

Employers' Liability and Workers' Compensation – Questionnaire

[Reports should be structured according to the numbered headings below. Items designated by bullet points need not be addressed in separate sub-headings, but must be addressed clearly and unambiguously. Some headings are followed by explanatory notes in parentheses; these do not form part of the headings.]

I. Introduction

1. Basic system of compensation and liability

- Existence of public insurance schemes covering workplace injuries?
- General role of private law remedies: primary, supplementary or excluded?

2. Interaction with other institutions (*eg Social Insurance, Social Security*).

3. Empirical evidence (*outline of main sources of empirical evidence and details relating to the relative scope of employers' liability, workers' compensation and (so far as they deal with employees' injuries) other institutions; empirical evidence should also, wherever possible, be integrated into each report at appropriate points throughout*)

II. Workers' Compensation

1. Scope

- Workers covered
- Spatial, temporal and other limitations (*eg 'course of employment', with discussion especially of the extent that travelling to and from work is covered*)

- Effect of the victim's contributory conduct
2. The Compensation Trigger
- Accidents (*including how distinguished from disease*)
 - Disease (*prescribed lists, proof in individual cases or both? Special provision for particular conditions?*)
3. The Scope of Protection
- Personal Injury
 - Sexual Harassment
 - Dignitary Injuries (*eg resulting from discrimination*)
 - Property Damage
 - Pure Economic Loss
- (The extent of such protection offered by general employment laws may be mentioned, but the focus should be upon the specific workers' compensation rules and injuries resulting from accidents or disease)*
4. Heads and Levels of Benefit
- Medical Care
 - Rehabilitation Assistance
 - Lost Earnings
 - Non-Pecuniary Losses
 - Dependants' Benefits
 - Comparison with Damages in Tort (*How much lower?*)
 - Lump sums or periodical payments?
5. Funding Systems
- Type of System (*Private or public insurance? Voluntary or mandatory? To what extent, if any, can the employer self-insure?*)
 - Contributions to the Workers' Compensation Fund (*Who pays for what?*)

Questionnaire

- Incentives (*eg Risk-Rating of Contributions*)?
6. Administration and Adjudication of Claims
- Organisational Framework of Workers' Compensation Institutions
 - Who Decides over Claims for Benefits?
 - Reviews and Appeals: Special tribunals or general civil justice system?
 - Speed of claims' resolution and administrative cost
7. Rights of Recourse of Workers' Compensation Institutions
- Recourse against the Employer.
 - Recourse against a Co-worker?
 - Recourse against Third Parties (*equipment/component manufacturers, suppliers of raw materials, etc*).
8. Interaction with General Social Welfare Provision and Private Insurance
- Fund of First Resort (*Who initially bears the cost: the Social Health Insurance/Public Health Service, Private Health Insurance or Workers' Compensation?*)
 - Deductibility of Benefits (*Collateral Source Rule? – Are benefits provided by social or private health insurance deducted from claims against workers' compensation carriers*)
 - Recourse of Social Welfare Agencies, Social Health Insurance, Private Health Insurers, etc, against Workers' Compensation Institutions?
9. Interaction with Employers' Liability
- Availability of Damages in addition to Workers' Compensation Benefits?
 - Deductibility of Benefits provided by WC from Claim against Employer (*Collateral Source Rule?*)
 - Subrogation of WC into the Claim of Worker against Employer?

III. Employers' Liability

1. Classification

- Contract or tort?
- General Law or a Special Category?

2. Elements of Liability

- Liability of employers for their own acts or omissions
- Liability of employers for the acts or omissions of their employees and others (the scope of vicarious liability; the effect of any 'common employment' exclusionary rule)
- Relevance of health and safety legislation in establishing liability
- Overall a fault-based or strict liability?
- Causation (*highlighting specific problems of causal uncertainty related to work injuries*).
- Effect of the victim's contributory conduct

3. Scope of Protection

- Personal Injuries.
- Sexual Harassment.
- Dignitary Injuries (*eg resulting from discrimination*).
- Property Damage.
- Pure Economic Loss

4. Heads and Levels of Damages

- Same Level as in other Cases of Personal Injury?
- Main heads of recoverable damages
- Costs of Medical Care
- Costs of Rehabilitation Assistance
- Lost Earnings, Loss of Earning Capacity and Loss of Pension Entitlements
- Non-Pecuniary Losses

Questionnaire

- Dependants' Benefits
 - Form of Payment (*Lump sums or periodical payments?*)
5. Administration of Claims
- Courts or Specialised Tribunals?
 - General Civil Procedure or Special Procedures?
 - Reviews and Appeals
 - Speed of claims' resolution and administrative cost
6. Rights of Recourse
- Against other Employees (*who caused the harm*) or their liability insurer?
 - Against Third Parties (*equipment / component manufacturers, suppliers of raw materials, etc*) or their liability insurer?
7. Interaction with Social Welfare Systems and Private Insurance
- Deductibility of Benefits Received from Social Welfare Agencies (*Collateral Source rule*)?
 - Recourse of Social Welfare Agencies and Private Insurers against the Employer?
8. Insurance
- Voluntary or mandatory? (*If voluntary, how common?*)
 - General Liability Insurance or Special Policy? (*If a special policy, what is its usual scope?*)
 - Basic Principles of Employers' Liability Insurance (*Trigger, Scope of Coverage, Exclusions, Limits, Deductibles , etc*)

IV. Evaluation and Conclusions

1. Overall Quality of each System independently and in combination. (*How do they work in the eyes of those concerned? Principal advantages and disadvantages*).
2. Overall Costs (*Are they reasonable in the light of the benefits provided?*)

3. Prevention (*Are there appropriate incentives to ensure health and safety and compliance with relevant regulations?*)
4. Interaction between Workers' Compensation and Private Law (*Employers' Liability*) (*Does this interaction further or obstruct the goals of compensation and prevention?*)
5. Plans for Reform (*if any*)