

Protection against accidents for persons entitled to agricultural retirement pensions who did not stop conducting agricultural activities^{*}

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Abstract

The purpose of this study is to show the desired direction of changes in the accident component of social insurance of farmers, in order to provide protection against accidents to everyone at risk of accident during agricultural work. This need is dictated primarily by the statutory changes implemented in 2022 in which those entitled to agricultural retirement pensions can combine receiving a full agricultural retirement with no restrictions on conducting agricultural activities on their farm, but no longer subject to accident insurance. The objective of each social insurance system should be to provide protection in the form of social insurance benefits to persons conducting specific activities. Such benefits are supposed to guarantee that the requirements the legislator considers of essential social importance are satisfied. Undoubtedly, one of these is insurance coverage of persons liable to accidents during agricultural work by introducing separate regulations in this respect in the provisions concerning social insurance of farmers. Hence the need to consider these changes.

Keywords: one-time compensation, social insurance of farmers.

^{*} The article presents the views of the author.

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Introduction

In the Social Insurance of Farmers Act of 20 December 1990 (Dz. U. 2023, items 208 and 337), insurance risks were divided into two classes. The first class involves retirement and disability risks and the second risks related to accidents, sickness and maternity. This division is the consequence of the different way of organising and financing both components of the social insurance of farmers. Only the accident, sickness and maternity insurance part is based on the principle of self-financing. Funds for financing these benefits are derived primarily from accident, sickness and maternity insurance premiums that make up the Farmer Social Insurance Premium Fund, an entity granted legal personality by the aforesaid Social Insurance of Farmers Act.

Generally, based on this act, those subject to accident, sickness and maternity insurance include farmers whose farms comprise utilised agricultural land in excess of 1 conversion hectare or specialised branches of agriculture. In addition, the act provides that members of the farmer's household are also subject to insurance¹. Another condition that allows the farmer and members of their household to take advantage of the insurance is not being subject to another social insurance or not having an established right to retirement or disability pension or an established right to sickness benefit and rehabilitation allowance granted under sickness insurance pursuant to the act of 25 June 1999 on pecuniary benefits from social insurance in case of sickness and maternity (Dz. U. 2022, item 1732, as amended).

Benefits under accident, sickness and maternity insurance include:

- one-time compensation due to permanent or long-lasting damage to health or death due to an accident while performing agricultural work, or one-time compensation due to an agricultural occupational disease;
- sickness benefit.

A one-time compensation is paid to an insured person who has sustained permanent or long-lasting damage to health due to an accident while performing agricultural work or an agricultural occupational disease. Such support is also due to family members of the insured person if the insured person died due to an accident while performing agricultural work or in connection with an agricultural occupational disease.

1. Pursuant to the provisions of the act, a household member is defined as a close family member of the farmer who: (a) has completed 16 years of age, (b) resides together with the farmer in a joint household, on the agricultural farm or in close vicinity thereof, (c) regularly works on the agricultural farm and is has not entered into an employment relationship with the farmer.

On the other hand, a sickness benefit is granted for the period of any temporary inability to work to an insured person who is unable to work due to sickness for a continuous period of at least 30 days, but no more than 180 days.

The act also extends the accident, sickness and maternity insurance analysed here to farmer helpers, that is adults, mentioned in the provisions on social insurance of farmers, with whom the farmer has entered into a harvest assistance agreement. They are subject to accident, sickness and maternity insurance solely in the scope limited to one-time compensation.

A farmer may also be subject to accident, sickness and maternity insurance in the full scope on request. This can occur when a farmer or their household member is regularly deriving their livelihood from agriculture but does not meet the conditions of mandatory insurance of a farmer or their household member under the act. A request for the full scope of insurance may also be filed by a person who, being a farmer, has turned over lands on an agricultural farm they run for afforestation on principles specified in separate provisions.

Importantly, persons who do not meet the conditions for mandatory insurance under the act and also have an established right to retirement or disability pensions, whether under the agricultural or general social insurance system, may be covered by such insurance on request, but similar to farmer helpers solely in the scope limited to one-time compensation. Hence, for example, a person entitled to an agricultural retirement pension who continues to conduct agricultural activities may be subject to accident, sickness and maternity insurance in a limited scope on their request and obtain, or have their family members obtain one-time compensation in case of permanent or long-lasting damage to health or death due to accident while performing agricultural work or due to an agricultural occupational disease.

Until 2016, one of the benefits due under accident, sickness and maternity insurance was maternity benefit. Because of a change in the rules for qualifying for this benefit and the sources of its financing, since 2016 this benefit has been due from the other component of social insurance of farmers, namely retirement and disability insurance. Because this benefit is not the object of this article, it will not be analysed and discussed in more detail here.

This study uses predominantly a dogmatic and legal research method, which consists mostly of analysing the legal norms related to social insurance of farmers. In addition, after assessments and presentations made by the author, specific conclusions have been formulated in the summary.

Protection against accidents under social insurance of farmers in the context of the 2022 changes

Moving to analysis of the problem that is the object of this article, it must be mentioned that ensuring social welfare requires the state to pursue an active policy in the sphere of social and economic relations². This means that the state should set up a suitable system of protection against social risks, but does not suggest that it should replace the individual in caring for their interests and the related obligation of paying social insurance premiums, a consequence of which is the possibility of obtaining the relevant benefit if an insurance risk materialises.

It should be recalled that, since the Social Insurance of Farmers Act of 20 December 1990 entered into force, one of the conditions of obtaining the full amount of a retirement or disability benefit was to stop conducting agricultural activities³. The current legal norm has undergone an essential change in this respect pursuant to the Act of 28 April 2022 amending the Social Insurance of Farmers Act (Dz. U. 2022, item 1155). Pursuant to the change, only persons entitled to an agricultural disability pension are, as a rule, obliged to stop conducting agricultural activities if they wish to receive the full amount of the granted benefit. On the other hand, persons entitled to an agricultural retirement pension do not need to stop conducting agricultural activities in the same circumstances. The said change is the consequence of expectations of beneficiaries who demanded to be allowed to conduct agricultural activities after acquiring the right to an agricultural retirement pension. This is evidenced by the contents of the justification of the relevant bill, according to which the change was dictated by numerous proposals by both individual farmers and organisations of farmers. It is perhaps partly justified due to the difficult economic situation and the low agricultural retirement benefits (which as a rule are only slightly higher than the minimum retirement pension). The legislator, however, deprived itself of the ability to affect the processes taking place in Polish agriculture, consisting in the previously desirable generational replacement. A review of historic statutes related

2. A.R. Tokarczuk notes that ensuring social welfare requires public authorities to engage in interventionism that runs contrary to the liberal model of a democratic state of rule of law: A.R. Tokarczuk, *Paradygmatyczne ujęcie koncepcyjnych i ustrojowych aspektów demokratycznego państwa prawa* [in:] *Demokratyczne państwa prawa. Zagadnienia wybrane*, red. M. Aleksandrowicz, A. Jamróz, L. Jamróz, Białystok 2014, p. 148.

3. For more on this cf. E. Nasternak, *Zmierzch pozaubezpieczeniowych funkcji części emerytalnej rolniczego ubezpieczenia społecznego*, "Ubezpieczenia w Rolnictwie – Materiały i Studia" 2022, nr 2(78).

to social insurance of farmers⁴ shows the evolution of instruments, including social insurance of farmers, used to achieve the objectives of social and agricultural policy. Abandoning this solution in the Social Insurance of Farmers Act may be a contribution and an inspiration to defining other non-insurance objectives which should be achieved by means of these provisions. The article does not, however, deal with these matters, therefore they will not be analysed in more detail.

It should just be recalled that the bill amending the Social Insurance of Farmers Act⁵ laid before the Sejm of the Republic of Poland did not entirely abandon achieving non-insurance objectives using regulations related to the social insurance of farmers. In the bill sent to the Sejm by the government⁶, a change in Article 16, item 3 was proposed, according to which the right to be subject to retirement and disability insurance under the act would also include conducting agricultural activities by persons eligible for an agricultural retirement pension. As the justification of the change shows, this was a consequence of amending Article 28, pursuant to which paying the agricultural retirement pension would no longer be suspended if the pensioner did not stop conducting agricultural activities. In this way, pursuant to the intention of the bill's authors to justify its enactment, paying retirement and disability insurance premiums was to be a factor moderately affecting generational replacement, while pensioners obtaining income from both retirement pensions and agricultural activities were to make larger contributions to the insurance system, financed from premiums of the insured person to a limited extent only.

Hence, abandoning the obligation to stop conducting agricultural activities in order to obtain payment of the full amount of an agricultural retirement pension, the bill's authors intended to introduce another solution in the form of obligatory payment of the retirement and disability insurance premium, which, as noted above, would support the logic on which the separate system of social insurance of farmers is based.

This solution was, however, abandoned in the course of parliamentary works. This means that following the decision of the legislator, the retirement component of the social insurance of farmers will have solely a social function, consisting of guaranteeing material safety without any connection to the previous role of this instrument of state policy aimed at agricultural and rural areas as regards generational changes in the countryside. It should be noted that former solutions in this respect also had additional functions, since the obligation to stop conducting agricultural

4. Ibidem.

5. Bill of the act amending the Social Insurance of Farmers Act – no. UD273 in the list of legislative and programmatic works of the Council of Ministers.

6. Sejm paper no. 2185.

activities usually involved transferring the agricultural farm to a successor or selling it to enlarge another farm. Hence the generational replacement in an agricultural farm took place while the farmer was still alive. This ensured continued farm management while preventing excessive division of the farm between heirs and hence conflicts when dividing up the inheritance.

Since the legislator decided to put the interests of persons eligible for agricultural retirement benefits center stage, and also considering that the system of social insurance of farmers is heavily subsidised from the state budget, further changes in this respect can hardly be expected. Nevertheless, the need for changes in the accident component of social insurance of farmers should be considered, since another group of insured people who are not protected under that insurance has appeared, namely persons entitled to an agricultural retirement pension who continue conducting agricultural activities. As already mentioned, public authorities cannot fully replace the individual in caring for their life interests and, according to the principle of subsidiarity that regulates the sphere of social relations in a democratic state, as expressed in the provisions of the Constitution of the Republic of Poland, citizens should take part in running, among other things, the social insurance system. The principle of subsidiarity plays a major role in the functioning of a democratic system and its importance is clearly growing, also in the social welfare dimension⁷. The notion of “social welfare” is a subtype of “social security”⁸. Social welfare includes freedom from so-called social risks, while social security means “a state of freedom from want of material means of subsistence and the existence of real guarantees allowing full development of individuals”⁹. Hence the legislator should pay attention to needs appearing due to changes undertaken in applicable law and adjust the remaining regulations of applicable legislation to them. I mean here pensioners who are currently not obliged to stop conducting agricultural activities and may continue them while receiving a retirement benefit. Consequently, their financial situation may be much better, since they receive a retirement benefit from the social insurance of farmers in addition to income from agricultural activities. However, due to ongoing agricultural activities they remain exposed to the risk related to accidents while performing agricultural work and hence the legislator should not forsake both preventive influence on that group and additional

7. A.J. Dębicka, *Sprawne państwo. Współczesne koncepcje i instrumenty zarządzania publicznego a administracja publiczna*, Warszawa 2008, p. 76.

8. M. Brzeziński, *Bezpieczeństwo społeczne jako rodzaj bezpieczeństwa. Ustalenia wprowadzające* [in:] *Bezpieczeństwo społeczne. Pojęcia. Uwarunkowania. Wyzwania*, red. A. Skrabacz, S. Sulowski, Warszawa 2012, p. 11 et seq.

9. M. Książkowski, *Bezpieczeństwo socjalne* [in:] *Leksykon polityki społecznej*, red. B. Rysz-Kowalczyk, Warszawa 2001, p. 20.

assistance under insurance if the risk related to this activity materialises. Hence, a change should be considered consisting in obligatory accident, sickness and maternity insurance for that group of persons, in the scope limited to one-time compensation, as is the case with farmer helpers. This is even more justified because the legal literature stresses that accident insurance protects the insured person who, while performing their professional activities, is exposed to damage to health while remaining in a causal relationship with such activities. Such insurance should in particular protect persons subject to it against the consequences of permanent or long-lasting inability or reduced ability to work as a result of an accident at work, an accident equated with an accident at work or an occupational disease. In addition, accident insurance protects eligible individuals against the economic consequences of losing a sole income earner. Tools used for such protection include compensatory and alimony-like benefits provided for in statute¹⁰. Consequently, it may be said that accident insurance grants a privileged protection of personal injury sustained in connection with work¹¹. Therefore, bearing in mind the purpose of this insurance, we should not treat the obligation of paying accident insurance as a burden but as a consequence of the fact that the conducted activities carry a potential risk of personal injury in connection with work. This means that accident insurance should as a rule appear whenever there is a risk of accident at work and thereby protect the insured, while the insured themselves should participate in setting up this system of protection by paying accident insurance premiums. Hence, mostly because accident insurance is not limited to employees and is extended to other kinds of activities, including agricultural activities, it is not surprising that all persons conducting (among other things) agricultural activities, including persons entitled to an agricultural retirement pension, need to be covered by that insurance. The conclusion is that accident insurance protection extends to various forms of providing work (including self-employment) and the essence of and decisive factor in this insurance coverage should be the risk of inability to perform work or conduct activities performed before an insurance event occurs, a risk that can be safeguarded against thanks to insurance, if such an event materialises.

10. G. Szyburska-Walczak, *Ubezpieczenia społeczne*, Warszawa 2019, p. 115.

11. W. Witoszko, *Obowiązek ubezpieczenia wypadkowego*, "Praca i Zabezpieczenie Społeczne" 2020, nr 8, p. 18.

Summary

The need for changes in the discussed scope should not raise any doubts. This is especially so because the current solutions related to that part of the social insurance of farmers are not aligned with the change that entered into force last year, according to which farmers who acquired the right to an agricultural retirement pension may conduct agricultural activities without having the supplementary part of the pension suspended, as had been the case previously. In this manner the legislator, listening to the demand of the insured and pensioners, abandoned achieving the non-insurance objectives realised by the separate system of social insurance. While encouraging pensioners to continue conducting agricultural activities, the need to cover this group by insurance protection due to the threat of accidents related to such activities was disregarded. The lack of proper solutions in this respect should be considered as a mistake to be rectified in the next amending act. Only as a result of adjustments will it be possible to develop a uniform and complete system of accident insurance of farmers, which as a result should encompass everyone who conducts agricultural activities, regardless of whether agricultural or non-agricultural activities are their main source of income. As a consequence, the first step toward reform in this respect should be extending the statutory accident, sickness and maternity insurance coverage to persons who have not stopped conducting agricultural activities after acquiring the right to an agricultural retirement pension, and later on extending insurance coverage in the scope of the right to one-time compensation to all persons conducting agricultural activities and exposed to the threat of accident while working on an agricultural farm. In addition, this would allow providing all insured people with knowledge on how to prevent accidents, since such knowledge is already offered to those subject to the social insurance of farmers. What is therefore important in the current actual and legal circumstances is that a large group conducting agricultural activities remains outside insurance coverage guaranteed by accident, sickness and maternity insurance and cannot take advantage of knowledge on how to prevent accidents, which the disability authority provides to persons subject to the relevant insurance. Due to the above, changes in this respect are justified.

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