



**Council of State Support to
Non-governmental Organizations under
the President of the Republic of Azerbaijan**



**Citizens' Labor Rights
Protection League**

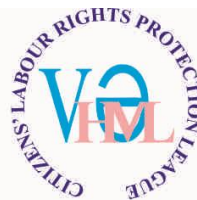
REPORT

(Resume)

**on the application of the Law on "Compulsory
insurance on cases of labor ability loss as a result
of industrial accidents and occupational diseases"
of the Republic of Azerbaijan**



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Baku-2016

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SUMMARY

According to the article 35 of the Constitution of the Republic of Azerbaijan, “Everyone has the right to work in safe and healthy conditions...”. According to the article 2015 of the **Labor Code**, “employees and employers of an enterprise are responsible for fulfillment of the occupational safety standards and regulations in the workplace...”. According to the paragraph (c) of the article 195 of the Code, the employer bears a complete financial responsibility “in case the employee’s health is damaged during the performance of labor functions or family members and persons under the patronage of the employee are subject to material damage in relation with the employee’s death as a result of an industrial accident caused by the employer’s failure to fulfill the occupational safety regulations”. Employers used, as a rule, to cover expenses arising from compensation of damage to employee’s health for industrial accidents and occupational diseases at the funds of the enterprise until January 2011. The right of employers to insure their responsibility before employees was rarely exercised and there was no legal and regulatory framework regarding this kind of insurance (only life insurance system could be applied by that time).

The Law on “Compulsory insurance on cases of labor ability loss as a result of industrial accidents and occupational diseases” of the Republic of Azerbaijan adopted on May 11, 2010 and applied since June 1, 2011 and a number of legal and regulatory framework adopted to ensure the application of this law made mandatory the introduction of compulsory insurance on industrial accidents and occupational diseases. All employers are to provide employees engaged in wage labor with compulsory insurance on industrial accidents and occupational diseases in accordance with this law. The article 225 of the Labor Code was adopted in relation with the application of the Law, as well. According to this article, *“1. An employer should ensure compulsory insurance of every employee on cases of labor ability loss as a result of industrial accidents and occupational diseases in the manners specified by law. It is necessary to show relevant information on the insurance coverage of the employee in the labor contract.*

2. Relations in the field of compulsory insurance on cases of labor ability loss as a result of industrial accidents and occupational diseases are regulated by the legislation”.

Thus, the introduction of the Law on “Compulsory insurance on cases of labor ability loss as a result of industrial accidents and occupational diseases” of the Republic of Azerbaijan made mandatory the compulsory insurance of the responsibility of the employer before the employee regarding the damage to the employee’s health in the field of labor.

However, serious problems are still remaining in the field of labor protections and technical safety, and therefore, the introduction of a special state program is considered in the concept.

The “Azerbaijan 2020: future vision” Development Concept considers the “strengthening of efforts to ensure healthy and safe working conditions for employed citizens and introduction of a State Program to ensure labor protection and improve labor conditions”¹.

¹ “Azerbaijan 2020: future vision” Development Concept. Source: http://www.president.az/files/future_az.pdf

INDICATORS ON COMPULSARY INSURANCE ON INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Employment indicators

The number of employed population is 4 million 556 persons according to the official statistics.

The number of those who work under labor contracts (for hire) was 1,521.1 thousand persons on July 1, 2016. Out of them, 889.7 thousand persons worked in the public sector of economy, while 631.4 thousand persons in the private sector.

The majority of labor contracts of 631.4 thousand persons (working in the private sector) was concluded on the basis of dual accounting, i.e. sometimes there is a difference between the actual wages and the wages indicated in the labor contracts by several times.

3 millions of employed people considered as actually employed are categorized as:

- Those performing work or services under civil law contract;
- Non-formal labor market actors;
- Owners of land shares and their able-bodied family members

Insurance Coverage Indicators in the Formal Labor Sector

According to the data provided to the Citizens' Labor Rights Protection League from the State Statistics Committee, the indicators of the insured for 2015 are as follows.

General information on compulsory insurance on labor ability loss as a result of industrial accidents and occupational diseases

	2015
Number of contracts signed, unit	26182
Number of the insured, thousand person	1067,6
Insurance compensation calculated in relation with insurance cases, thousand manat	2429,3
Proportion of the insured employees in the total number of hired workers, percentage	71,4

It is obvious from the data that 28.6 percent of formal labor market actors are not provided with compulsory insurance on industrial accidents and occupational diseases.

Thus, the number of insured employees was 1,067,600 persons in 2015. However, this number was 3,488,400 persons according to the official statistics.

So, the number of actually employed people who were not provided with compulsory insurance made 3,488,400 persons in 2015.

Payment indicators

According to the article 16 of the Law on “Compulsory insurance on cases of labor ability loss as a result of industrial accidents and occupational diseases” of the Republic of Azerbaijan, persons who lost the ability to work in whole or in part as a result of industrial accidents and occupational diseases or other beneficiaries in case they die for the abovementioned reason are provided the following types of insurance payments:

- Monthly insurance payment;
- Lump sum insurance payment;
- Additional insurance payment.

The payments are made in the following manner in insurance cases:

- Monthly insurance payment is a cash compensation provided to the beneficiary instead of monthly wages in relation with the insured person’s labor ability loss in an insurance case.
- Lump sum insurance payment is a sum of monthly insurance payment amounts paid in the manner specified with law. A lump sum insurance payment is provided in the following cases:
 - in case disability is defined for the insured person subject to an insurance case without waiting for the next examination period;
 - in case the insured person dies as a result of an insurance case.

According to the information provided by the Financial Market Control Chamber of the Republic of Azerbaijan upon the request of the Citizens’ Labor Rights Protection League, **19,134 insurance contracts were signed in 2015** regarding the “Compulsory insurance on cases of labor ability loss as a result of industrial accidents and occupational diseases” and **the total amount of insurance premiums made 26,900,000 manat under this category. The total insurance payments made 2,429,300 manat.**

General review of the situation in the non-formal labor sector

According to the provision 3.1.1 of the Law on compulsory insurance on cases of labor ability loss as a result of industrial accidents and occupational diseases, the compulsory insured are **“persons who perform labor functions based on labor contract or civil law contracts signed with a legal entity or an individual without establishing a legal entity in accordance with law”**. It means that not all of non-formal labor sector

actors are insured from industrial accidents and occupational diseases. Considering the abovementioned figures, we can see that the number of workers actually performing labor activity without compulsory insurance is great.

We saw compulsory insurance indicators in the formal labor sector in the above section. Coverage is not full there despite of growth tendency by years.

The situation is much complicated in the non-formal labor sector. It is not possible to insure an employee without legalization of labor relations. Nevertheless, failure to involve an employee in compulsory insurance does not release an employer from responsibility. As mentioned above, even an employer bear a complete financial responsibility for damage caused to employee's health in real labor relations. According to the provision 7.3 of the Law on compulsory insurance on cases of labor ability loss as a result of industrial accidents and occupational diseases, "In case an insured person obliged to get insured does not fulfill this obligation in accordance with this Law or conclude the compulsory insurance contract under conditions aggravating the situation of the insured person instead of conditions specified by law, the person responsible for compulsory insurance is liable before persons who are considered the beneficiaries of the insurance contract in the amount of insurance coverage specified by this Law".

However, a number of serious problems occur in case of industrial accident or occupation disease related with a person who is engaged in wage labor without a labor contract and receive wages in a non-formal way, including:

- in such a case, the employee is not insured and material responsibility is assumed by the employer;
- taking advantage of lacking formal labor relations, employers claim that they are not actually in labor relations with employees and refuse to provide any payments voluntarily;
- a victim whose health is damaged (or his/her heirs) is expected to prove a number of things when appealing to the court. First of all, the victim should justify (with evidences) that he/she actually works at the enterprise, then indicate the amount of the salary and generally, prove that the accident or disease occurred in that enterprise.

As you understand, one should go through a very complicated process. Having a glance at the court practice we can see that the problem is solved for the favor of the victim or heirs of the victim very seldom.

Even if the process is completed successfully, i.e. the court obliges the employer to provide compensation for the damage caused to the employee, the victim or the heirs are not able to get the compensation in most cases. The main reason is that such enterprises are established temporarily (for instance, an LLC established for the construction of a building), then those enterprises go bankrupt or artificially bankrupt, which impedes the compensation of damage caused.

Such cases are widely available in the country practice.

Dual (shadow) accounting system and problem related with compulsory insurance of employees

Monthly and lump sum compensations are calculated in proportion to the labor ability lost in an insurance case and in accordance with average monthly salary of the employee. In case the labor ability is completely lost, the compensation is considered in proportion to the average monthly salary. In this respect, the salary is one of the key indicators for the employee insured on industrial accidents or occupational diseases.

One of the most serious problems existing in the period before the transition to the system of compulsory insurance was related with lack of formal (avoidance from formalization) labor relations and presence of a big gap between the official wage and actual wage.

Unfortunately, the introduction of the system of compulsory insurance did not succeed to prevent any of the two problems. At present, the compulsory insurance does not cover an employee without a labor contract (or a civil law contract). The situation is a little bit different in firms exercising dual (black) accounting. Thus, the insurance coverage of employees is calculated in accordance with the official wage in work place where the difference between the actual wage and the official wage is greater for several times. Of course, all insurance payments are made in accordance with official wages in social insurance cases. For example, the official wage of an employee is 100 manat, but he/she actually receives 500 manat. So, the compensation will be calculated in accordance with the official wage proportionally to the labor ability lost in an insurance case.

Presence of such a case is one of the serious problems in the application of the system of compulsory insurance. There was a possibility for an employee to define the actual wage by court prior to the introduction of the system of compulsory insurance. Of course, it was not so easy to exercise this in practice. Anyway, this right was available and there were employees who used this right. Presently, there is no prospect of appealing to the court, because an insurance company has not responsibility for provision of salaries based on dual accounting.

Main groups not subject to compulsory insurance

Gaps in the legislation and problems in the application of this law lead to engagement of many workers in labor activity without compulsory insurance on industrial accidents or occupation diseases. These worker groups include:

- All actors of the formal labor sector who are not subject to compulsory insurance because of employer irresponsibility and carelessness. Having a look at the above figures we can see that employers have not provided employees with compulsory insurance, although there was no problem about that. This case has spread significantly even in budget organizations, including state bodies;
- All actors of the non-formal labor sector. They are:
 - household service workers (babysitters, cooks, personal drivers, gardeners, bodyguards, etc.);

- Public catering workers (restaurants, wedding palaces, tea-houses, pubs, etc.);
- Workers in the trade sector;
- Workers in agriculture and farms;
- Able-bodied persons who are owners of land shares and considered as employed in accordance with the Law on “Employment”;
- Persons who are not subject to compulsory insurance in accordance with law.

INDICATORS OF INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Systematic and consistent monitoring of industrial accidents and occupational diseases is not conducted in the country. Definition of the dynamics is only based on statistics of the registration of accidents. Even, it is impossible to refer to statistics in the definition of statistics of occupational diseases. As it mentioned above, such statistics are not available at all. The current figures are available in the relevant government agencies.

However, the monitoring of dynamics should be conducted on the basis of both official statistics and surveys and observations, and the reports drafted should be justified from scientific point of view.

According to the official data provided by the State Statistics Committee to the Citizens' Labor Rights Protection League, the number of the injured and dead (by person) in 2015 was as follows.

Types of economic activity	Number of the insured and dead (victims)	including:	
		Injured	Dead
Total in the country:	161	111	50
Agriculture, forestry and fishery	5	4	1
Mining industry	12	11	1
Processing industry	37	25	12
Electricity, gas and steam production, distribution and supply	13	8	5
Water supply, waste treatment and recycling	3	1	2
Construction	45	31	14
Trade; vehicle repair	4	4	-
Transport and warehousing	15	8	7
Tourism accommodation and public catering	-	-	-
Information and communication	2	2	-
Finance and insurance activity	-	-	-
Real estate operations	-	-	-
Professional, scientific and technical	-	-	-

activity			
Administrative and support service activities	-	-	-
Public administration and defence; social security	-	-	-
Education	4	4	-
Provision of medical and social services to the population	1	1	-
Recreation, entertainment and art activities	-	-	-
Provision of services in other fields	20	12	8

The Ministry of Health does not disclose any statistics regarding occupational diseases. It does not answer the requests.

Recommendation

Additional measures should be taken in relation with the application of the law on compulsory insurance on industrial accidents and occupation diseases.

Employers not subject to compulsory insurance on labor contracts recorded in the online information system of notification of labor contract should be identified and financial responsibility should be determined for them in the manner specified by law. The application of this mechanism (the legislation allows it) allows defining the violations and similar cases without going to the enterprise.

Serious problems still remain in registration and prevention of occupational diseases in the background of relevant activities in the field of registration and prevention of industrial accidents. The Ministry of Health does not fulfill the obligations arising from the Law on “Sanitary-epidemiologic welfare” and does not implement important activities aimed at the prevention of occupational diseases in this respect.

None of the state bodies, including the Ministry of Health have accurate statistics of occupational diseases. The “Regulations on the State Labor Inspection Service of the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan” do not include provisions on the registration and record of occupational diseases.

From this point of view, there is no single management in the field of formation of a policy and implementation of activities in registration, record and prevention of industrial accidents and occupational diseases.

The role of the State Labor Inspection Service should be increased in definition, prevention and record of vocational diseases.

It is necessary to create service areas on the basis of commercial activity in order to improve safe and healthy working conditions in industrial areas and other work places. It can be done by private organizations. However, the participation of the authority exercising state control in the formation such service areas. In this regard, such services areas can be established under the authority exercising the state control. The main activities of the service should include the preparation of documents on labor protection, the application of safety regulations (fire, safety of power lines and equipment, etc.), staff instruction, preparation and allocation of visual aids, consultations on the organization of a labor protection service in work places, improvement of staff knowledge and skills, etc. Currently, lack of such specialized services areas creates problems in the organization of activities in labor protection and reduction of industrial risks.