

Identification of Work Injury Infected by Workers with COVID-19 Infection in China

Wenjie Zhang*

Faculty of Hospitality and Tourism Management, Macau University of Science and Technology,
Macau, China

*Corresponding author: 1210010741@student.must.edu.mo

Abstract. In recent years, the COVID-19 pandemic has seriously affected the safety of workers' working environment. It is not uncommon for workers to contract COVID-19 while working. In the post-EPIDEMIC era, in order to better protect workers' work safety and social welfare, this paper discusses the legal issues of COVID-19 and the identification of industrial injuries through legal norms analysis, case analysis, and other empirical analysis. Legislation is divorced from justice. The judicial practice of the same case in different territories is separated. This paper hopes to promote judicial and legislative practice by improving laws and policies on work-related injury insurance. This paper aims to make legal professionals and relevant legal learners understand the legal deficiency of current laws and regulations regarding industrial injuries of workers in the context of COVID-19. It is hoped that by improving laws and regulations and increasing the issuance of judicial interpretations, all localities and cities can provide legal support for ensuring workers' social welfare in the post-epidemic era. The final purpose is to improve the 'infectious disease prevention law, *Chinese labor law*, *work-related injury insurance regulations* and other relevant laws to promote the protection of human rights and improve people 's living standards.

Keywords: Covid-19; work-related injury; Legal issues

1. Introduction

The COVID-19 pandemic has brought a lot of inconvenience to workers at work. Moreover, workers may also suffer industrial injuries if they are infected during working hours. This paper discusses the issue of relocating infectious diseases in the context of COVID-19. The paper analyses the causes of the difficulty in identifying infectious diseases as industrial injuries and the future identification path of infectious diseases industrial injuries under the epidemic background. At present, the students' understanding of COVID-19 and work-related injury is mainly reflected in the limited and attainable identification of work-related injury in the post-epidemic era. However, the current legal rules are not friendly to the majority of non-medical workers affected by the epidemic and the majority of workers for epidemic prevention. At present, scholars have analyzed a lot about the necessity of improving laws and regulations on infectious diseases, but the legal system has not been implemented in terms of improvement methods, and the current academic understanding has not been promoted to the implementation of specific laws and regulations. [1-2] Based on the analysis of existing laws and regulations, this paper concludes the people who are affected by COVID-19 and can be judged as industrial injuries. Then, this paper proposes the social reasons for the difficulty in identifying industrial injuries in the context of COVID-19. Later, this paper puts forward specific measures to improve the judicial interpretation of laws and regulations, hoping to promote the progress of judicial and legislative practice.

2. The legal analysis for the relocation of the COVID-19 related to work injuries

The part discusses the influence of new crown outbreak which was proposed the necessity of work-related injury problems. The problem is associated with the new champions league, and comb. In this section, the current laws and relevant regulations on the new type of crown and the maintenance of

work-related injury are mentioned. Meanwhile, there are problems in the judicial practice and the ordinary. Workers may not be located for work-related injury problems.

2.1 The inadequacy of existing laws and policies

On 24th January 2020, the Ministry of both Social Security and Human Resources, the Ministry of Finance and the National Health Commission jointly issued *A Notice on the Performance and Protection of Medical Staff and Related Personnel*. The notification points out that medical staff and related personnel who are infected with or died of new coronavirus pneumonia due to their duties in the process of epidemic prevention and control should be treated according to work-related injury. [3]

Firstly, the precondition for the identification of industrial injuries in the Notice is that in the prevention and treatment of COVID-19, the subject is limited to medical and related personnel, which reduces the applicable conditions of the "three-work principle". Secondly, the Notification directly identifies COVID-19 infection as a work-related injury. This notice compares to an almost identical verbal notice during 'SARS' using the term 'deemed to be an work-related injury'. Whether pneumonia infectious diseases belong to industrial injuries has always been a legal problem. So medical staff infected with new coronavirus pneumonia is regarded as work injury and enjoy treatment according to relevant provisions. In "SARS" period, "by law of work-related injury insurance" has not been promulgated, the whole country also does not have unified work-related injury to identify standard.' regarded as work-related injury' expands the scope of identifying work-related injury. Therefore, "notice" expanded the identification standard, and narrowed the "three-work principle" conditions. Medical staffs and related personnel infected with new-type coronary pneumonia due to the prevention. The treatment of new-type coronary pneumonia can be regarded as the population suffering from work-related injury.

It is unfair that other employees who contracted COVID-19 as a result of work are not entitled to work-related injury insurance. Medical workers are performing their duties while other employees are performing their duties by returning to work immediately. There is no essential difference between the two, and all workers should be treated equally before the law. Such policies not only infringe on the legitimate rights and interests of workers, but also reduce the enthusiasm of workers to return to work.

Secondly, the COVID-19 infection is not recognized as a work injury unless it is a health care and related worker engaged in COVID-19 prevention and treatment. Workers who are not health care and related workers who contracted COVID-19 while performing their job duties cannot be considered industrial injuries if they contracted COVID-19 during working hours or in the workplace.

Thirdly, Contracting COVID-19 is an illness, not an accident injury under the Workers' insurance ordinance. The COVID-19 has not yet been included in the Classification and Catalogue of Occupational Diseases. Infection with COVID-19 does not constitute an occupational disease. Accordingly, laborer who is infected inside working time and workplace cannot identify work-related injury.

Specific conditions are required to identify a work injury. In view of the situation that the employee suffers from infectious disease on business trip in epidemic area, according to the regulation of "work-related injury insurance" analysis the employee has one of the following circumstances, this should be identified as work-related injury.

Employees who have one of the following situations should be regarded as work-related injury. Firstly, they die of sudden disease or die in 48 hours after rescue during working hours and at work. Secondly, they are injured in activities such as rescue and disaster relief to safeguard national interests and public interests. [4]

Pneumonia infectious diseases under epidemic situation are not included in the list of occupational diseases in China. If there is no illness during working hours or at work and death within 48 hours after rescue and they do not accord with the identification conditions of work-related injury, it is difficult to enjoy work-related injury treatment.

2.2 work-related injury identification currently supported by policies

Notice on the Protection of Medical Staff and Related Personnel Infected with New-type Corona Pneumonia in the Course of Performing Their Duties (Letter No. 11) clearly pointed out that in the prevention and treatment of new-type corona pneumonia, medical staff and related personnel infected with new-type corona pneumonia or died of new-type corona pneumonia in the work should be regarded as industrial injuries. These persons are legally entitled to work-related injury insurance. This is a special care for medical staff and related personnel engaged in high-risk groups of occupational exposure to new coronavirus in the process of fighting the epidemic. In fact, not only the Ministry of Human Resources and Social Security issued a notice on the identification criteria of new coronavirus infection, but also the local people ' s congress and the high court made other explanations.

Firstly, in Guangdong Province, Infected persons dispatched to epidemic areas can be identified as industrial injuries. Before the introduction of "*Guangdong Province work-related injury Insurance regulations*", two cases shall be regarded as work-related injury. Fourthly, contracting an epidemic disease by working in a place declared as an epidemic area according to law as designated by the employing unit. The Law can only be applied to Guangdong Province. The toxic and harmful substances specified in Article 3 are limited to chemicals, which falls under the detailed provisions of accident injuries. The Novel Coronavirus cannot be identified as toxic and harmful substances. Therefore, only the fourth provision can be applied, that is to say, the COVID-19 infection of the staff sent to the declared epidemic area in Guangdong and the COVID-19 infection of the medical staff sent to Hubei to participate in the medical treatment in Guangdong can be regarded as a work-related injury by the local human resources and social security departments of Guangdong.

Secondly, in Guangxi Zhuang Autonomous Region, infection of medical and related workers can be regarded as work-related injury. According to the notification issued by Guangxi Zhuang Autonomous Region, medical care and related staff should be identified as work-related injury due to public infection of the new crown. These persons are entitled to work-related injury insurance. If a worker is infected with COVID-19 other than due to the performance of his/her job duties, the employer shall guarantee the worker's legitimate rights and interests related to the medical treatment period in accordance with the Provisions on medical Treatment Period for Employees suffering from Illness or Non-work-related injury.

Thirdly, in Zhejiang Province, workers infected with pneumonia at work can be identified as work-related injury. According to regulations issued by Zhejiang High People's Court, workers infected with COVID-19 during the epidemic prevention and control period should be considered as industrial injuries and enjoy work-related injury insurance benefits in accordance with the law. If a worker is infected with COVID-19 other than due to the performance of his/her job duties, the employer shall guarantee the worker's legitimate rights and interests related to the medical treatment period in accordance with *the Provisions on Medical Treatment Period for Employees Suffering from Illness or Non-work-related injury*. The Notice is only valid for Zhejiang Province. For the identification subjects, both medical staff and ordinary workers are included, that is to say, as long as the pneumonia is contracted due to the performance of work duties, it can be identified as work-related injury. Compared with the "Notice" of the Ministry of Human Resources and Social Security, the "Implementation Opinions" of Zhejiang High People's Court can better protect the rights and interests of ordinary workers.

Fourthly, in Hunan Province, the workers were really infected with pneumonia at work, and the court supported the identification of work-related injury. Hunan High People's Court issued an opinion that the people's court would support medical and medical workers who claimed to be recognized as industrial injuries if they were infected with COVID-19 while performing their duties during COVID-19 prevention and treatment. People's courts would support non-medical and related workers who claimed to be recognized as industrial injuries if they had clear evidence that they contracted COVID-19 at work. The people's courts would support workers who claimed to be treated as industrial injuries as stipulated in Article 15 of *the Regulations on work-related injury Insurance*

for the purpose of safeguarding national and public interests during epidemic prevention and control. The determination method of The High People's Court of Hunan Province is similar to that of Zhejiang Province, but it highlights that workers have evidence to prove that they contracted COVID-19 at work and strictly follow the "three-work principle" for the determination of industrial injuries. At the same time, the provisions of the second clause of article 15 of the work-related injury insurance regulations have also been reminded to make it more convenient for the majority of medical staff and workers to safeguard their legitimate rights and interests.

3. The social cause that affirms injury hard

At present, the main way of epidemic prevention and control in China is network management. Community grid management is a new urban governance model based on grid units, with information technology as the core, with fine management as the goal and with socialization as the means. Under this management model, once a person's NUCLEIC acid test is positive, they are immediately admitted to the CDC. However, this has caused inconvenience for workers who contracted COVID-19 at certain workplaces during working hours. When workers apply for work-related injury identification, they may have passed the appeal period of work-related injury identification or the consequences of their health damage are difficult to be quantified obviously. Therefore, it is difficult for ordinary workers who are not related to epidemic prevention and control infected with COVID-19 to be recognized as industrial injuries in the society.

The element that affirmation work-related injury depends on whether exists causality between laborer's behavior and work-related injury result. Due to the long incubation period of the virus, it is difficult to determine the specific time of infection from the medical point of view, so there is only a weak causal relationship between work and infection of the virus, or there is no necessary connection between the two. Unit of choose and employ persons, laborer has no real control ability and do not have a dominant labor law in the sense of management the ability to act. Before the behavior of the workers telecommuting wasn't significantly increase their risk of infection, therefore, ordinary workers hard to recognized work-related injury from the social level. [5]

4. Improvement measures

Officials should recognize the need to optimize relevant laws and regulations at the legislative and judicial levels to promote the accurate application of justice. The disconnection between legislation and justice is the reason why COVID-19 is not a cause of industrial injuries. China's legislation lags behind social development and is difficult to meet the needs of judicial administration under the current COVID-19 situation. Therefore, it is necessary to promulgate judicial interpretation and revise administrative laws and regulations in time.

4.1 Solution from the perspective of law

First of all, the occupational disease classification list stipulated in the Law on the Prevention and Control of Occupational Diseases is too dead, without any provisions or flexibility, which is also the difficulty in the application of the law on the identification of industrial injuries during the SARS outbreak in 2003 and the COVID-19 outbreak in 2020. There is no applicable space for new types of malignant infectious diseases, which will inevitably lead to obstacles in the diagnosis of occupational diseases (the premise of work-related injury identification) for those who participate in the prevention and control of major infectious diseases. It is suggested to amend article 2 of the Law on prevention and Control of Occupational Diseases. This Law applies to the occupational-disease-prevention activities within the territory of the People's Republic of China. The occupational diseases mentioned in this Law refer to diseases caused by exposure to dust, radioactive substances, malignant infectious viruses and other toxic and harmful factors by the workers of enterprises, institutions, individual economic organizations and other employing units in their occupational activities. The classification

and catalogue of occupational diseases shall be formulated, adjusted and promulgated by the public health authority under The State Council jointly with the supervision and administration department of production safety and the labor and social security authority under The State Council. A paragraph is added as paragraph 3. In the event of the occurrence of a major national or local epidemic of infectious diseases, the public health authority under The State Council shall decide to include the new list of occupational diseases in the list in conjunction with the supervision and administration department of work safety and the labor and social security authority under The State Council.

Secondly, the COVID-19 outbreak belongs to an infectious disease, and the provision in Paragraph 2 of Article 11 of the Law on the Prevention and Treatment of Infectious Diseases should be revised. It is suggested to amend it. Those who cause illness, disability or death due to their participation in the prevention and treatment of infectious diseases should be identified in accordance with relevant provisions on work-related injury (injury sustained in the line of duty). Meanwhile, they should be given subsidies and compensation, so as to clarify its connection with Social Insurance Law and work-related injury Insurance Regulations, clear the basis of law application. [3]

The work-related injury Insurance Regulations regard as the second article 15 of work-related injury is amended, the proposal is modified as those who are injured in the activities of safeguarding national and public interests. Officials should include emergency rescue, disaster relief, epidemic prevention and control in the list of major epidemic prevention and control. In addition to medical personnel, other civil servants, employees and volunteers engaged in epidemic prevention. Control should also be included in the scope of work-related injury identification.

4.2 Solution from the perspective of judicial practice

Ordinary workers need to comply with the arrangements of employers, laws and policies, and social epidemic prevention and control policies in their daily work. In the post-epidemic era, every worker faces unprecedented work pressure and working environment pressure.

National legislation in terms of social security, and actively mobilize social resources, ensure workers affected by the epidemic and affected by the outbreak of lower living standards of citizens to be able to survive, safeguard the laborers and the era in the epidemic because of old age, unemployment, illness, work-related injury, birth of the basic life is not affected, according to the economic and social development at the same time, China will gradually increase the level of public welfare and improve the quality of people's lives.

The authority can reduce or reduce social security contributions periodically. Due to the impact of the epidemic, some enterprises have been unable to start operation or have not started operation enough, and some workers have been unable to go to work. The normal employment pattern has been disrupted, especially in labor-intensive services such as catering and small and micro manufacturing enterprises. If the enterprise does not have normal operating income, employees do not have normal labor income. Therefore, both sides cannot afford the normal social insurance payment. Procrastination policy obviously cannot fully help the plight of enterprises and workers, nor is it conducive to reducing the financial pressure of payment subjects. To this end, relevant policies can be formulated to make clear that social insurance contributions of some enterprises and workers can be reduced or exempted in stages during the epidemic period. At the same time, the accumulated social insurance funds and strategic reserve funds can be used to make up the shortfall, so as to tide over the difficulties together.

It is clear that social security ties that were cut off due to the epidemic can be seamlessly resumed after the epidemic. In view of the interruption of employment and income as a result of COVID-19 isolation, it is necessary to issue timely and precise policy guidance so that the interruption of social insurance can be seamless after the epidemic, so as to relieve the worries of the insured.

work-related injury insurance policies should be made clearer. On the one hand, for the workers who died in the epidemic prevention work, the judicial department should be identified as work-related injury. Relevant departments should give compensation according to law. Medical personnel, law enforcement personnel, community workers, security personnel and other front-line epidemic

prevention staff should be identified and processed according to work-related injury, laws and regulations should give full play to the effectiveness of work-related injury insurance policy. On the other hand, it is necessary to clarify the policy boundaries of work-related injury identification in special periods. If the worker on the way to work or in the epidemic prevention duties of infection and injury or disability, generally belong to the responsibility system. This situation has gone beyond the scope of work-related injury insurance, should be considered as disease and medical insurance, but decided to need more clear policy guidance.

Social security should give full play to the positive role of unemployment insurance. The unemployment insurance system should have many functions such as relieving unemployed workers, stabilizing employment and improving laborers' skills. In the face of the epidemic, China need to pay close attention to employment and prevent mass layoffs. At the same time, in view of the situation that some enterprises may reduce jobs due to development obstruction, unemployment insurance not only needs to provide timely relief to the registered unemployed in accordance with the law, but also should make contributions to stable employment and timely improvement of workers' skills by accumulating existing unemployment insurance funds. On the one hand, the government has made full use of the return policy of unemployment insurance funds to help affected enterprises resume normal production. At the same time, the authority should combine the employment and reemployment fund to provide employment subsidies to enterprises or organizations that employ people who have lost their jobs due to the epidemic. On the other hand, employment training plans will be further improved to help severely affected areas organize workers unable to find jobs to participate in skills training in a timely manner, so as to improve the quality of workers. China will fully leverage the positive role of unemployment insurance to better mitigate the adverse impact of the epidemic on employment and safeguard the positive interests of workers.

5. Conclusion

To better solve the problem of reattribution of industrial injuries affected by COVID-19, the paper draws the conclusion about laws, judicial interpretations and administrative regulations. What is need to be improved through analysis of legal norms and case studies gives corresponding suggestions. The significance of this paper is to improve the working status of workers and strive for more legal protection and social welfare for workers by analyzing the problem of work-related injury repatriation of workers affected by COVID-19. The audience of this article is professionals in the field of law and journalism, hoping to promote the improvement of people's livelihood and promote the legislative and judicial practice of the identification of work-related injuries under the COVID-19 epidemic in the post-epidemic era.

References

- [1] Dan Chen, Zhanghan Xia. System improvement of work-related injury Identification rules in the context of epidemic prevention and control [J]. Journal of Anhui University of Technology (Social Science Edition),2021, 38(02) :36-37.
- [2] Zhang Wenli, Xiangcheng. Social Insurance Center in Zhangzhou city, Fujian Province thinking on identification of work-related injuries caused by COVID-19[J]. China medical Insurance, 2020,3:70-72.
- [3] A Notice on the Protection of Health Care workers and Related Staff infected with COVID-19 while Performing Their Duties, 2020.
- [4] Regulations on medical treatment period for sick or non-work-related injuries of enterprise workers Ministry of Labor hair No. 479,1994
- [5] The Guiding Principle of Emergency Psychological Crisis Intervention for Pneumonia Epidemic with New Coronavirus Infection, 2020.
- [6] The work-related injury Insurance Ordinance,2010.

- [7] Song Xiaobo, Wen qinghong. Conservatory of Music about the identification of COVID-19 work-related injuries [J]. Journal of Beijing Trade Union Cadre College,2020,35(03):42-48.
- [8] Weng Renmu. Chinese Academy of Labor and Social Security Sciences: An international perspective on COVID-19 work injury identification policy[J]. China Medical Insurance. 2020,6:74-80.
- [9] World Health Organization. Who Director-General at the INTERNATIONAL Health Regulations Emergency Committee on Novel Coronavirus 2019 News briefing speech [DB/OL]. <https://www.who.int/zh/activities/tracking-SARS-CoV-2-variants?msclkid=5b81586cce9e11ec9c79612bf5e7252f>.
- [10] Bulletin of the National Health Commission of the People's Republic of China,2020.
- [11] The Notice Concerning the Treatment of Workers Infected with SARS while Performing Their Duties (Power Generation of the Ministry of Labor and Social Security (2003) No. 2),2003.
- [12] Regulations on Work-related Injury Insurance, 2003.
- [13] Labor Law of the People's Republic of China, 2010.
- [14] Yang Xueyou. Labor security during the world epidemic, these four special cases belong to work-related injury[J]. Labor Security World, 2020,10:66.
- [15] Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases ,2004.