

Workers' Compensation in Japan

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Abstract

Each country has its own compensation scheme, different from other countries, reflecting historical, social and other backgrounds. The author considers the availability of compensation may be an indicator of the “sense of human rights” within a country. Also, to obtain justice for asbestos victims and their families should be a common aim for all of us.

Asbestos litigation cases in Japan are very rare. Almost all compensated cases are employees' cases and are awarded benefits from the Workers' Accident Compensation Insurance scheme, which is administered by the Government.

The Japanese official schedule of occupational diseases includes asbestosis (as a type of pneumoconiosis), asbestos-related lung cancer and mesothelioma. Recently, benign asbestos pleural effusion and diffuse pleural thickening also became compensable diseases on a case by case basis. Asbestos-related disease victims can receive Medical Benefit (100% of the average wage), or Absence Benefit (80%) if he/she cannot work, without any time limitation (i.e. until cured or death). After a victim's death, dependents can claim Survivors Benefit in the form of a pension. Even if a worker suffers from an asbestos-related disease after departure or retirement from the job in which he/she had been exposed to asbestos, he/she can receive compensation benefits. And, even if an employer hasn't paid insurance premiums, a worker can receive compensation benefits. However, it is estimated that the proportion of compensated cases with respect to all eligible cases remains at the level of only a few percent, in Japan.

Under-reporting, under-compensation and under-diagnosis are common problems for all countries. In addition, in many developing countries, a victim and his/her family cannot receive workers' compensation after his/her departure or retirement from the asbestos-exposed job, despite the fact that asbestos-related cancers often appear long after exposure. This largely explains the invisibility of asbestos-related cancers in developing countries.

Initially, the author will present a comparison of workers' compensation for asbestos victims and their families in Japan and Europe.

Case Study – Asbestos-Related Diseases

I have a report entitled “Occupational Diseases in Europe – comparative survey conducted in 13 countries” (Eurogip, 2000). I would like to introduce the Workers’ Accident Compensation Insurance scheme in Japan in line with a case study given in this report and to compare the Japanese system with European systems.

The given case:

A man aged 50 was affected by asbestosis complicated by a lung cancer. 20 years ago, he had worked for five years in a firm that produced car brakes containing asbestos; he is also a former smoker. His gross wage was 2,500 euros/month (30,000 euros/year). He had to take leave to undergo surgery (a lung ablation), followed by major chemotherapy treatment. After eight months away from work, he was incapable of resuming his job. He died a few months later leaving behind him a widow, four children from a first marriage (aged 23, 20, 18 and 17, all students), and two children from the second marriage (aged four and one).

Filing a claim

A victim or surviving dependant must submit the application forms for workers’ compensation benefits (in the case above: Medical, Absence, Surviving, and Funeral Expenses) to the Labour Standards Inspection Office (LSIO) that has jurisdiction over the victim or dependant’s address or the address where the car brake firm is/was.

The deadlines for submitting the application forms are two years for Absence and Medical Compensation Benefits, and five years for Disability and Survivors Compensation Benefits and Funeral Expenses.

Hospital or clinic

A doctor who suspects an occupational origin of an injury/disease isn’t obliged to notify the injury/disease to a competent authority such as the LSIO in Japan.

All application forms for workers’ compensation insurance benefits have columns for a doctor’s certification. The application form for Medical Compensation Benefit is submitted to the LSIO via a hospital or clinic, thereby a victim can receive medical treatment free of charge. The opinion of a victim’s doctor has a real influence on the recognition of injuries or diseases as being occupational, so help from the doctor is crucial.

However, generally doctors and other relevant staff of the hospital or clinic are not well

informed about the workers' compensation system or about occupational medicine, and tend to avoid troublesome jobs. As for lung cancer, doctors always ask, "Do you smoke?" But rarely ask, "Have you ever been exposed to asbestos?"

We explain to them about the system, the victim, and the work history, and ask for their help. If they still won't help and/or the medical treatment they recommend wouldn't be appropriate for a victim, we might recommend that the victim changes to another hospital or clinic, but this would be impractical in the case above.

Employer

In this case, the employer in question is the employer of the car brake firm where the victim worked for five years 20 years ago.

Article 23 of the Enforcement Regulations of the Workers' Accident Compensation Insurance Law (WACIL) prescribes that "the employer must promptly certificate the necessary information when a victim or dependant asks." This clause is not subject to punishment. In reality employers often refuse the certification and other assistance.

The LSIO can receive application forms without employer certification if the employer refuses to supply it.

If the firm has closed, we must find two ex-fellow workers to prove (with written certifications) that the victim had worked for the firm.

The amounts of Absence, Disability, and Survivors [Dependants] Compensation Benefits and Funeral Expenses are calculated on a sliding scale based on gross wages that the victim earned in the last three months at the company. Concerning the benefits paid in the form of pensions, bonuses that the victim had earned in the last year at the firm (20 percent of the amount of all bonuses, but capped at 1.5 million yen) are added in the calculation. If the information is not available the chief of the Prefectural Labour Office decides. Sliding scale rates are revised by the Minister of Health, Labour, and Welfare (MHLW) annually.

It is simpler if the employer supports the case to be recognised as an occupational disease, and offers relevant data, information, etc. So we negotiate with the employer to do so.

Labour Standards Inspection Office

The LSIO that received an application form for workers' compensation starts the necessary investigation. The LSIO will:

- hear from the victim, families and fellow workers about the work, exposure to hazards, health situation and diseases (including diseases other than the one in question) of the victim and fellow workers,

- hear from the employer about the business and victim, the results of work environment measurement and health examinations, etc., and request submission of the relevant data (information, drawings and photos, etc.), and,
- ask the victim's doctor to submit written opinions about the diagnoses, clinical and pathological findings, correlation between the victim's work and the diseases, etc., and chest X-ray, laboratory results, and any other relevant data.

Then the LSIO asks for opinions from their medical advisor(s), and if necessary consults with the Prefectural Labour Office and the MHLW. Finally the LSIO decides whether (all or part of) the compensation benefits should be paid or not.

We submit to the LSIO written opinion(s) based on the data obtained from the victim him/herself, families, fellow workers, employer, victim's doctor(s) and other sources to prove that the case is eligible for compensation benefits. If necessary we ask medical, legal, and other specialists to write independent opinions.

We also often meet officials of the LSIO – calling for recognition of occupational diseases (OD).

Q.1: Are they occupational diseases?

Ans. – Japan: *Yes*. Both diseases are included in the list of ODs. Asbestosis is covered by pneumoconiosis, which is a prescribed occupational disease, and lung cancer due to asbestos exposure is listed as an occupational cancer.

The recognition criteria for asbestos-related diseases are set up, and now under review. Both diseases are considered compensable in the light of these criteria. If a victim has only lung cancer without pneumoconiosis, the recognition criteria requires a 10-year period of occupational asbestos exposure.

Ans. – Europe: *Yes* for both diseases in eight countries. In four countries, *Yes* for asbestosis, but there are reservations, such as lung cancer following asbestosis. In Sweden which has no list of ODs, *Yes* for both diseases if proved.

Q.2: Take account of the fact that the victim is a smoker?

Ans. – Japan: *No* for both occupational diseases.

Ans. – Europe: *No* for both diseases in 11 countries. In Sweden, *Yes* for both diseases. In Italy, *No* for asbestosis, and *Yes* for lung cancer.

Q.3: What is the reimbursement rate of medical expenses?

Ans. – Japan: *100 percent*. All expenses of necessary medical treatments are granted for Medical Compensation Benefit.

Ans. – Europe: *100 percent* in 12 countries. In Sweden, the victim has to pay 8.9 euros/day + 200 euros for chemotherapy.

Q.4: What is the Compensation for temporary disability for eight months sick leave?

Ans. – Japan: *80 percent* of the daily average wage per day of absence is paid under Absence Compensation Benefit up to death (eight months + a few (?) months (even after retirement) except for the first three days. Regarding the first three days, the firm producing asbestos car brakes must pay 60 percent of the daily average wage per day under the Labour Standards Law. The average wage is calculated on a sliding scale based on gross wages that the victim earned over the last three months at the car brake firm. If the monthly average wage was 2,500 euros, the Absence Compensation Benefit is 2,000 euros/month (16,000 euros for eight months). The Workers' Compensation Insurance scheme doesn't adopt a concept like "temporary disability."

Ans. – Europe: *from 14,000 euros* in Portugal to 20,000 in Finland, and 5,130 euros in Greece.

Q.5: What is the Permanent disability rate?

Ans. – Japan: Japan's Workers' Compensation Insurance scheme adopts no concept like "permanent disability rate."

Ans. – Europe: 50-100 percent (100 percent in seven countries).

Q.6: Is there Compensation for permanent disability?

Ans. – Japan: The Enforcement Regulations for the WACIL has a table of disability grades for the Disability Compensation Benefit, but this benefit is paid where a disability corresponds with any item in the table remaining after one injury/disease healed. Where medical treatment is still needed, and a worker is unable to work/obtain wages due to the medical treatment, the Absence Compensation Benefit should be paid, regardless of the length of period of absence (even after retirement). The Absence Compensation Benefit is 80 percent of the average wage, so if the monthly average wage was 2,500 euros, benefit would be 2,000 euros/month.

Heals:

According to the government, the term "heals" refers to a situation where a symptom has stabilised and it is expected that any additional generally-accepted medical treatment will produce no positive results. This situation is called "consolidation." Accordingly, consolidation does not necessarily mean that physical conditions are completely restored. This abnormal interpretation and its application often cause disputes.

Ans. – Europe: *Yes.* From 1,667 euros/month in Germany to 3,375/month in Italy, and 710 euros/month in Greece.

Q.7: Are funeral expenses paid?

Ans. – Japan: *Yes.* 5,000 euros. Funeral Expenses are 315,000 yen plus 30 days of the daily average wage; where this totals less than 60 days of daily average wages, 60 days of daily average wage.

Ans. – Europe: *Yes.* From 1,103 euros in France to 3,865 euros in Germany, 30 euros in Spain, and 650 euros in Greece.

Q.8: What is the level of compensation for widows and children?

Ans. – Japan: The amount and type (pension or lump-sum) of the Survivor [Dependant] Compensation Benefit is determined by the number of dependants and other factors. If a widow was living on the victim's income when he died, and if all the children depend on the same livelihood as the widow, 19,167 euros/year (Survivors [Dependants] Compensation Pension) and 25,641 euros (Survivors [Dependants] Special Allowance, lump-sum payment) will be paid to the widow.

Up to four children aged under 18 are taken into account to calculate pensions, but don't have individual rights to receive benefits. The amount of the Survivors [Dependants] Compensation Pension for five dependents (a widow and four children) is 245/365 (67 percent) of the victim's annual wage and this rate is the maximum amount of the Survivors [Dependants] Compensation Pension.

Ans. – Europe:

examples:

In Italy, 15,000 euros/year for the widow and 2,500 euros/year each for the six children (30,000 euros/year, 100 percent of the victim's annual wage).

In Spain, pension of 13,500 euros/year to be shared between the two “widows” (i.e. one widow and one ex-wife) according to the duration of the marriages, and 3,300 euros/year each for the four children aged under 21 (26,700 euros/year, 89 percent of the victim's annual wage).

In Sweden, 6,400 euros/year for the widow, 3,772 euros/year each for the two youngest children of a first marriage, and 3,772 euros/year each for two children of the second marriage (21,488 euros/year, about 72 percent of the victim's annual wage).

In Greece, 3,120 euros/year for the widow and 900 euros/year each for the six children (8,520 euros/year, about 28 percent of the victim's annual wage).

In Denmark, the widow receives a pension of 9,000 euros/year for three to five years

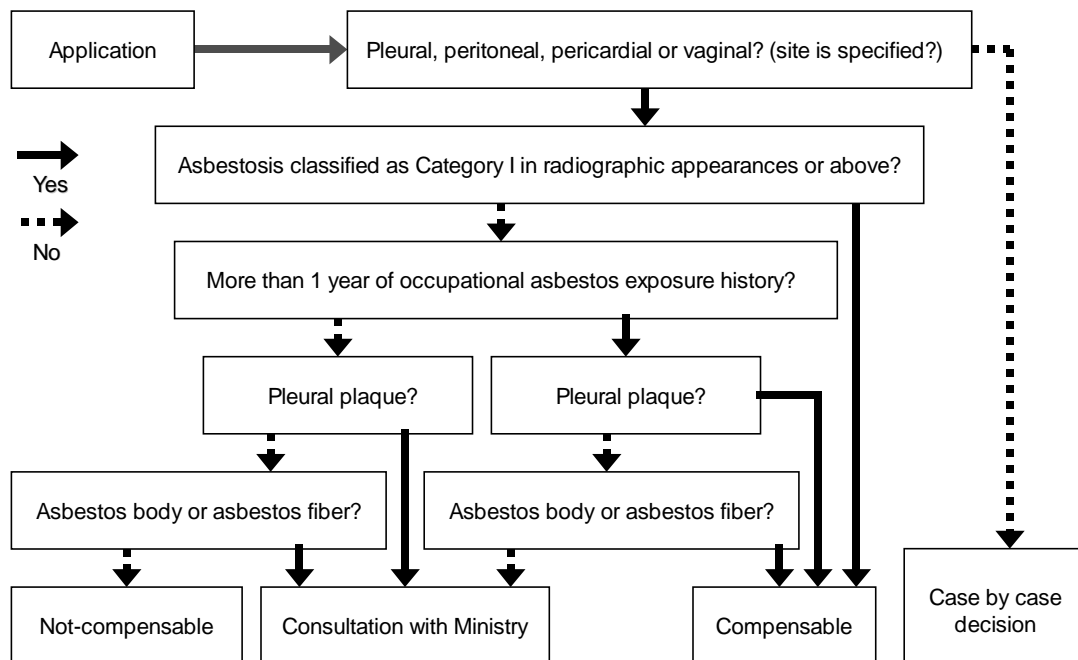
dependent on her age; if young enough she has the opportunity of undertaking vocational training/education and of being able to provide for herself. The pension can be paid over five years, as long as the training lasts, and even over 10 years in some circumstances. She receives a transitional allowance of 13,467 euros plus running benefit amounting to 30 percent of her husband's annual income.

Recognition Standards for Asbestos-related Diseases in Japan

Recognition criteria for asbestos-related diseases as occupational diseases were revised on 19 September 2003. Key points of the amendments are:

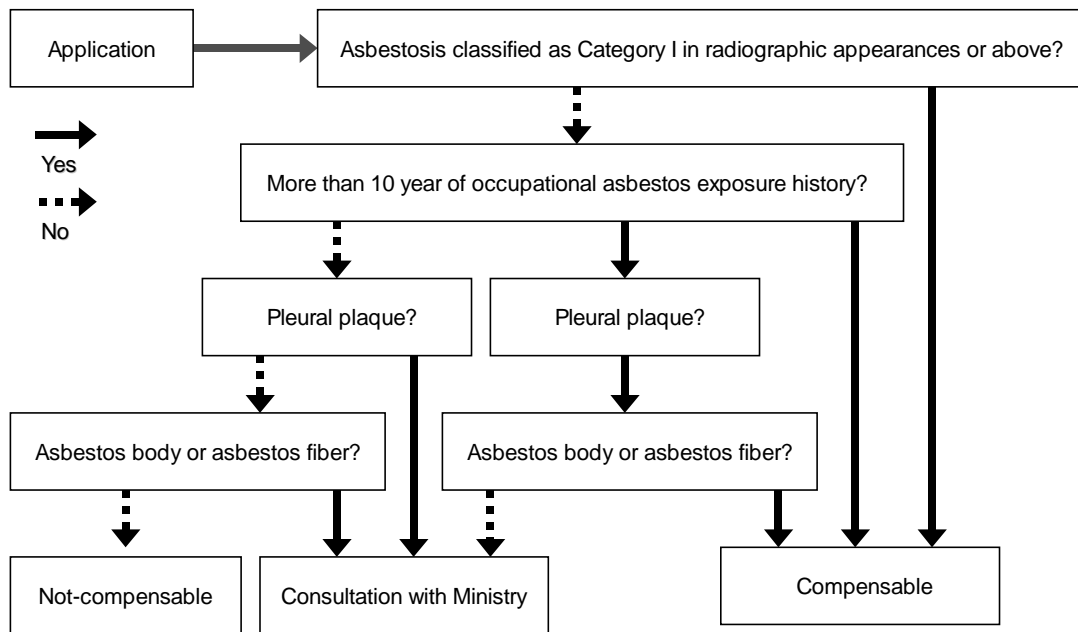
- (1) “Pericardial, testicular and vaginal (previously only pleural and peritoneal) mesothelioma” are additionally recognised as diseases which are apparently caused by asbestos.
- (2) “Benign asbestos pleural effusion” and “diffuse pleural thickening” are exemplified as diseases, which are apparently caused by asbestos.

Recognition for Mesothelioma as OD



- (3) The tasks listed below are additionally referred to as “asbestos-exposed tasks.”
- Putting raw asbestos into bags, etc., and carrying such in storehouses etc.
 - Repairing or demolishing vehicles in which asbestos containing products are used.
 - Working in areas where asbestos or asbestos containing material is directly handled, i.e. where a worker can be “indirectly” exposed to asbestos.
- (4) The required occupational asbestos exposure period for mesothelioma case is reduced to 1 year from 5 years. (Cases with less than 1-year occupational asbestos exposure period will be examined on case-by-case basis.)
- (5) In line with requirements of clinical findings, “pleural plaque” and “asbestos body and asbestos fiber” are referred as important indicators of asbestos exposure.

Recognition for Primary Lung Cancer as OD



The above and preceding schemata show the recognition criteria for asbestos-related lung cancer and mesothelioma, respectively. Below are listed all the asbestos-related diseases recognised as compensable occupational diseases in Japan.

- Asbestosis
- Lung cancer

- Mesothelioma (pleural, peritoneal, pericardial and vaginal)
- Benign asbestos pleural effusion
- Diffuse pleural thickening

Table.1 Number of newly compensated cases in Japan

Fiscal year	60-75	1976	1977	1978	1979	1980	1981	1982	1983	1984
Lung Cancer	8	2	0	3	5	1	2	7	4	3
Mesothelioma	0	0	0	1	0	0	0	0	0	4
Total	8	2	0	4	5	1	2	7	4	7
Pneumoconiosis (including asbestosis)				1,907	2,150	2,108	2,034	2,114	1,899	1,339

Fiscal year	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Lung Cancer	7	5	8	7	9	10	10	9	11	9
Mesothelioma	4	9	2	3	10	6	8	14	10	12
Total	11	14	10	10	19	16	18	23	21	21
Pneumoconiosis (including asbestosis)	1,353	1,272	1,327	1,254	1,238	1,144	1,140	1,060	983	1,245

Fiscal year	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Lung Cancer	10	15	12	23	17	17	21	22	38	295
Mesothelioma	13	12	10	19	25	34	33	55	83	367
Total	23	27	22	42	42	51	54	77	121	662
Pneumoconiosis (including asbestosis)	1,395	1,502	1,480	1,424	1,385	1,322	1,148	1,139	1,243	

Source: Ministry of Health, Labour and Welfare (MHLW), Statistics of workers' compensation insurance.

Table 2 Number of deaths due to mesothelioma in Japan

Year	Sex	C45: Total	C45.0: Pleura	C45.1: Peritoneum	C45.2: Pericardium	C45.7: Other sites	C45.9: Unspecified
1995	Male	356	201	35	3	7	110
	Female	144	74	16	3	4	47
	Total	500	275	51	6	11	157
1996	Male	420	283	23	5	12	97
	Female	156	75	22	3	1	55
	Total	576	358	45	8	13	152
1997	Male	451	281	31	3	9	127
	Female	146	74	17	2	3	50
	Total	597	355	48	5	12	177
1998	Male	429	283	39	2	7	98
	Female	141	78	23	1	4	35
	Total	570	361	62	3	11	133
1999	Male	489	319	27	4	20	119
	Female	158	85	21	1	5	46
	Total	647	404	48	5	25	165
2000	Male	537	367	30	3	11	126
	Female	173	89	24	1	4	55
	Total	710	456	54	4	15	181
2001	Male	574	414	35	5	10	110
	Female	198	116	26	1	6	49
	Total	772	530	61	6	16	159
2002	Male	604	412	43	3	12	134
	Female	206	111	27	1	4	63
	Total	810	523	70	4	16	197
2002	Male	655	441	58	2	11	143
	Female	223	125	27	2	7	62
	Total	878	566	85	4	18	205

Source: Ministry of Health, Labour and Welfare (MHLW), Vital Statistics.