

REGULATIONS ON REGIMES FOR EMPLOYEES SUFFERING FROM OCCUPATIONAL ACCIDENTS AND DISEASES

QUOC KHANH

On December 28, 2021, the Ministry of Labor, Invalids, and Social Affairs issued Circular 28/2021/TT-BLĐTBXH providing details and guidelines for implementation of the Law on Occupational Safety and Hygiene in terms of regimes for employees suffering from occupational accidents and diseases (**Circular 28**). This Circular replaces Circular 04/2015/TT-BLĐTBXH providing guidelines for implementing the regimes of compensation, financial aid, and medical expenses paid by employers to employees who suffer from occupational accidents and diseases (**Circular 04**) and Circular 26/2017/TT-BLĐTBXH stipulating and guiding the statutory insurance for occupational accidents and diseases (**Circular 26**). Accordingly, Circular 28 came into force from March 1, 2022 with several modifications and supplementations to regimes of occupational accidents and diseases. The following are some noticeable features of Circular 28:

Firstly, Circular 28 stipulates cases of occupational accidents and diseases, principles, and specific compensation levels. Accordingly, employers are obligated to compensate the employees suffering from occupational accidents and diseases in the cases where:

- (i) The occupational accident impairs the employees' work capability by at least 5% or the employees are fatal because of the occupational accident but the accident is caused not completely by the employees themselves.
- (ii) The occupational disease impairs the employees' work capability by at least 5% or the employees are fatal by this disease when they are working for their employer, before retirement, before quitting job, or before working for another employer.

The following is the compensation principle:

- (i) For occupational accidents: Compensation must be made for each occurrence of occupational accident without accrual to previous occupational accidents.
- (ii) For occupational diseases: Compensation is made depending on the percentage (%) of work capability impairment (proportion of bodily injury) in the first health check-up and examination. From the second time and later, the difference between the incremental work capability impairment and the latest examination result will be the basis for compensation.

When suffering from an occupational accident or disease, employees are entitled to the compensation as follows:

- (i) Work capability impaired from 5% to 10%: at least 1.5 months' salary.
- (ii) Work capability impaired from 11% to 80%: at least 1.5 months' salary, adding 0.4 month's salary for each additional one percentage of work capability impaired (the compensation level for employees could be found in Annex I enclosed with Circular 28).
- (iii) Death or work capability impaired from 81% and over: at least 30 months' salary.

Secondly, Circular 28 provides specific guidance for employers' obligation to provide financial aids to employees. Accordingly, employees who suffer from an occupational accident leading to work capability impairment by at least 5% or employees' relatives die due to the occupational accident caused by the employees themselves, are entitled to receive financial aid for every occurrence of occupational accidents without accrual to previous ones with the financial aid specified as below:

- (i) Work capability impaired from 5% to 10%: at least 0.6 months' salary.
- (ii) Work capability impaired from 11% to 80%: 40% of the monthly salary compensated to employees when they suffer from an occupational accident with similar level of work capability impairment (the financial aids to employees could be found in Annex I enclosed with Circular 28).
- (iii) Death or work capability impaired from 81% and over: at least 12 months' salary.

Thirdly, Circular 28 regulates the time limit for making compensation and financial aid of employers. Accordingly, the employers must issue a decision on compensation or financial aid for

employees suffering from occupational accidents or diseases within 05 business days from the date of receiving the examination report by the Medical Evaluation Board about the level of work capability impairment for severe occupational accidents, or from the date when the Central or Provincial Investigation Agency organizes a meeting to publish the report on occupational accident investigation at grassroots level for a fatally occupational accident. Within 05 business days from the date of such decision, the employers must make the full payment one off to the employees or their relatives.



Fourthly, Circular 28 alters the payment method of occupational accident benefits in particular cases. In detail, if an employee is subject to compulsory social insurance but his/her employer does not pay social insurance premium for him/her, the employer must pay the employee the amount corresponding to the support regime that the social insurance agency would make to the employee if social insurance contribution was made. The payment could be made one off or monthly based on both parties' agreement, or at the employee's request if the parties fail to agree on the mode of payment.

COMMENTS AND RECOMMENDATIONS

Circular 28 has overcome several limitations of Circular 04 and Circular 26, typically the regulation on the mode of payment of occupational accident regime to employees if employers do not pay social insurance for their employees. However, some critical issues related to the regimes of occupational accidents and diseases have not governed in Circular 28 or relevant documents, for instance, the regulation on binding the responsibility of specialized management authority to the examination and inspection of investigation and conclusion of occupational accidents, diseases. Most inappropriate cases have been reviewed merely based on feedbacks from social insurance agency, employees, or related individuals; Occupational Accident Investigation Agency is not subject to any liability when making any incorrect conclusion. This is an issue that employees need to pay attention to ensure their maximum rights and interests.