3) of the Act on healthcare). Analogically it follows that if healthcare is provided during work shift of an employee, incapacity for work starts on that very day. However, from the point of view of applied praxis, problems arise concerning how such an employee is financially supported. Is such an employee♀ indemnified for all day's pay even if he worked for part of the day or should he receive the sickness benefit just for the aliquot part of the day? If an employee worked during the day when his title to the benefit originated, he/she is to receive a benefit for the aliquot part of the day. Even though, this benefit is only offered in an aliquot sum, this day is counted for the support period for offering compensation of pay during temporary incapacity for work as well as sick pay. These are just different interpretations of the issue.

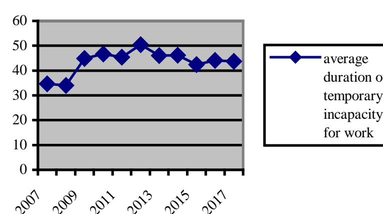
A doctor may state temporary incapacity for work retroactively. Retroactive acknowledgement of temporary incapacity for work concerns such cases when a person was not able to see a doctor based on reasons laid down by law. The attending physician may acknowledge a person incapable to work retroactively for not more than three calendar days based on medical finding of first aid medical service or institutional emergency service (§ 12a (4) Act on healthcare). The time-limit of three days for retroactive acknowledgement of temporary incapacity for work has been in force as of July 1, 2014. Until this date retroactive acknowledgement of temporary incapacity for work by an attending physician had not been laid down by law. In case such medical finding is absent, contrary to previous practice, according to valid legal regulation an attending physician can acknowledge an employee incapable to work on the day when such work incapacity was found by him/her. In case urgent care connected to hospitalization abroad was offered and the person submitted hospital discharge papers to the attending physician within three days of the end of hospitalization in abroad, the attending physician issues an acknowledgment of temporary incapacity for work retroactively while the beginning date of the temporary incapacity for work is set according to the discharge papers.

As for the duration of temporary incapacity for work, according to the Act No. 461/2003 Coll. on social insurance as amended by later regulations the time of support for offering sick pay during temporary incapacity for work is 52 weeks maximum.

In Slovakia the number of temporarily incapable for work is growing. "In 2017 there were daily 96,127 insured with incapacity for work on average which confirms the negative growing trend from the past – in 2016 there were 91,904 people on average incapable to work, in the year 2015 it was 87,803 insured."[3]

The durations of temporary incapacities to work differ. In the past decade there has been a growth and further on a stagnation of average duration of temporary incapacity for work in the nationwide average. The greatest change was recorded in the year 2009 (44.87 days) compared to the year 2008 (33.96 days). The longest average duration of temporary incapacity for work in the past decade was in the year 2012 when it reached 50.48 days as shown in the following Graph 1.

Graph 1: Average duration of temporary incapacity for work in days (2007-2017)



Source: own processing according to Statistical Office SR (2018)

As for the duration of temporary incapacity for work from the point of view of reasons for temporary incapacity for work, people with respiratory system diseases as

the most common reason for incapacity for work usually are incapable to work for a short term with the duration of incapacity up to 10 days, namely for urgent respiratory infections and influenza. Temporary incapacity for work because of muscular and skeletal system diseases and fibrous tissue problems, usually lasts 43 to 91 days. Frequent open wounds and flesh wounds, dislocations, wrenches and repositioning of joints require duration of incapacity for work from 43 to 91 days.[4]

In this connection it should be noted that the duration of temporary incapacity for work influences the percentage of incapable to work. The shorter the duration of temporary incapacity for work the higher the percentage of incapable to work. Such disproportion is given by short-term diseases in flu season.

The duration of temporary incapacity for work depends on the social status of a patient, also his functional rank. When it comes to managers of organizations extensions of duration of temporary incapacity for work is not expected but he/she will use the shortest treatment type possible. The duration of temporary incapacity for work is also influenced by the check of keeping the treatment regime. It is assumed that consistent enforcement of such check-ups especially of time intervals can positively influence the duration of temporary incapacity for

[2] Gregorová, Z. - Galvas, M.: *Sociální zabezpečení*. 2. vyd. Brno : Nakladatelství Doplněk, 2005. 280 p.

[3] Social Insurance Agency. 2018. Ústredie Sociálnej poisťovne informuje. [online]. [quoted 2018-06-10]. Available at: <https://www.socpoist.sk/aktuality-vlani-opat-vzrastol-pocet-pn/65424c>

[4] Social Insurance Agency In Statistical Office SR. 2018. [online]. [quoted 2018-06-10]. Available at: <http://datacube.statistics.sk/TM1WebSK/TM1WebLogin.aspx>

work. Last but not least the duration of temporary incapacity for work is influenced by medical progress – replacement of a knee joint takes three days, after plastic surgeries e.g. of breasts the medical institution will discharge the patient on the next day, even though the patent is not completely self- reliant.

3.1 Issuing an acknowledgement of temporary incapacity for work

There is a special form to prove temporary incapacity for work of an employee which serves for claiming financial support. After acknowledging an employee incapable to work the attending physician issues an acknowledgement of temporary incapacity for work on a prescribed form (five-part "Acknowledgement of temporary incapacity for work"), prescribes medication and treatment. The employee tells the doctor where he is reachable during his/her work incapacity and the doctor provides the place in the form. "Acknowledgement of temporary incapacity for work" for the purpose of a Social Insurance Agency check, as well as the employer if the person in question is an employee. The attending physician may allow for a change of address where the employee is staying during temporary incapacity for work based on previous request of the employee if there is a serious reason for this. The change of address of the employee is recorded on the acknowledgement form of temporary incapacity for work as well as in the medical documents of the person incapable for work.

The employee is obliged to inform the employer about the arisen temporary incapacity for work. The employee delivers or sends the acknowledgement (II. part) to his/her employer, so that he could claim for pay compensation or sick pay during work incapacity. If another incapacity for work arises for the employee on the next day after the incapacity for work just ended (which lasted for example for 14 days), this is considered an extension of incapacity for work of the previous incapacity for work and the attending physician issues a new acknowledgement of temporary incapacity for work where "extension of temporary incapacity for work" is marked. The new acknowledgement of temporary incapacity for work is issued by the attending physician as of the day stated as the first day of incapacity for work on the previous acknowledgement of incapacity for work. The extension of temporary incapacity for work is conditioned by the Act on healthcare by worsened health condition of the person after ending the temporary incapacity for work, which means that in the given case a change of diagnosis is not taken into account.

3.2 Financial claims of an employee during temporary incapacity for work

The moment when temporary incapacity for work arises is very important since further issues follow from it, such as fulfilment of financial liability by the Social Insurance Agency or the employer. Social Insurance Agency (2014) emphasizes though, that if the temporary incapacity for work will be acknowledged contrary to legal rules i.e. will be issued by an inappropriate doctor, will not be acknowledged from the date when the disease was found out or will be acknowledged more than three days retrospectively, the claim for sick pay will not be considered valid.

There are two different financial claims valid for an employee – sickness benefit and compensation of pay during temporary incapacity for work. Sick pay is provided by the Social Insurance Agency amounting to 55% of daily assessment base. An employee may claim for sick pay from the 11th day of temporary incapacity for work because by then from the first day of his incapacity he receives compensation of pay from his employer according to Act No. 462/2003 Coll. on compensation of pay during an employee's temporary incapacity for work as amended and supplemented by later regulations. The stated facts do not apply in the case if temporary incapacity for work arose for an employee in the so called protected period which is seven days after termination of sickness insurance unless the Act on social insurance states otherwise. Such an employee is entitled for sick pay from the first day of temporary incapacity for work.

The claim for compensation of pay is valid if the employee is temporary incapable for work due to a sickness or injury and thus he does not receive wages, salary or another form of remuneration.[5] The compensation of pay during temporary incapacity for work is provided by an employer to an employee for the first ten calendar days from the day when temporary incapacity for work arose. Since an employer provides compensation of pay amounting to 25% of daily assessment base for the first three days (from 4th to 10th day amounting to 55% of daily assessment base), which is not very financially advantageous for the employee, employees often prefer taking a day off instead of temporary incapacity for work, of course on condition that the employer allows them to take a holiday. During holiday an employee is entitled to compensation of pay. Preference to take a paid leave over being temporary incapable to work happens especially during trivial illnesses such as a cold or migraine which do not call for a long time to recover. However, it is possible that by preferring this option harmful consequences on health may intensify with a later risk of even more serious disease. This can eventually mean a much greater financial burden.

Financial security of an employee during temporary incapacity for work is influenced by continued temporary incapacity for work (after ending temporary incapacity for work the health condition of the person gets worse), and occurrence of a new temporary incapacity for work, when an employee receives the benefit of sickness insurance - sick pay - from Social Insurance Agency further on. On the contrary i.e. when temporary incapacity for work arises for an employee an employer has to provide compensation of pay during temporary incapacity for work. However, this does not apply if such temporary incapacity for work was acknowledged from another labor relation which participates in sickness insurance. In case when activities are performed within several labor relations participating in sickness insurance, the attending physician assesses temporary incapacity for work individually. This means that for one activity an employee may be acknowledge temporary incapable to work and for another he may continue able to work.

The period during which sick pay is provided is called support period. It may not exceed 52 weeks from the beginning of temporary incapacity for work. The title for sick pay ends on the day following termination of temporary incapacity for work, no later than 52 weeks after beginning of temporary incapacity for work (support period thus includes the first ten days of temporary incapacity for work when an employee receives compensation of pay from the employer). The support period includes previous periods of temporary incapacity for work if they belong within 52 days before it arises. Previous periods of temporary incapacity for work are not included in the support period if sickness insurance lasted for at least 26 weeks from the termination of last temporary incapacity for work and the insured did not become temporarily incapable to work during this time. The support period does not include a period of ordered quarantine precaution.

4 Conclusion

It is obvious from the practice that each employee during his/her carrier is found in a situation when a sickness or injury prevents him/her from going to work. An ailment results in certain disruption of work ability which is usually only short-term.

After analysing the problematics of temporary incapacity for work resulting from a sickness or injury we have come to the conclusion that the term itself is not defined neither by any Slovak legal regulation within healthcare legislation nor by labor ruling or normative legal act in the scope of law of social security. The issue of temporary incapacity for work is a part of several legal regulations. We may encounter it not only in the

[5] Barancová, H. at al.: *Pracovné právo*. Bratislava: SPRINT, December 2007, p. 568

environment of healthcare in connection with the rise of temporary incapacity for work but also in the field of labor law as a hindrance to work on the side of an employee, as well as in the field of the law of social security in connection with financial support of an employee during temporary incapacity for work. In this connection it should be considered whether it is not pertinent to unify the problematics of temporary incapacity for work and regulate it legally in one legal ruling or ground it individually in the Labor Code in connection with an employee.

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