

China's Supreme People's Court issues judicial opinion on work-related injuries

December 2, 2014 | Written by Dr. Iris Duchetsmann and Cynthia Zheng

As of 1 September 2014, the new judicial opinion of the China's Supreme People's Court concerning work-related injuries (the "Opinion") came into force. This Opinion mainly clarifies the scope of work-related injuries, to support the implementation of the Regulations on Work-Related Injury Insurance (the "Regulations").



General framework of work-related injuries

The Regulations define the general framework of work-related injury matters, including the scope of work-related injuries, verification of the injury, and obligations and liabilities of employers, amongst other aspects.

Under the Regulations, work-related injuries include the following cases, where:

- an employee is injured as a result of an accident occurred due to his/her work within working hours and at

his/her place of work;

- an employee is injured as a result of an accident within their place of work, before or after normal working hours, whilst preparing for or finishing work related to his job;
- an employee suffers from violence or another unexpected injury during working hours, at their place of work, whilst performing his/her duties;
- an employee suffers from an occupational disease;
- an employee's whereabouts are unknown due to an injury or accident that occurred whilst he/she was travelling beyond the workplace in performance of his/her duties (the "Business Trip Period"); or
- an employee is injured in a traffic accident for which he is not principally responsible, or during urban rail transit, in passenger ferry or rail accident on his/her way to or from work ("Commuting Accidents").

Within the above scope, whether an injury constitutes a work-related injury or not is subject to assessment and verification by local labour authorities. Once confirmed that it is so, and depending on the severity of the injury, an injured employee will be entitled to statutory benefits, including coverage of medical expenses and provisions of statutory subsidies by the statutory work-related injury fund.

His/her employer also has obligations. The employer must continue to pay the employee's full monthly salary during the medical treatment period (which is generally up to 12 months, and may last for 24 months in severe cases subject to approval by the local labour authorities).

Following medical treatment, the employer's liability depends on the disability and injury grade (from 1 (the most severe one) to 10), as evaluated by the local labour authorities. Liabilities generally include arranging appropriate work, providing compensation or paying subsidies according to local standards. Employment must be maintained if the grade of disability and injury is verified as 1 to 4.

Clarifications provided by the Opinion

The Regulations provide the general definition of work-related injuries, but challenges remain for implementation. To guide practice in implementation, the Opinion provides helpful clarifications.

The Opinion clarifies that the following cases also constitute work-related injuries, where:

- the injury occurs during working hours and at the place of work, and where the employer or the labour authority can provide no evidence that the injury is due to a nonwork-related reason;
- the employee is injured during an activity organized by the employer, or by another entity but at which the employee's attendance is required by the employer;
- within working hours and whilst travelling between several working locations in the course of carrying out his/her work duties, there occurs an injury to the employee whilst within a reasonable proximity of these locations; and
- whatever the injury suffered by the employee, it occurred during working hours and within a reasonable proximity to the work place, which is relevant to his/her work.

The Opinion considers the following period as the "Business Trip Period":

- when, as assigned by his/her employer or required by his/her work, the employee travels beyond their place of work to undertake activities which are related to his/her job duties;
- when the employee is receiving training or attending a meeting as assigned by the employer;

- when the employee travels beyond their place of work to conduct activities as required by his/her work.

As to Commuting Accidents, the Opinion upholds an accident as a Commuting Accident if it occurs within a reasonable time period on a reasonable route the employee takes for the purpose of commuting between his/her work place and:

- his/her domicile, habitual residence or dormitory;
- the residence of his/her spouse, parents or children;
- the place where he/she performs those activities necessary for earning a living.

If it occurs within a reasonable time period whilst on any other reasonable route that the employee takes whilst commuting, the accident will also be upheld as a Commuting Accident.

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