

**Note on the importance of employment injury benefits for victims of
violence and harassment at work and their families
GEIP and NORMES¹, 25 May 2018**

1. Why employment injury benefits for victims of violence and harassment at work?

- Many workers suffering physical injuries or mental illness due to violence and harassment at work are not covered by employment injury or workers' compensation schemes and therefore have no access to benefits provided by such schemes.
- All workers, regardless of the nature of their work, may be exposed to violence and harassment at work.
- Particular groups, sectors and occupations have bigger risks to be exposed to violence and harassment at work. Sectors and types of work with bigger risks include health sector, public emergency sector, education sector, transportation services, domestic work and agriculture. Part-time work through job agencies, non-standard forms of employment and workers in the informal economy constitute vulnerable groups of workers which very often are not protected by legal frameworks against violence and harassment at work.²
- Although violence and harassment at work may lead to physical injuries, and mental illnesses caused by e.g. stress and trauma, the number of countries which provide compensation through employment injury insurance and workers' compensation schemes are limited. Employment injury insurance and workers' compensation schemes generally ensure access to the necessary medical care as well as counselling, rehabilitation and reintegration to affected workers. They also provide cash benefits to victims and their families (in case of death), which prevent them from falling into poverty and social exclusion due to loss of income, loss of earning capacity and income support, as the case may be.
- Some countries provide benefits to victims under general social security schemes; although these provide some form of coverage, the level of protection is lower than required by ILS in case of employment injury. Notably, the financing is shared with the worker, the qualifying conditions are more stringent, the level of benefits is lower, and cost-sharing is allowed for medical care, unlike under Employment injury insurance schemes and workers' compensation schemes.
- In other countries, injuries or death resulting from violence and harassment at work are simply not covered. This leaves affected workers having to pay substantial health care expenses out of pocket, and without financial protection for the loss of earnings and loss of earning capacity they or their dependent family members suffer as a result; They thus become exposed to poverty, vulnerability and social exclusion This is especially the case for workers holding contracts that limit access to social security benefits³.
- The lack of coverage by employment injury insurance as well as its consequences for victims of violence and harassment at work is a still much undocumented.

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² ILC Report V (1), 107th Session, 2018, Ending violence and harassment against women and men in the world of work

³ See Workers comments to question 21 for more information, ILC Report V (2), 107th Session, 2018, Ending violence and harassment against women and men in the world of work

2. What are the employment injury benefits required for victims?

- Victims of violence and harassment at work should be entitled to full range of employment injury benefits set out in the Employment Injury Benefits Convention, 1964 (No. 121), namely:
 - Periodical **cash benefits** in case of temporary incapacity for work, and pension in case of permanent loss of earning capacity, or corresponding loss of faculty/disablement; **the benefit should correspond to at least 60% of previous earnings** (C121, Art. 6(b) and (c), and 9(1)(b), in conjunction with Schedule II);
 - **medical care** (including counselling and psychological consultation in case of post-traumatic stress and mental disorders), as well as **allied care benefits** (e.g. functional rehabilitation, psychosocial support, domiciliary care, reablement), **with a view to maintaining, restoring or improving the health of the injured person and his/her ability to work and to attend his/her personal needs** (C121, Art. 6(a), 9(1)(a) and 10); **Medical and allied care and benefits should be provided at no cost for the victim.**
 - the **dependent survivors (e.g. dependent spouse and children) of persons who die due to an employment injury should be entitled to a periodical cash benefit** to compensate for the loss of income support they suffer as a result of the death of the “breadwinner”, corresponding to **at least 50% of reference wage** (C121, Art. 6(d) and 9(1)(b) in conjunction with Schedule II)
 - a **funeral benefit** covering the normal cost of a funeral (C121, Art. 18(2)).
- **Coverage should be effective from day 1 of the worker in employment, without requiring the completion of a qualifying period.**
- The List of Occupational Diseases Recommendation, 2002 (No. 194) of the ILO includes mental and behavioural disorders as one of the diseases that should be comprised in a national list of occupational diseases.

3. Advantages for benefits to be provided under Employment Injury Insurance (EII) or Workers' Compensation legislation

- EII/Workers' Compensation legislation establishes in detail the rights and duties of employers and workers, contingencies covered, persons protected, qualifying conditions for benefits, benefits to be provided and administration and governance of the scheme.
- EII/Workers' Compensation legislation usually provides the mechanism of collective risk pooling among employers through earmarked contributions to the scheme and protect employers against direct compensations to affected workers.
- EII/Workers' Compensation legislation usually provides the governance and administrative mechanism which is essential for an effective enforcement of coverage and provisions.
- The Employment Injury Benefits Convention, 1964 (No. 121) and the accompanying Recommendation (No.121) as well as the Social Security Minimum Standards Convention, 1954 (No. 102), Part VI, are the main International Labour Standards setting quantitative and qualitative benchmarks for the statutory provision of employment injury benefits.

4. Advantages for benefits to be provided under EII or Workers' Compensation schemes

Advantages for employers

- Social security mechanisms such as EII/WC **shift the responsibility for compensating and treating/rehabilitating victims away from the employer to the Government**, who has the ultimate and overall responsibility for their establishment and governance;
- Through EII/Workers' Compensation schemes, employment injury benefits are provided under the **principle of "no fault"**, namely an injured worker, or his/her survivor(s) in case of death of the worker, are provided with benefits without any necessity to prove the "fault" or responsibility of the employer; the injury and its cause are assessed by the competent medical body based on a set of objective criteria, irrespective of whether it has been caused by the employer, co-workers or another party in a work context.
- This normally **precludes further judicial action against the employer** for pecuniary/material damages, except, in some jurisdictions, in cases of gross or wilful negligence.
- **Given that judicial procedures are often lengthy, expensive, and damageable for employers' reputation, compensation through non-adversarial social security/EII or Workers' compensation bodies bears undisputable advantages for businesses.**
- Workers' compensation/EII schemes are financed through earnings-related contributions, set at a percentage of wages. **The costs are thus predictable and limited as opposed to the costs which an employer may incur where the law makes it liable for compensation. This reduces the financial risks for businesses** when facing catastrophic situations.
- The consolidation of the risks of violence and harassment with other occupational risks through insurance mechanisms based on risk pooling allows for a better management of those risks and reduces their costs for businesses, as opposed to the individual approach to risk in employer's liability provisions.

Advantages for workers

- EII/WC schemes are usually financed by employers' contributions, due to the responsibility of the employer to provide a risk-free and healthy work environment.
- EII/WC schemes ensure access to compensation through a non-adversarial process; Lawsuits, which are generally lengthy, expensive and stressful for victims, and do not guarantee proper and timely compensation to be paid, can thus be avoided.
- EII/WC schemes usually offer higher levels of protection than general social security schemes, e.g.:
 - o no qualifying period for entitlement to the benefit, meaning that a worker and his/her dependents must be covered from day 1 of employment
 - o victims are not required to participate in the costs of medical and allied care;
 - o rehabilitation and professional reinsertion are comprised
- Neutral governance of administration of the scheme, namely benefits established outside the contractual relationship between a worker and his/her employer, allows timely and proper compensation based on clear benefits stipulated in the legislation.
- Contrary to the payment of employment injury benefits directly by employers or by private insurance, workers compensation schemes usually pay periodical cash benefits throughout the whole duration of the contingency. Since the employer may not continue his/her business and the private insurer does not want to provide benefits for a long time with indexation, benefits directly provided by employers and by private insurance are often in the form of a lump sum, or paid for a limited period without indexation.

5. Opportunity cost is not covered by EII/WC laws

- In the absence of the provision of employment injury benefits through EII/WC or social security mechanisms, the lengthy and expensive litigation and civil court cases against employers will increase. This is a cost for the employer as well as for the worker and a loss of productivity due to time invested on lawsuits instead of work as well as damaged industrial relations.

6. What are the financial implications to provide employment injury benefits under WC schemes for victims of violence and harassment at work?

- Falling into poverty of the victims due to income loss or loss of earning capacity is prevented through the provision of employment injury benefits under EII/WC schemes.
- Instead of unknown future cost for employers to provide direct compensations, cost for employers in the form of earnings-related contributions to EII/WC schemes becomes stable and predictable.
- An individual rating system of contributions, by taking into account past performance of employers in respect of occupational injuries and diseases including those due to violence and harassment at work, provides an incentive to employers in preventing work-related injuries and diseases as well as facilitating the return to work of injured workers.

7. Current country practices

- Australia: Workers' compensation laws can give some workers injured or harmed by workplace bullying an entitlement to compensation. It is not available to all workers though. Safe Work Australia submitted: workers' compensation is only available to about 88 per cent of workers and is not available to the self-employed⁴
- Canada: violence and harassment at work is fully integrated to the Workmen's' Compensation Schemes in some provinces and territories (Quebec, Saskatchewan, Ontario), in the process of being integrated in other (Prince Edward Island) but not integrated in several provinces (Alberta, Newfoundland and Labrador).⁵
- Finland: compensation is extended to aggressions committed by third parties, where appropriate steps were not taken by the employer to mitigate risks. Damages awarded in civil lawsuits arising from harm caused by workplace violence may include compensation for medical expenses, economic harm and psychological harm, as well as punitive damages.⁶
- In Japan, courts allow for compensation to be paid by the company to the families of workers who committed suicide for having been victims of "power harassment".⁶
- Denmark: sexual harassment as well as violence at work are included in the employment injury Insurance and are overviewed by the Labour inspectorate, part of the Danish Working Environment Authority.⁷
- United States: Under the laws in several States (California, Massachusetts, Oregon and Washington, and in the District of Columbia), unpaid or paid leave for victims of violence, sexual assault and stalking is provided.⁶

⁴ Parliament of the Commonwealth of Australia, House of Representatives, Standing Committee on Education and Employment. 2012. Workplace bullying: We just want it to stop (Canberra).

⁵ [Association of Workers' Compensation Boards of Canada](#)

⁶ ILC Report V (1), 107th Session, 2018, *Ending violence and harassment against women and men in the world of work*

⁷ [Danish Working Environment Authority](#)