

Employer's liability for damage caused to his employee

The employer's liability for damage caused to his employee is always objective liability. The culpable action is not a prerequisite of the liability. The employer is liable even if he has breached no obligation. The liable subject is not necessarily identical with the subject who caused damage. The employer may be liable for the effect of the event which caused damage.

The Czech Labour Code distinguishes:

General liability

Liability in connection with averting damage

Liability for damage to employee's things

Liability for industrial injury and occupational disease

The compensation for damages

The employer shall compensate the damage in money if he didn't restore the things into its original condition.

In all cases the employer shall compensate the damage in full amount (except damage to employee's things which the employee doesn't usually bring to work and the employee didn't pass to the employer for safekeeping). When the damage was caused intentionally the employee may also require the compensation for other damage.

The employer who has compensated to his employee the damages may require the reimbursement of the compensation from the subject who caused the damage. The compensation is ruled by the Civil Code.

1. General Liability

This type of liability is general. When the conditions for a special type of liability are not met the employee may claim this type. It is governed in the section 265 of the Labour Code and includes two situations:

1. The employer is liable for damage arisen to his employee during performance of working tasks or in direct connection with them through a breach of legal obligation or intentional action *contra bonus mores* (good moral).

The conditions are:

- Damage arisen to the employee during performance of working tasks or in direct connection with them. The damage may be caused by another subject than the employer,
- Breach of legal obligation or intentional action *contra bonus mores* (good moral),
- Causal link between the damage and breach of legal obligation or intentional action *contra bonus mores* (good moral).

The employee's action at the moment of creating damage is decisive (performance of working tasks or direct connection with them).

2. The employer is liable for damage caused to his employee by other employees who breached their statutory duty in performance of working tasks and who are acting in the employer's name.

The conditions are:

- Damage caused to the employee,
- Breach of legal obligation by an employee acting in the employer's name,
- Causal link between the damage and breach of legal obligation.

The acting of the injured employee at the moment of creation of damage is not important.

The employer is not liable for damage to the employer's means of transport which the employer used in performance of working tasks or in direct connection with them without the employer's consent. He is not also liable for damage to the employee's tools equipment or other things which the employer used in performance of working tasks or in direct connection with them without the employer's consent.

2. Liability in Connection with Averting Damage

The employee is obliged to prevent damage. Where there is a risk of damage he shall bring it to the attention of a superior employee. If there is some impending damage at the employer's property the employee has a duty to take steps to avert the damage. He is not liable for damage caused by such an action. It is possible that during meeting this obligation the employee suffers damage. The employer is also liable for damage caused when averting danger threatening to life or health where the employer would have been liable for damage. The employee is entitled to the compensation for material damage and to reimbursement of effectively exposed costs on condition that:

- he has not intentionally caused damage
- he has acted in a manner appropriate to the circumstances.

3. Liability for Damage to Employee's Things

The employer is liable for damage to employee's things if:

- These are the things which the employee usually brings or wears to work and
- The employee left the things in employer's premises or in a place designate.

If these are things which the employee usually doesn't bring or wear to work the employee is only liable if he accepted them for special safekeeping. If he didn't do so he is liable only in the amount of CZK 10, 000.

4. Liability for Industrial Injury and Occupational Disease

The employee is liable even if he fulfilled all the duties. This is the liability for result.

The conditions are:

- Damage caused to the employee (or his surviving when the employee died because of industrial injury or occupational disease),
- The legal event (industrial injury or occupational disease)
- Causal link between the industrial injury or occupational disease and the damage.

The Act on Employee's Accident Insurance will govern this liability. It was supposed to enter into force the 1st January 2008. But the date was postponed till 2010. Now liability for industrial injury and occupational disease is governed by the transitory provisions of the Labour Code.

Industrial injury means damage to employee's health occurred:

- Independently of his will
- Caused by a short-term, sudden and violent impact of external forces
- During the performance of working tasks or in direct connection with them (or for the performance of his working tasks)

Occupational disease is a disease included in the list of occupational diseases (the annex of Government Decree no 290/1995 Coll.) if they are developed in specified conditions. The employer is liable if the employee was working in his undertaking under the conditions from which the disease arose.

It is possible for the employer to be relieved his liability fully or partly on conditions laid down in the Labour Code.

The employer may free himself of his liability fully

1. If the employee violated the rules governing the occupational safety and health at work.

The conditions are:

- The employee had been acquainted with them.
 - Their knowledge and observation was systematically required and checked-up.
2. The employee caused the damage due to drinking alcohol or abusing other substances and the employer couldn't prevent the damage

And such fact was the only cause of damage.

The employer may free himself of his liability partly when:

1. There are the same facts but they are only one of the causes of damage.

2. The employee acted contrary to normal behaviour. He breached no rule but he acted irresponsibly in view of his qualification, and experience.

The employee who suffered damage to health is entitled to:

Loss of earnings - during the incapacity to work

- after the termination of incapacity to work

Pain and lesser employability

The purposefully incurred costs to medical treatment

Material damage

When the employee dies due to industrial injury or occupational disease the employer shall compensate to:

- The purposefully incurred costs to medical treatment
- Adequate costs connected with employee's funeral
- Costs for survival's maintenance
- A sum of money for survivors
- Material damage