

PART FIVE

Benefit for Accidents at Work and Occupational Diseases – Chapter Two of Regulation 883/04

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1. INTRODUCTION

Articles 36-41, deal with the awarding of payments in the event of accidents or the contraction of occupational diseases. For the purposes of such awards, the competent State is the State in which the claimant was insured at the time of the accident or the contraction of the disease. Payment of the benefit is subject to the legislation of the competent State. In cases where periods of insurance or residence are required for qualification for such benefits, periods served in other Member States are reckonable.

2. RESIDENCE IN A MEMBER STATE OTHER THAN THE COMPETENT STATE – NOT A FRONTIER WORKER

As a general rule, an employed or unemployed person who lives or is staying in a different Member State from that in which (s)he is insured and who sustains an accident at work or contracts an occupational disease will receive benefits in kind from the institutions of the State in which (s)he resides or stays, and cash benefits from the competent State. The cash benefits can be provided by the institution of the State of residence if such an agreement exists between it and the competent State.

Example 1

X, an Irish citizen who has lived and worked for the last 15 years in the UK, sustains an accident at work that prevents him from returning to work for the foreseeable future. He decides to return to his parents' home in Dublin to recuperate. In this event he correctly applies to the UK Department of Work and Pensions for Industrial Injuries Disablement Benefit, as this is where he was insured at the time of the accident, and to his local health board in Dublin for a Medical Card, which all those receiving Occupational Injury Benefit in Ireland receive as benefit in kind.

Example 2

Y, who has lived and worked all her life in Ireland, contracts an occupational disease that prevents her from working and so she applies for and receives Occupational Injury Benefit from her local office. Y also receives benefit in kind awards, including Dental Benefit and Treatment Benefit. After a period, Y decides to move to southern Spain. In light of this, she will continue to receive her cash award in the form of Occupational Injury Benefit, but her benefit in kind awards will cease and she will have to apply to the Spanish authorities for such awards available under their national legislation.

3. PROVISIONS FOR FRONTIER WORKERS

Frontier Workers are also entitled to benefits in the event of an accident at work or the contraction of an occupational disease. These are payable by the competent state in accordance with its legislation as if that person was a resident of the state.

Benefits in kind will be received from the State of Residence or stay, in accordance with its legislation, as if they were insured under that legislation, at the cost of the competent state. Family of a frontier worker, shall receive benefits in kind from the competent state unless they are one of the following member states- Denmark, Spain, Ireland, Netherlands, Finland, Sweden and the United Kingdom, in which case the members of the family of a frontier worker shall be entitled to benefits in kind in the competent member State under the conditions that the benefits become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of stay.

Example

Y, who works in Ballyshannon, Co.Donegal and lives in Belleek, Co.Fermanagh, sustains an accident at work that prevents him from returning to work for the foreseeable future. In these circumstances Y applies to the local office in Ballyshannon for Occupational Injury Benefit and, given that he has sufficient insurance contributions is successful in his application. He is not entitled to a Medical Card or other benefits in kind due to those who reside in the state. Any benefit in kind awards will have to be sought from the Department of Health and Social Services and Public Safety of Northern Ireland.

If, on the other hand, Y did not have sufficient insurance contributions to qualify for Occupational Injury Benefit, payment of all benefits would be a matter for the Northern Ireland authorities. This would be the case for all persons claiming in Member States that have insurance-based benefits for accidents at work and occupational diseases.

4. COST OF TRANSPORT - ARTICLE 37

Should national legislation of the competent State provide, the member State in which a person is insured shall meet the cost of transporting a

person who has sustained an accident at work or is suffering from an occupational disease, either to his place of residence or to a hospital, shall meet such costs to the corresponding place in another member State where the person resides, provided that the institution gives prior authorisation for such transport, duly taking into account the reasons justifying it. Such authorisation shall not be required in the case of a frontier worker.

Should national legislation provide, the member State in which a person is insured shall cover the cost of transporting a body of a person killed in an accident at the work place to the place of burial and meet such costs to the corresponding place in another member State where the person was residing at the time.

5. BENEFITS FOR AN OCCUPATIONAL DISEASE WHERE THE PERSON SUFFERING FROM SUCH A DISEASE HAS BEEN EXPOSED TO THE SAME RISK IN SEVERAL MEMBER STATES – ARTICLE 38

When a person who has contracted an occupational disease has, under the legislation of two or more member States, pursued an activity which by its nature is likely to cause the said disease, the benefits that he or his survivors may claim shall be provided exclusively under the legislation of the last of those states whose conditions are satisfied.

6. AGGRAVATION OF AN OCCUPATIONAL DISEASE – ARTICLE 39

a) If the person concerned, while in the receipt of benefits, has not pursued, under the legislation of another member state, an activity as an employed or self employed person, likely to cause or aggravate the disease in question., the competent institution of the first member state shall bear the cost of the benefits under the provisions of the legislation which it applies, taking into account the aggravation.

b) If the person has pursued such an activity, the aggravation will not be taken into account. The competent institution of the second member state shall grant a supplement an amount equal to the difference between the

amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation is applies, if the disease had occurred under the legislation of that member state.