

# Accident at Work as the Basis for Compensation for Moral Damage to the Affected Employee

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**Abstract:** The article examines the institution of an accident at work as the basis for compensation for moral damage to the injured employee. Approaches to the definition of this concept both in international and national legal acts are considered, on the ground of which the author's view on this term is proposed. The procedure for notification of an accident by the employer to the State Labor Service of Ukraine and the procedure for its investigation by the special commission are studied. It is established that compensation for moral damage to an employee is possible in the presence of certain conditions provided for by law, which are general for the onset of liability in all cases of infliction of moral damage, including the one resulting from an accident at work. It is emphasized that all these circumstances must be properly proven, which is also confirmed by the materials of the relevant court practice, which is researched in the process of preparing the article.

**Keywords:** Accident at work, compensation, investigation, liability, labor protection, moral damage, suitable working conditions, violation of labor rights.

**Jel Classification:** J28; K31.

## 1. INTRODUCTION

The human being, his or her life and health, honor and dignity, inviolability and security shall be recognized in Ukraine as the highest social value. Everyone shall have the right to labor, including the possibility to earn a living by labor that he/she freely chooses or to which he/she freely agrees. At the same time, the state obliges employers to create proper, safe, and healthy labor conditions and to remuneration no less than the minimum wage determined by law (Law of Ukraine No. 254k/96-VR, 1996).

The right to proper, safe and healthy working conditions is realized through labor protection as a system of legal, socio-economic, organizational and technical, sanitary and hygienic, preventive medical measures and means aimed at preserving life, health and working capacity of a person in the process of work activity. The State policy in the area of labor protection is based on the principles of priority of employees' life and health, full responsibility of the employer for the creation of proper, safe and healthy working conditions; increasing the level of industrial safety by ensuring continuous technical control over the State of production,

technologies and products, as well as assisting enterprises in creating safe and harmless working conditions; complex solution of labor protection tasks on the basis of national, sectoral, regional programs on this issue and taking into account other areas of economic and social policy, achievements in the field of science and technology and environmental protection; social protection of employees, full compensation for damage to persons having suffered from accidents at work and occupational diseases; establishment of uniform labor protection requirements for all enterprises and actors of economic activity, regardless of the forms of ownership and types of activity; adaptation of labor processes to the capabilities of the employee, taking into account his (her) health and psychological state; the use of economic methods of labor protection management, State participation in the financing of labor protection measures, attraction of voluntary contributions and other income for these purposes; informing the population, conducting professional and advanced training of employees on labor protection issues; ensuring the coordination of the activities of the State authorities, institutions, organizations, and citizens' associations that solve the problems of health care, hygiene and occupational safety, as well as cooperation and consultations between employers and employees (their representatives), between all social groups when making decisions on labor protection at the local and State levels; using the world experience of work organization to improve conditions and increase labor safety on the basis of international cooperation.

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Suitable working conditions in the technical sense should be considered working condition of the machines, lathes and devices; proper quality of materials and tools necessary for the performance of work and their timely provision; timely supply of production with electricity, gas and other energy sources; timely submission of technical documentation. Healthy and safe working conditions is compliance with safety rules and regulations, required lighting, heating, ventilation, elimination of harmful effects of noise, radiation, vibration and other factors that negatively affect the health of workers, etc.

However, unfortunately, the Ukrainian economy suffers significant losses due to industrial injuries and occupational diseases, because the desire of employers to save on quality equipment, timely and proper maintenance of machinery, utilities or the introduction of modern technologies in production leads to injuries and loss of health, and sometimes – the lives of their employees, which has a very negative effect on labor productivity as a whole. Indeed, in 11 months of 2021 (before the start of a full-scale war in Ukraine), 255 (over 74%) fatal accidents occurred due to organizational reasons. In the 2<sup>nd</sup> place are 47 cases of psychophysical, man-made, natural, environmental and social causes (13.7%). Technical reasons take the 3<sup>rd</sup> place (42 cases, 12.2%) (Labor Protection Service, 2021).

It should be noted that an accident at work is the basis for compensation for moral damage, according to the provisions of Article Art. 237-1 of the Labor Code of Ukraine. Therefore, the purpose of our research is to study this institution in terms of compensation for moral suffering to the injured worker.

## 2. MATERIALS AND METHODOLOGY

At the dissertation level, the problem of compensation for moral damage was considered by Shymon (1998), who analyzed this institution as a means of protecting subjective civil rights.

Paliuk (2000) also devoted his scientific work to this problem. In particular, he examined the legislation of Ukraine in the specified area and investigated the main problems that arise in the process of its application, studied foreign experience on this issue, proposed the system of general and separate criteria for assessing moral damage and determining its amount.

Hryschuk (2002) improved the definition of the concept of moral damage, determined the degree of compliance of the legislation of Ukraine on this issue with the relevant acts and precedent law of the Council of Europe. In addition, the scientist highlighted the system of criteria for calculating the amount of compensation for moral damage.

The dissertations by Chernadchuk (2001) and Soroka (2021) address the issue of compensation for moral damages in labor law. In particular, the former provided the author's definition of this term in labor law, considered the conditions for holding the employer accountable, and also established general, separate criteria for assessing such damages, as well as criteria affecting the amount of compensation by increasing or decreasing it.

Soroka studied the problems of compensation for moral damages caused as a result of accidents at work and occupational diseases. The author proposed her own "methodology for calculating the monetary equivalent of moral damage caused to an employee as a result of industrial injury and occupational disease, which is based on the following criteria: (1) physiological characteristics; (2) professional characteristics; (3) degree of severity of occupational disease or industrial injury; (4) the degree of the employee's disability; (5) the duration of the employee's treatment for the purpose of restoring work capacity".

A number of general and special scientific methods of cognition have been applied for the comprehensive disclosure of the raised issue, the achievement of an objective scientific result and the formulation of relevant conclusions and recommendations. The basis for the scientific research is the dialectical method, which contributed to the comprehensive study of the elements of the studied institution as the basis for compensation for moral damage caused to an employee in their interrelationship and interdependence, which made it possible to reveal the current state of the problem under consideration.

The functional method was applied when clarifying scientific approaches to determining the concepts of accident at work, as well as moral damage, enshrined in the relevant legal instruments and proposed by the scholars.

Formal and logical method was chosen in the process of critical analysis of the current national labor legislation in matters related to the legal regulation of establishing and proving moral damage caused to employees as a result of accidents at work.

Analysis method helped to examine judicial practice on the presented topic as an empirical basis for scientific research.

The method of comparativistics is used to analyze the foreign experience of legal regulation of compensation to victims of moral damage as a result of accidents at work.

Logical method made it possible to inquire into the process of occupational injury investigation so that it can become the basis for moral damage reimbursement.

Systematic method was helpful in identifying the legal conditions for the onset of liability in causing moral damage.

## 3. RESULTS AND DISCUSSION

### 3.1. Approaches to the Concept of an Accident at Work

According to the ILO resolution "On statistics of industrial injuries", an accident at work is an unexpected and unplanned event, including actions of a deliberate, violent nature, which occurs as a result of work or related activities, resulting in injury, illness or death (International Labor Organization, 1998). Thus, the term ILO does not limit the concept of an accident to the influence of a dangerous or harmful factor, but connects it with the process of labor activity, which more fully reveals the picture of industrial injuries.

According to the methodology of the European Statistics of Accidents at Work, an accident at work is defined as a dis-

crete event in the work process that results in physical or mental harm. The phrase "in the course of work" means "while engaged in professional activity or during the time spent at work". This methodology excludes, for example, accidents on the way to work or home from work, as it is limited to those cases that occur exclusively at the workplace or during the professional activity performance (Eurostat, 2013).

The definition of this concept is also enshrined in Ukrainian legal acts, in particular, Part 1, Art. 1 of the Law of Ukraine "On Mandatory State Social Insurance" (Law of Ukraine No. 1105-XIV, 1999), where accident is understood as a time-limited event or a sudden impact on the worker of a hazardous production factor or environment in the course of his work, resulting in health damage or death.

The Resolution of the Cabinet of Ministers of Ukraine of April 17, 2019 "On approval of the Procedure for the investigation and accounting of accidents, occupational diseases and accidents at work" (Resolution of the Cabinet of Ministers of Ukraine No. 337, 2019) states that an accident is a time-limited event or a sudden impact on an employee of a dangerous production factor or environment, which occurred in the course of his employment or in transit (on the vehicle of the enterprise or on behalf of the employer), causing harm to health, in particular from injury, trauma, including as a result of bodily injuries, acute occupational disease (poisoning) and other poisonings, receiving sun or heat stroke, burns, frostbite, as well as in case of drowning, electric shock, lightning and ionizing radiation, receiving other lesions as a result of an accident, fire, natural disaster (earthquake, landslide, flood, hurricane, etc.), contact with representatives of the animal and plant world, leading to the employee's loss of working capacity for one working day or more or the need to transfer him to another (light) work for at least one working day, disappearance, etc.

Besides, this regulatory act establishes the circumstances under which an accident is recognized as being related to production. They are, in particular: 1) performance of labor duties in accordance with the internal labor regulations of the enterprise (institution, organization) by the victim, including on a business trip; 2) residence of the victim at the workplace, on the premises of the enterprise (institution, organization) or in another place during the performance of employment (job) duties or tasks of the employer from arrival to departure, which fixed in accordance with the rules of the internal work schedule of the enterprise, including working hours and overtime; 3) preparation and adjustment after completion of production tools, protective equipment, clothing, as well as implementation of measures regarding personal hygiene, movement of an employee for this purpose within the enterprise before and after work; 4) performing tasks according to the written order of the employer during non-working hours, vacations, on weekends, holidays and non-working days; 5) performance by the victim of actions in the interests of the enterprise, which are not part of his employment (job) duties; 6) sudden death as a result of acute cardiovascular insufficiency, ischemic stroke, cardiovascular insufficiency or impaired cerebral circulation during underground work (mining, construction (reconstruction, overhaul), technical re-equipment of mines, underground chan-

nels, tunnels and other structures, underground exploration) or after lifting to the surface with this sign, as confirmed by medical report; 7) sudden deterioration of the victim's health, injury or death during the performance of work duties as a result of exposure to harmful and dangerous factors of the production environment, severity and tension of the work process, as confirmed by medical report, or in case the victim has not undergone a compulsory medical examination in accordance with the law, and the work performed is contraindicated to the victim according to the medical opinion; 8) traveling to or from work on a vehicle belonging to the enterprise or on another vehicle provided by the employer in accordance with a contract with another institution (organization), etc.

### **3.2. Process of Investigation of Accidents at Work**

In Ukraine, the requirements of Convention 155 of the ILO "Convention on Occupational Safety and Health and the Industrial Environment" are fulfilled (Clauses c) and d), Article 11) regarding:

- reports on industrial accidents and occupational diseases,
- submission of annual statistical data on industrial accidents and occupational diseases,
- investigations of industrial accidents and occupational diseases (International Labor Organization, 1981).

Therefore, in the case of an accident at work, the employer is obliged to notify the territorial body of the State Labor Service of Ukraine by means of communication within two hours, and also to provide a report on the accident on paper no later than the next working day. Notification of an accident is provided at the place of occurrence of the accident.

The State Labor Service conducts its activities in accordance with the Procedure for investigating and recording accidents, occupational diseases and accidents at work, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 337 (2019).

Special investigation commission (hereinafter – the Commission) is formed by the State Labor Service and/or its territorial body. After inspecting the place where the accident occurred; studying the documents and materials available at the enterprise regarding it; determining the type of event that led to it; identifying the compliance of working conditions and its safety with the requirements of labor protection legislation; carrying out laboratory research, tests, technical calculations, expertise, etc.; clarification of the circumstances and causes of the accident; identification of persons who violated the requirements of regulations on labor protection, etc., the Commission is obliged to draw up N-5 accident investigation report in triplicate, as well as six copies of the N-1 certificate if the accident was found to be related to production, or Act on the form of the NVP if the accident is found to be unrelated to the work, and submit them to the employer for approval.

The employer should consider and approve acts of form N-5, N-1 or NPV reports within a day after the end of the investigation, and for cases that occurred outside the enterprise – within a day after receiving the necessary materials.

The decision to recognize an accident and/or an acute occupational disease (poisoning) as related or not related to production is made by the Commission by a simple majority vote. In case of an equal number of votes of the Commission members, the vote of the Chairman of the Commission is decisive.

### 3.3. Definition of Moral Damage

As already mentioned above, an accident at work is the basis for compensation for moral damage. According to previous legislation, reimbursement to the insured and their family members was carried out by the Social Insurance Fund for accidents at work and occupational diseases of Ukraine. However, in 2007, as a result of the relevant amendments, this provision was excluded, and the law imposed the obligation to compensate the moral damage was assigned to the employer.

Thus, according to Article 237-1 of the Labor Code of Ukraine (Law of Ukraine No. 322-08, 1971), compensation for moral damage to an employee by the owner or authorized body is carried out in case the violation of legal rights led to moral suffering, loss of normal life ties and requires the worker to make additional efforts to organize his (her) life. The procedure for reimbursement is determined by legislation.

Moral damage is:

- inflicting physical pain and suffering, which a natural person suffered in connection with injury or other damage to his (her) health;
- mental suffering experienced by such a person due to illegal behavior towards him (her), his (her) family members or close relatives;
- mental suffering inflicted on an individual by destruction or damage to his (her) property;
- degrading honor and dignity of an individual, as well as the business reputation of an individual or legal entity.

Moral suffering is a negative psychological experience of an individual, which manifests itself in the form of such feelings as fear, shame, humiliation, or a state of mental pain, anxiety, depression or any other psychologically unfavorable state (Erdelevskiy, 2004, p. 7).

As noted by Holubev (2001, pp. 103 – 104), in fact, any illegal act causes moral damage to the victim, which primarily means mental suffering caused directly by the offense. It is not so easy to prove that the disease, as well as the accompanying physical pain and suffering are related precisely to the moral suffering from the committed offense. It is quite likely that in this case the conclusions of a forensic medical, forensic psychiatric, forensic psychological examination may be needed.

### 3.4. Conditions for the Onset of Liability for Causing Moral damage by an Accident at work: Legislative Provisions and Court Practice

As one can see from the provisions of the aforementioned Labor Code (Law of Ukraine No. 322-08, 1971), compensation for moral damage to an employee is possible if there are

certain conditions provided for by law, which are general for the onset of liability in all cases of causing moral damage:

- 1) the fact of causing (presence of) moral damage. It includes breach of any subjective right that arose on the basis of a law, by-law, agreement, employment contract, other contracts between the parties to the employment relationship, and is valid. Moral damage shall be deemed to have been caused if the person and the perpetrator of such damage are in an employment relationship or subject to labor law; it arose as a result of violation of labor rights by the employer; the employee suffers moral losses in the form of moral suffering, i.e. negative changes that occur in his (her) mind due to awareness of the violation of his (her) labor rights, and these negative changes have led to loss of normal life relationships, and require additional efforts to organize his (her) life;
- 2) illegal behavior of the employer, which occurs in the event failure to fulfill his (her) obligations to ensure the legal labor rights of the employee, as well as in violation of the legal labor rights of the employee, if this violation leads to mental, mental or physical suffering of the latter;
- 3) causal link between the employer's illegal act and the moral damage caused to the employee, i.e. the owner's failure to fulfill obligations to ensure legal labor rights of the employee or their violation led to causing moral damage to the latter;
- 4) fault of the employer – the mental attitude of the owner to the violation of the legal rights of the employee and its consequences, expressed in the form of intent (direct or indirect) or negligence (simple or rude).

We emphasize that all these circumstances must be properly proven, which is also confirmed by the materials of the relevant court practice. Let's consider a couple of relevant decisions.

For example, according to the materials of case no. 182/5756/21 of the Nikopol city district court of the Dnipropetrovsk region (2021), the plaintiff PERSON\_1 appealed to the court with a claim for compensation for moral damage caused to the employee as a result of harm to her health and requested the defendant to recover the moral damage in the amount of UAH 60,000.00 alleging an accident in the course of her employment resulted in bodily injuries.

The justification of the lawsuit states that as of February 14, 2004, PERSON\_1 worked as a pipe cutter at Nikopol Stainless Pipe Plant CJSC. On the same day, as a result of an accident, she suffered health damage in the form of traumatic amputation of the fifth finger nail phalanx of the right hand/ According to the results of the investigation carried out by the competent commission, a decision was made to recognize this accident as one related to production. This fact is confirmed by the N-1 act No. 2 "About an accident at work", N-5 report and employment record in the name of the claimant.

In the statement of claim the plaintiff's representative noted that in connection with the above-mentioned accident, PERSON\_1's usual way of life has been permanently disrupted since the age of 45. The injury and subsequent treatment

were accompanied by severe physical pain. Subsequently, the plaintiff underwent long-term medical treatment with complaints of pain in the injured area. However, the treatment had a short-term effect. Despite the considerable time that has passed since the injury, the effects of the injury haunt the plaintiff and cause her physical suffering to this day. Currently, the plaintiff feels pain and limiting the volume of movements in the right hand; she is concerned about impairment of the flexion/extension function of the latter, sense of numbness in it. The plaintiff, as a result of the mentioned injuries, is unable to properly realize herself in the professional sphere, and depends on the consequences of the received mutilation. This causes considerable discomfort and suffering to the claimant, which negatively affects her daily life and the life of her family. As a result of constant pain, especially at night, the plaintiff's sleep is disturbed, which does not allow her to rest normally, leads to a decrease in attention during the day, to a constant feeling of fatigue. Damage to health became the reason for the need to involve additional efforts to organize her life; the loss of working capacity led to failure to realize the intentions in the professional sphere, to work fully, limits the plaintiff's ability to devote time to her intellectual and spiritual development, to pay attention to loved ones and relatives. The listed negative phenomena in the plaintiff's life convincingly prove that she suffered moral damage as a result of the injury and permanent loss of professional capacity, which is a consequence of the employer's violation of labor protection legislation. The right to compensation for moral damage appears from the date of establishment of permanent disability for the first time by conclusion of the medical and social expert commission.

Based on the circumstances of the case, the court, taking into account the arguments of the plaintiff's representative that the plaintiff lost 10 per cent of her professional capacity to work indefinitely as a result of an employment injury, which indicates the impossibility of improving her health in the future, and taking into account the nature of non-property expenses, considers UAH 60,000 sufficient, fair, proportionate compensation for moral damage.

According to the materials of another case No. 235/3191/19 (2021), the plaintiff noted that her son was in labor relations with LLC and held the position of a sales agent. On May 12, 2017, while he was performing his work duties, he had an accident at work, namely a traffic accident, as a result of which he died.

The woman also noted that in connection with the unexpected death of her son, she suffered moral damage, which lies in mental suffering, because she lost the dearest person, who was only 22 years old at the time of his death. Since the death of her son, she has lost confidence in the future, since he was her support in life. In addition, she has to make a lot of effort to organize her life, which is primarily related to household organization.

Taking into account the above, the plaintiff requested compensation for moral damage in the amount of UAH 500,000.

The decision of the court of first instance partially satisfied the claim. Moral damage in the amount of UAH 80,000 was collected from the LLC in favor of the plaintiff.

The appellate court didn't change the decision of the court of first instance.

The Supreme Court concluded that under the established circumstances of the case, the cause of the accident was recognized as failure to perform occupational safety, including by the victim; therefore, there are legal grounds for compensating for moral damage.

Having established that the accident occurred in the course of performing employment duties as a result of the employer's failure to provide safe and harmless working conditions, the Supreme Court noted that the courts of the first and appellate instances correctly concluded on the existence of legal grounds for compensating the plaintiff for moral damage caused by the death of her son.

It was stated, in particular, that the permanent control over employees' compliance with the requirements of legal instruments on labor protection is entrusted to the owner or the authorized body. Thus, the use of a vehicle with the permission of the enterprise imposes on the latter the responsibility to control the car's safe operation. According to the act N-1 No. 1 on the accident related to production, the cause of the accident was a violation of safety requirements when using the vehicle. Taking into account the type of the employee's activity with a sufficient degree of hazard and dangerous working conditions, which has led to an industrial risk in the form of health damage resulted in the death of the employee while performing his duties, the employer's failure to provide safe working conditions was the cause of the accident at work and the subsequent death of the plaintiff's son.

In accordance with the above, the Supreme Court refused LLC to cancel the decisions of the court of first instance and appellate court due to its lack of guilt in the death of the plaintiff's son.

#### **4. CONCLUSIONS**

So, based on the above, we can draw the following conclusions. An accident at work is an unforeseen event that can happen on the territory of the enterprise (institution, organization) or outside it during the performance of the employee's work duties, and leads to physical and/or moral damage or death of the latter.

An accident is the basis for compensation for moral damage, which, according to the provisions of Art. 237-1 of the Labor Code of Ukraine is reimbursed by the employer if the violation of a worker's legal rights results in mental suffering, loss of normal life relationships and requires additional efforts to organize his (her) life.

Compensation for non-pecuniary damage to the employee is possible if there are certain conditions provided for by law, which are common for liability to arise in all cases of non-pecuniary damage: 1) the fact of causing (presence of) moral damage; 2) illegality of the employer's actions; 3) causal connection between the employer's illegal action and the moral damage caused to the employee; 4) fault of the employer.

All these circumstances must be properly proven; one application based on the content of Art. 237-1 of the Labor Code of Ukraine is not enough to recover moral damages from the

owner, which is also confirmed by the materials of the relevant court practice.

## CONFLICT OF INTEREST STATEMENT

The authors declare that they have no conflict of interest.

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