



# Assuring Improvement

## China's New Work-Related Injury Insurance Regulation

Effective as of January 1<sup>st</sup> of this year, the State Council released a new work-related injury insurance regulation. Public response was immediately positive because of an extended definition of work-related injury to include injuries resulting from accidents involving non-automotive vehicles such as trains, metro trains, ferries and bicycles. Under the former regulation, only injuries incurred by automotive vehicles were covered, excluding a majority of Chinese workers from claiming benefits when injured during the course of business travel.

The former regulation, active since 2004, was a major leap forward in Chinese insurance. Under this scheme, the number of employees covered by work-related injury insurance increased from 45mn in 2004 to 161mn by end of 2010. This included nearly 63mn migrant workers who filed outside their home districts. By the end of 2009, 10.8mn people were granted work-related injury medical insurance under the regulation, while 4.3mn people were entitled to disability or death benefits. The programme brought China significantly up to speed, but proved an incomplete solution. Despite the increased number of covered employees and the reduced risk for companies, the former regulation failed to deal with many new problems emerging from China's increasingly complex labour environment.

The new regulation improves upon the former in three significant ways: by broadening the definition of work-related injury, simplifying application procedures, and increasing compensation standards for employees. Under the new plan, the definition of work-related injury expanded to include injuries sustained while travelling to and from work across the spectrum of transportation with the condition that the employee was not at fault. In terms of application procedures, the new regulation adds a simplified

process for cases with clear facts, and optimizes the dispute resolution process by cancelling an administrative review which preceded the judicial review. In addition, the compensation standards were increased, giving claimants higher benefits.

The new regulations also cover a greater scope of organizational types. In the past, only business enterprises were required to comply, however the new rules are enforced on several other organizations including public institutions, social groups, non-profit organizations, foundations, law firms, and accounting firms. In addition, those organizations without insurance plans for their employees will be prosecuted.

By dramatically expanding the scope as well as depth of the regulation, the new programme brought forth many important changes. What follows are six affected areas of note.

### Expanded Application of the Regulation

Work-related injury insurance regulations previously only covered enterprises and individual businesses with employees, while public institutions, social institutions, privately-owned non-enterprise entities, foundations, law firms and accounting firms were not included. These were all supposed to be covered under other, separate regulations. The result was an uneven and irregular network of regulations that left many without coverage. This led to conflicts when parties within this group found themselves inadequately provided with work-related injury insurance. The

new regulation closes the gap by unifying the policy and extending the coverage of work-related injury insurance to the above listed groups.

## Adjusted Definition of Work-related Injuries

Public attention was drawn to these changes, which settled a long-standing controversy over the exclusion of non-automotive vehicles from the definition of work-related injuries. This particularly impacted city commuters, who frequent mass transit. Now covered are injuries sustained while en route to work activities via automotive vehicles, trains, ferries, metros, and bikes. However, in order to qualify for work-related injury insurance, the new regulation specifies that the employee must not be the party at fault, which means the employee will be deprived of benefits if he or she is primarily liable for the injury. A second clause further limits coverage if the employee behaves recklessly or illegally. This clause revises the provision to exclude injuries where the employee took drugs, drank to excess, or was engaged in a deliberate crime.

## Simplified Application Procedures

In response to complaints about time-consuming and complicated application procedures, the new regulation introduced several adjustments:

- a. A new fast-track has been established for cases with clear facts and definite rights and obligations. The Administrative

Department of Labour Security is required to provide determination for these cases within 15 days of the application receipt. However, without clear facts, the 2004 regulation still stands, giving a maximum of 60 days to reach a decision.

- b. The time limit of re-assessment or review assessment now should not be longer than the time it took for the initial assessment. This significantly speeds up appeals.
- c. In a work-related injury dispute, the relevant entity or individual can now either apply for administrative review or judicial review. This cancels a previous provision that an administrative review must be conducted before the case will be considered for judicial review.

Together, these changes substantially improve the system. In the past, even after a claim had been declared a work-related injury, procedures and processes kept employees waiting months or even years to receive their benefits. These changes significantly reduce the time involved in injury assessment and employee compensation.

## Increased Compensation Standards

Before this regulation, different regions had their own compensation standards for employees who died while on the job. These averaged around RMB 102,400, with the lowest figure at RMB 30,000. The new regulation establishes a uniform amount, setting the new standard figure at 20 times the average national disposable income from the previous year. For example, the 2011 lump sum compensation payment for families of employees who died on the job is based on 20 times the yearly average national



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## Strengthened Use of the Injury Insurance Fund

The previous regulation placed a large amount of the monetary responsibility on the employer. In order to reduce this burden, the Work-Related Injury Insurance Fund now assumes payment for the lump sum medical subsidy, hospital meals allowance, and all transportation and accommodation expenses for out-of-town medical treatment.

Moreover, in order to further prevent work-related injuries and promote safer workplaces, the Fund will provide for a new expense item called the Work-Related Prevention Expense, which will be used for safe practices promotion and training in

disposable income, and works out to around RMB 340,000. The new regulation also raises the lump sum payment for debilitating injuries by one to three month's salary depending on the disability level. The benefit for employees with a disability level ranking between one and four has been increased by three months, disability levels five and six by two months, and disability ranking from seven to ten by one month's salary.

workplace safety methods. The plan to manage and administer this new practice will be jointly released by the State Council Finance Department, the Labour and Social Security Department, and the Work Safety Department.

## Enforced Participation in Injury Insurance

The new regulation specifies the penalties for employers who fail to participate in work-related injury insurance and refuse to comply with work-related injury incidents investigation. For entities who fail to participate in the plan, the fine has been set as the insurance fee plus a late fee of 0.05% per day. The fine for entities that refuse to cooperate in the investigation ranges from RMB 2,000 to RMB 20,000.

There are a few implications of the new regulation worth considering. First, with the large economic discrepancy between different areas in China, the unified compensation standard might seem low for economically advanced areas, while it is a big improvement for less-developed regions. Secondly, there is no clear definition of the terms "from and to work" or "party at fault", which adds an element of uncertainty. Some disputes in these grey areas are to be expected. Thirdly, in order for employees to receive compensation, there must be a valid employment contract with the employer in question. For other grey areas, this could lead to further complications.

Nevertheless, the new regulation has been applauded by the public for its expanded coverage and higher benefits to employees. The broadened definition of work-related injury basically covers most transportation means if not all. With a simplified application process, employees suffering from a work-related injury can get their payment quickly, helping all parties involved move forward.

### Additional Details and Clarification

on China's work-related injury insurance regulation as provided by the new Social Insurance Law, which went into effect on 1<sup>st</sup> July 2011.

All companies and organizations covered by the work-related injury insurance regulation must pay the premiums on behalf of their employees. The State determines the premium rate based on the risk of injury associated within a particular industry. For each company, the premium for an employee is determined by a social insurance agency, which factors in the State level rate for the industry, the historical usage of injury insurance fund by the company, the incidence rate of injury in the company, and the wage of the employee.

If an employer does not pay the work-related injury insurance premium, any injury will not be covered and the employer must pay the full cost of the resulting fees that would be covered by the injury insurance regulation. If the employer is unwilling or unable to pay, the insurance fund will cover the costs. The employer will then be required to repay the costs to the insurance fund. In the event that the company refuses to pay back the injury insurance fund, the social insurance agency has the legal right to enquire to the bank or other financial institution where the company's deposits are held in order to recover the costs as well as any outstanding premium payment due from the company. If the deposits do not cover the total amount due, the company's assets may be seized and sold.

Similarly, if a work-related injury is caused by a third party, the third party is required to cover the costs. If the third party refuses to pay, the injury insurance fund will cover the costs and is entitled to claim the amount from the third party.

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