

Netherlands (ratification: 1966)

Direct Request, 2007

The Committee notes that the Government's report for the period 1999–2006 contains information only as regards the application of *Articles 13, 21 and 26 of the Convention*. The Committee hopes that a full report will be supplied for examination at its next session in November–December 2008 containing all the information requested in the report form under each Article of the Convention, as well as detailed answers to the following questions.

Article 9 of the Convention (conditions of entitlement to benefits). According to section 7.1.1(1) of the Work and Income (Capacity for Work) Act (WIA), an insured person who becomes sick shall be entitled to the benefit for partial incapacity (WGA) if: (a) he has completed the qualifying period; and (b) he is partially capable of work. Section 7.1.5(1) specifies that the entitlement to the WGA benefit is subject to a qualifying period of work as an insured person for at least 26 weeks during the 39 weeks immediately preceding the loss of entitlement to wages in case of sickness or to the sickness benefit (ZW). **Taking into account that under Article 9(2) of the Convention, eligibility for benefits may not be made subject to the length of employment or the duration of insurance, the Committee would like the Government to explain whether this requirement (see also sections 7.1.1(3) and (4) of the WIA) of having a period of previous insured employment is applied in case of sickness and incapacity resulting from employment injury.**

As regards the requirement to be partially capable of work, section 7.2.2 stipulates that in order to become entitled to the WGA wage top-up benefit, the insured person should earn per calendar month an income from work which is at least equal to 50 per cent of his remaining earning capacity. Section 4.1.4 obliges the insured person entitled to the WGA benefit to register as a jobseeker and to perform suitable work if given the opportunity to do so. The Committee points out that the requirements to use the residual earning capacity, to perform suitable work and to obtain income from work as a condition for entitlement to employment injury benefit are not envisaged by the Convention. **The Committee would like the Government to specify the qualifying requirements imposed by the WIA on which entitlement to the WGA top-up benefit is dependent.**

Article 14, paragraphs 4 and 5 (degree of incapacity). In accordance with sections 1.2.2 and 2.2.4(3) of the WIA, partial disability is recognized and compensated only when 35 per cent or more of earning capacity is lost. If an employee experiences a loss of capacity for work of less than 35 per cent, he or she will not qualify for any WIA benefit (sections 7.1.3(2) and 7.2.3(6)). The Committee recalls that, in accordance with *Article 14(4) and (5) of the Convention*, the degree of loss of earning capacity shall be prescribed in such manner as to avoid hardship for the persons concerned, who at least should be entitled to a lump-sum payment in case such loss is not substantial. **Taking into account that no lump-sum benefit is envisaged by the WIA, the Government is asked to explain how the protection guaranteed by the Convention is ensured to victims of employment injuries with less than 35 per cent incapacity.**