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New Work-Injury Insurance Rules Provide Guidance on Rulings

Introduction

Since the implementation of China's <<Work-Injury Insurance Regulations>> about ten years ago for providing a legal ground to protect the workers' legal rights, there had been revisions as well as incorporation into China's <<Social Insurance Laws>>. Their coverage had since been broadened, and the number of related administrative cases has increased significantly. Owing to increasingly complicated issues developed over time such as cross-knitted employment relationship and difficulties in recognising work-injury etc., China is in need of more detailed interpretations and definitions in the area, for rulings to be based upon and differences to be resolved.

The Supreme People's Court publicized the <<Rules Relating to Certain Questions on ruling Work-Injury Insurance Administrative Cases>> (hereinafter referred to as <<the Rules>>) and also conducted a press conference on Aug 20. The Rules have taken effect from September 1 this year.

Essence

There is a total of 10 articles in the Rules, which have ascertained the parties who are responsible for work-injury insurance under the various common employment arrangements in China. They have elaborated on the various issues arising on the recognition of work-injury, as well as clarified how injury cases caused by third parties should be handled.

Parties responsible for work-injury insurance

Article 3 Paragraph 1 of the Rules sets out the parties responsible for work-injury insurance under specific situations.

(1.) *Dual employment:* for a worker who has established employment relationship with two or more than two parties, the party responsible is the one which the worker works for when the injury occurs;

- (2.) **Secondment:** for a worker who is injured during the period he is seconded by the seconding party to the secondee party, the seconding party is responsible ;
- (3.) **Assignment:** for a worker who is injured when assigned to another party, the assigning party is responsible;
- (4.) **Subcontract:** A qualified employing party may violate rules and regulations and subcontracts business to an organization or a natural person which does not qualify as an employer. When a worker employed by the organization or natural person is injured in conducting the subcontracted business, the qualified employing party is responsible;
- (5.) **Attachment:** for a worker who is injured when employed by an individual who is “attached” to a party for doing business with other parties, the attached party is responsible.

Under the previously mentioned illegal subcontracting and attachment situations, the parties which have undertaken the work-injury insurance responsibility by paying the injury claims or that the social security administration organization having paid the claims out of the work-injury insurance funds, they have the right to seek indemnity from the relevant organization, party or individual.

Recognition of work-injury

In the press conference, the Supreme People’s Court said that the Rules have provided more detailed interpretation on issues arising from the recognition of work-injury cases, including on the meaning of “work reason, work time and work place”, “time for business out-visit” as well as “commuting between work and home”. Sample cases were also discussed in the conference.

The Supreme People’s Court elaborated on the principles provided by the Rules in defining “reason for work, time of work and place of work”:

- (1.) Reason for *work*: should consider factors such as whether carrying out work duties, whether assigned by the employing party, whether related to work responsibilities, or whether based on the proper interests of the employing party;
- (2.) Time of *work*: should consider if it is time necessarily required for work;
- (3.) Place of *work*: should consider if it is an area involved in work and a naturally extended reasonable area.

Regarding the recognition of work-injury during the “time for business out-visit”, since this is regarded as a special situation of “time of work”, therefore collective consideration should be given to whether the worker has been assigned by the employing party or whether it is for the proper interests of the employing party. The Rules stipulate that if a worker is assigned by the employing party for out-visit or has to carry out necessary work-related activities outside of his normal place of work, including being dispatched for training or meeting, it should be reckoned as within the “time for business out-visit”. Provided the injury is not caused by non work-related personal activities of the worker, it should be recognized as work-injury.

As to the recognition of “commuting between work and home”, the key consideration should be whether it is within “reasonable time” and “reasonable path”. Article 6 of the Rules has also included commuting between the work place and the place of residence, place of domicile, company quarters, residences of the spouses, parents and offsprings etc., as well as activities that are part of normal daily work life.

Work-injury caused by third parties

The <<Social Insurance Laws>> stipulate that for work-injury caused by a third party, and in case that the third party does not pay for the medical expenses or that the third party cannot be ascertained, claims are to be paid by the work-injury insurance fund, and which can subsequently seek indemnification from the third party.

Under this principle, Article 8 of the Rules specifically expressed that refusals by the social insurance administration authority to handle or verify work-injury cases or pay for work injury claims for reasons that the workers or their next-of-kins have already proceeded with civil actions or have received civil indemnities, will not be supported by the Supreme People's Court. On the contrary, the Rules have requested the People's Court to support the cases in which the workers or their next-of-kins have not proceeded with civil actions or have not received civil indemnities and who take legal action against the social insurance administration authorities.

Implications

Clarifying responsibilities, settling disputes promptly and getting work-injury compensation and insurance on a timely basis are usually the top priorities of workers. As far as the ever complicated and increasing work-injury disputes are concerned, the Rules can definitely provide better guidance in resolving the disputes in a more efficient and timely manner. We expect similar rules to be introduced in the future, which will constructively help in reinforcing employment relationship and establishing a legal framework for China's work-injury social insurance system.

Also, the Rules have considered various and practical perspectives and have set forth in better detail the principles in the definition of work-injury, which presumably will be endorsed and accepted by people.

HR Action

HR management should try to understand the principles and spirits of the Rules, and maintain active communication with the employees, which will enhance the sense of security and loyalty among them. In addition, the Rules have more clearly ascertained the responsible parties for work injury insurance, including clarification on the employment qualification and employment relationship etc. HR management should review the existing or intended arrangements in the company in order to ascertain its work-injury insurance responsibilities and ensure proper compliance with the regulations.

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