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## Analysis of Work Injury at the Annual Meeting

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At every end of the year, moments of the company's annual meeting are always shared on every major social networking platforms. The company organizes group activities to help strengthen the company's cohesion, mobilize employees' enthusiasm, and facilitate work. However, in practice, there are frequent employment disputes that are closely related to the company's annual meeting. This article focuses on the discussion of work-related injury disputes related to the company's annual meeting from the perspective of "work-related injury", hoping to help the employers in dealing with such problems.

### 1. Can an employee's injury due to a fight during/after the company's annual meeting be recognized as a work injury?

#### 1.1 Cases introduction

**Case 1:** After the annual meeting, Huo, deputy manager of the company's administrative department, requested the driver, Gu, to send the chairman home and then to park the vehicle back to the company in accordance with the company's "Notice on the 2013 Spring Festival Holiday Arrangement". The driver, Gu, did not obey Huo's arrangement, leading to a quarrel, and Gu ultimately wounded Huo. After diagnosis, Huo's traumatic tympanic membrane perforation in his right ear was confirmed as a work injury. The company pleaded not guilty and filed an administrative lawsuit.<sup>1</sup>

**Case 2:** Mr. Chen was appointed by the company to be responsible for the car security of the company's annual meeting. During the annual meeting, Chen had a verbal dispute at the hotel arising from a cards game with Zeng. Zeng struck his right eye with a heavy item. The matter was not identified as a work-related injury, and was later appealed to the court by Chen. In the first trial, Chen argued that the reason for the fight was because Zeng was unhappy with his refusal to let Zeng borrow the car key.<sup>2</sup>

#### 1.2 Legal analysis

The legal basis for the determination of work injuries is whether the above case is in accordance with article 14.3 of the *Regulation on Work-Related Injury Insurance*,

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<sup>1</sup> 江苏省赣榆县人民法院 (2013) 赣行初字第 39 号行政判决书

江苏省连云港市中级人民法院 (2014) 连行终字第 0018 号行政判决书

Administrative Judgment of the People's Court of Ganyu County of Jiangsu Province (2013) Ganxing Chuze No. 39  
Administrative Decision of Lianyungang Intermediate People's Court of Jiangsu Province (2014) Lianxing Zhongzi No. 0018

<sup>2</sup> 上海市高级人民法院 (2012) 沪二中行终字第 4 号行政判决书

Shanghai Higher People's Court (2012) Hu Er Zhong Xing Zhong Zi No. 4 Administrative Judgment

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"...suffers from violence or other unexpected injury within the working hours and working place due to implementation of his duties". That is, employee needs to meet the standards of working hours, workplace and work reasons. In trial, whether casualties occur due to work is more critical than whether it occurs during working hours. Prioritizing work causes can improve the accuracy of judgment.

**Case 1:** The first case occurred after the end of the annual meeting, which was not during working time for other employees. Huo requested the driver to send the chairman home, and to park the vehicle back to the company. Although Huo's working method is improper, he is performing his job duties in accordance with company regulations. Huo was injured by Gu, which is in line with the situation of being injured by violence due to performing his job duties in the *Regulation on Work-Related Injury Insurance*. Therefore, it is not possible to treat working hours rigidly, and it is more reasonable to put aside working hours and look at whether it is for the purpose of work.

**Case 2:** Chen's injury is consistent with the working time and place of work standard, and whether it is in line with the work purpose remains to be discussed. According to the statements made by Chen and Zeng at the police station, they had a quarrel when playing cards and Chen was injured. Chen advocated that the Zeng was unhappy with Chen because he did not let him borrow the car keys during the day; this led to the quarrel and fight in the hotel where the annual meeting was held. Chen's claim did not have an inevitable and direct causal relationship with the result of the injury caused by quarrelling when playing cards. Therefore, although the working hours are met at the annual meeting, there is no direct purpose of work and it cannot be regarded as a work-related injury. It is very important to first analyze the purpose of work to determine whether it is a work-related injury.

## **2 Are alcohol-related injuries (death) at the annual meeting completely excluded from work-related injuries?**

### 2.1 Cases introduction

**Case 3:** At the company's annual meeting, Yu continuously drank a large amount of alcohol, including drinking on behalf of other coworkers. Afterwards, he felt uncomfortable and took a rest on the sofa in front of the conference hall. Later, a colleague discovered that his condition was bad and he was taken to the hospital. Once at the hospital he was confirmed dead. The vomit caused by drinking blocked the trachea and caused suffocation. After Yu was cremated, the company filed an application for certification of work injury to the Local People's Social Security Bureau, however it was not recognized as a work injury.<sup>3</sup>

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<sup>3</sup> 深圳市福田区人民法院（2014）深福法行初字第762号行政判决书  
广东省深圳市中级人民法院（2014）深中法行终字第502号行政判决书  
Shenzhen Futian District People's Court (2014) Administrative Judgement of Shenfufaxingchuzi No. 762

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**Case 4:** After the company's annual meeting, Zhang did not accept the company's arrangements for the drinkers to go home, and took a motorcycle ride home from Zhu, a colleague, who has also been drinking. On the way they hit a private car illegally parked in a lane forbidden to cars. Zhang died on the scene and it was later identified as a work-related injury.<sup>4</sup>

## 2.2 Legal analysis

Whether or not the provision excludes employees who consume alcohol from work injuries caused by drinking is the key points in both cases. Article 16 of the *Regulation on Work-Related Injury Insurance* stipulates that it shall not be regarded as work-related injuries or deemed to be work-related injuries for employees who “...intentionally commits a crime; is under the influence of alcohol or drugs; or, injures himself or commits suicide.” Article 4 of the *Opinions of the Ministry of Human Resources and Social Security on Matters Relating to the Implementation of the Regulations on Job-Related Injury Insurance* (Ren She Bu Fa [2013] No. 34) clarifies the criteria for determining drunkenness. Therefore, one cannot equate drinking with drunkenness.

Whether the drinking situation meets the "drunkenness" in Article 16 of the *Regulation on Work-Related Injury Insurance* can be analyzed from two levels of causality: does the drinking of the employees have work factors? Is there causal relationship between employee casualties and drunkenness?

**Case 3:** Yu's participation in the annual dinner has certain working factors. However, during the dinner Yu's drinking behavior (including drinking on behalf of others) has exceeded the scope of work and is a personal behavior, which has led to death by suffocation. It can be seen that there is no direct and inevitable causal relationship between Yu's participation in the dinner and his death. That is, Yu's death after suffocation has no work reason. Yu should act according to his own circumstances and bear the consequences of his actions. Due to being drunk, Yu cannot make a reasonable judgment about the possible results of his behavior. Can this exempt Yu? The author believes it is impossible. His drinking is a manifestation of his free will and he allowed himself to keep drinking, resulting in death caused by the behavior. The causal relationship between Yu's autonomous behavior and the result of death cannot be alleviated by the decline of cognitive ability from being drunk.

**Case 4:** Zhang was drinking; however, his death was due to a road traffic accident and of which he was not the main responsible. It cannot be claimed that Zhang's own cognitive abilities were reduced from being drunk, thus he chose to take a motorcycle

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Administrative Judgment of Shenzhen Intermediate People's Court of Shenzhen Province (2014) Shen Zhong Fa Xing Zhong Zi No. 502

<sup>4</sup> 上海市青浦区人民法院 (2011) 青民四(民)初字第 2171 号民事判决书

Civil Judgment of Shanghai Qingpu District People's Court (2011) Qingminsi (Min) Chuzi No. 2171

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that his colleague drove after drinking. It would be an expansion of the scope of causality to qualify the death as a work injury.

In addition, the criteria for the determination of drunkenness should be based on Article 4 of the *Opinions of the Ministry of Human Resources and Social Security on Matters Relating to the Implementation of the Regulations on Job-Related Injury Insurance* (Ren She Bu Fa [2013] No. 34): ““Intoxication or drug taking” as referred to in Item (2), Article 16 of the Regulations shall be determined based on a legal instrument issued by the authorities concerned or a valid verdict rendered by the people's court. Where the aforementioned evidences are unavailable, determination may be made based on relevant evidences.” In response, the Supreme People’s Court issued the *Provisions of the Supreme People's Court on Several Issues Relating to the Hearing of Administrative Cases Involving Job-Related Injury Insurance* (Fa Shi [2014] No. 9), which, in its article 1, subdivided legal documents into a report on confirmation of accident liability, conclusive opinion issued by the competent authorities, and People's Court judgments which have come into force. The second paragraph of article 1 also stipulates that: “Where the aforesaid legal documents are not available or the contents thereof are unclear, and the social security administrative authorities makes a certification of work injury in respect of the facts in the preceding paragraph, the People's Court shall take into account the relevant evidence provided in the examination of the case pursuant to the law”

In the third case, the Municipal Human Resources and Social Security Bureau asserted in the first instance that because Yu’s body had been cremated and there are no objective conditions for obtaining the corresponding legal documents. Thus, the Municipal Human Resources and Social Security Bureau had the right to determine that Yu was drunk based on the combination of the evidence provided by the plaintiff (Yu’s family). The court rejected this opinion, and believed that the existing evidence could not prove that Yu was drunk on the night of the incident, and the Municipal Human Resources and Social Security Bureau’s claim lacked basis. It can be seen from this that the requirements for proof of drunkenness are very high, and legal documents such as relevant legal instruments, effective judgments, concluding opinions and other legal documents should be used as much as possible. Although the relevant evidence is a way, it is difficult to meet the requirements of authenticity, relevance and legality.

### **3. Summary**

This article focuses on explaining two sets of causality. The first one is injury due to work. The purpose of work is the top priority in the “three principles” (location, time, purpose). In specific cases, non-workplace and non-working hours may occur, but it is determined to be work-related injury due to the purpose of work. The second one is to pay great attention to the cause and effect relationship when applying exemptions

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clauses to work-related injuries. The causality in the law is direct and cannot be applied extensively. The author suggests employers to do the following:

First, the causality can be reviewed in terms of whether the employee's behavior is autonomous and whether it is a reasonable job requirement. For caution, applying for work-related injuries if the purpose of work is met, can also avoid the consequences, and thereby assume legal liability, for failing to apply for a work-related injury certification within the prescribed time limit.<sup>5</sup>

Second, pay attention to the retention of evidence. The facts of the case determined in arbitration or litigation are legal facts proved by evidence. Public authorities can also be used to help collect evidence. For example, in the case of employee fights, police records, transcripts and other documents will be formed after the police intervention. Compared with employee testimony, it is more authentic and easier to be approved by the trial authority, which also reduces the difficulty and cost of proof.

Thirdly, for the proof of "drunkenness", rather than to prove the items by related proofs it is suggested to obtain as many as possible of the legal documents, effective judgments, concluding observations, etc.

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<sup>5</sup> 依据《工伤保险条例规定》第十七条，用人单位应当自事故伤害发生之日或被诊断、鉴定为职业病之日起30日内，向统筹地区劳动保障部门提出工伤认定申请。遇有特殊情况，经报社会保险行政部门同意，申请时限可以适当延长。

According to Article 17 of the "Regulations on Work-related Injury Insurance Regulations", the employer shall submit an application for the identification of work-related injury to the labor security department of the overall planning area within 30 days from the date of the accident injury or the date of diagnosis and identification as an occupational disease. In case of special circumstances, the time limit for application may be appropriately extended with the approval of the social insurance administrative department.