



## Original Research Article

# On the Legal Application Dilemma of the Identification of Work Injury Caused by Infectious Diseases and Its Solutions

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**Abstract:** Although the country has achieved leapfrog development in recent years, all walks of life have made great progress, but due to the short development time, there is still a certain gap in laws and systems compared with developed countries, and there is still a lot to improve the place. For example, the current legal concept of "work-related injury" is absent, and the concepts of "occupational infectious disease" and "occupational disease" have not been censored. Actually, there are no clear regulations and implementation when the identification is carried out. At this stage, the lack of general provisions for the identification of work-related injuries and the closure of the identification of occupational infectious diseases have made the application of the law for the identification of work-related injuries of infectious diseases quite embarrassing. Based on this, this article elaborates on the legal application dilemma existing in the identification of work-related injuries of infectious diseases, and puts forward some opinions based on its own practical experience, hoping to have a certain reference significance for improving the legal application of work-related injury identification of infectious diseases in my country.

**Keywords:** Infectious Diseases; Work Injury Identification; Application of Law; Solutions

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At present, the current "Regulations on Work Injury Insurance" for the identification of work-related injuries in my country adopts the enumeration model, while the "Classification and Catalogue of Occupational Diseases" adopts the closed recognition technology for the scope of work-related injury identification, which has a large scope for identification of work-related injuries. Restrictions, in the face of the current increasingly complex social and environmental law application, gradually entering a predicament. For example, during the epidemic, there was no dispute about the conclusion that Wuhan doctor Li Wenliang's death was attributed to a work-related injury, but there was considerable controversy regarding the legal basis for the identification of occupational infectious diseases and work-related injuries<sup>[1]</sup>. Because of the lack of effective legal application scope, it is very difficult to identify this type of industrial injury. Therefore, this article discusses the legal application path for the identification of infectious disease industrial injury.

## 1. Overview of work injury identification

### 1.1 Concept and classification of work injury recognition

The main bodies of work injury determination mainly include arbitration institutions, courts, and administrative agencies. They all have the power to determine work injury. In civil litigation, the work injury determination is a kind of notarization, that is, evidence, in the administrative department.

### 1.2 Definition of work injury recognition

First, the identification of private subjects. In the "Work Injury Insurance Regulations", there are mainly two types of insurance benefits: items borne by the employer and items borne by the insurance fund. The nature of the actual legal relationship is quite different. The judicial department is in charge of disputes over private legal relations, that is, between employees and employers. In the "Work Injury Insurance Regulations", there are also relatively clear provisions that when disputes arise between employees and employers, they shall be handled in accordance with the provisions of labor disputes, which are civil litigation cases. Compared with civil litigation, administrative litigation belongs to judicial trial law and can directly use substantive law. This also fully demonstrates the independence and directness of civil jurisdiction. The court can directly confirm whether it is a work injury based on the facts and relevant regulations. The litigation systems in China and the United States are the same in principle. The right to govern between private individuals is within the scope of civil litigation and can be directly applied to the law to make judgments.

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## **2. The legal application model of infectious disease work injury cases**

In different modes of law application, there are many types of work injury identification of infectious diseases. From this perspective, there is a direct and clear basis for "occupational disease", while other law application modes of work injury identification of infectious diseases have no clear regulations. In the "Classification and Catalogue of Occupational Diseases", occupational infectious diseases are mainly divided into five categories, and there are very serious restrictions. In judicial practice, there are many cases of infection caused by contact with infectious diseases that are no longer within the scope, generally appearing in the infection of overseas labor services or occupational exposure is not covered in the "Classification and Catalog of Occupational Diseases"<sup>[2]</sup>. This has also led to a certain degree of difference in understanding between the judicial and administrative departments, and is also the main reason for the ongoing disputes.

### **2.1 The law application model of accident injury due to work**

There are relevant provisions in the "Work Injury Insurance Regulations", because workers who suffer from typhoid accidents are classified as work-related injuries. However, in the case of Yu Mo in Yantai, Shandong Province, the case was caused by hemorrhagic fever with renal syndrome caused by exposure to mouse excreta and bites at work. The work injury recognition administrative department considered that the problem was not caused by accidental injury and belonged to the disease. It does not comply with the "work accidents" stipulated in the "Classification and Catalogue of Occupational Diseases" and "Occupational Disease Catalogue". The court of second instance held that acute poisoning accidents or injuries caused by work should belong to work injuries, and expressed different views on the view that infectious diseases are not work accidents.

### **2.2 "Occupational disease" law application model**

The provisions in the "Work Injury Insurance Regulations" for "suffering from occupational diseases" are work-related injuries. China's legal recognition of occupational diseases is the legal occupational disease, but currently there are only five occupational infectious diseases, namely Lyme disease, AIDS, brucellosis, forest encephalitis, and anthrax. Among them, AIDS is also limited to the people's police and medical and health personnel. In addition, this basis cannot be applied when core elements of "work-related" are infected with other types of infectious diseases. According to the relevant provisions in the "Administrative Measures for the Diagnosis and Appraisal of Occupational Diseases," occupational disease diagnosis institutions exercise their right to diagnose occupational diseases in accordance with relevant laws and regulations and are responsible for their conclusions. For example, if the hospital only provides a diagnosis certificate, but does not provide an occupational disease appraisal or diagnosis certificate, it cannot be recognized as an occupational infectious disease.

### **2.3 The law application model for injuries caused by going out to work**

With the improvement of the country's comprehensive strength, its status in the world has gradually improved, and the number of people going abroad for work has increased rapidly, which has also led to a slow increase in infectious diseases during overseas work. Regarding this type, the judicial organs and the work-related injury administrative department have not yet formed a unified agreement on whether to apply the provisions of the Work Injury Insurance Regulations. For example, the Fuxingchuzi No. 332 (2015) Judgment issued by the Furong District People's Court revoked the administrative decision on the treatment and prevention of infectious atypical pneumonia that did not approve work injuries<sup>[3]</sup>.

## **3. Countermeasures for the predicament of the legal application of work-related injury identification**

### **3.1 Legislation clarifies core standards**

In related cases concerning the identification of work-related injuries of infectious diseases, the administrative department believes that infectious diseases should not be subject to the relevant provisions of the Work Injury Insurance Regulations, because the understanding of "accidents" is characterized by externalities, harmfulness and suddenness. I am more inclined to understand industrial accidents and believe that infectious diseases should not be classified as accidents. However, some courts have a broader understanding of "accidents", believing that injuries or poisoning incidents caused by work citations should be classified as work-related injuries, which are more extensive than work-related injury determination administrative departments. Therefore, it is necessary to clearly define the core meaning of work-related injuries. Some scholars believe that the core of "work-related injuries" is "work-related." This is a viewpoint that many scholars agree with. The United States has gradually revised the identification of work-related injuries, because work does not need to be the cause of work-related injuries, as long as the work aggravates or promotes the occurrence of injuries, it is regarded as work-related injuries. Analyzed from the current practical and theoretical perspectives, the core of the identification of work-related injuries lies in "sickness", "injury" and "accidents", that is to say, whether the employee's illness or injury is related to work, and should not only focus on the concept of "accident" Make a judgment. Therefore, in addition to the traditional identification of occupational diseases, the identification of occupational infectious diseases and work-related injuries can be identified by combining the three factors, namely "work reasons", "workplaces" and "working hours".

### **3.2 Combining general and listed terms**

In the application path of the identification of work-related injuries for infectious diseases, some cases mostly apply the purpose and spirit of identification in order to pursue justice, but the spirit of identification has certain ambiguities in the identification of work-related injuries. Compared with the general provisions of the construction of work-related injuries, it has stepped forward. At this stage, some local recognition laws treat diseases infected by Chen Wei's local work as work injuries, and should also be included in the "Classification and Catalogue of Occupational Diseases" to completely break the restrictions on traditional occupational infectious diseases and have stronger operability. For work-related injuries that are recognized as infectious diseases

outside the neck, the judgment can also be made according to the regulations on injuries suffered during the work-out period. But in practice summary, it must be applied only when going out on business and working in the epidemic area.

### **3.3 Applicable model of work injury identification**

The National Health Commission, the Ministry of Finance, and the Ministry of Human Resources and Social Security issued in 2020 the "Notice Concerning Medical Care and Relevant Workers Infected by the New Coronavirus Pneumonia Due to Their Work Duties", clearly stipulating the work injury of medical staff during the epidemic Regulations, but the legal basis for its formulation is not stated. During the period of the epidemic, work-related injury identification can be applied to the "Deemed Work-related Injury" clause in the Work Injury Insurance Regulations.

### **3.4 Improve the provisions of the "classification and catalogue of occupational diseases"**

According to the relevant provisions of the "Occupational Disease Prevention Law", only five types of occupational infectious diseases are occupational diseases, that is, infectious diseases such as anthrax in the "Classification and Catalog of Occupational Diseases". Many infectious diseases are not in this list. For example, the new coronary pneumonia this time is also a difficult problem in the legal application of work injury identification<sup>[4]</sup>. Therefore, through the joint release of the "Notice on Security Issues Related to Medical Care and Relevant Workers Infected by New Coronavirus Pneumonia due to Performing Work Duties", the identification of work-related injuries for medical staff during the epidemic will be formalized. Therefore, it is necessary to redesign the comprehensive provisions of the "Classification and Catalogue of Occupational Diseases", expand the scope of occupational diseases, and judge whether it is a work-related injury or not.

## **4. Concluding remarks**

In summary, at present, there are still many loopholes in the legal application of work-related injury identification of infectious diseases in my country. Especially after the epidemic, relevant laws and regulations and legal systems need to be improved and optimized, and work-related injury identification must be improved. The core standards are clarified. In actual reform and optimization, it is necessary to take into account the actual situation of current social development, through the in-depth reform of the "Work Injury Insurance Law," the "Work Injury Insurance Regulations," and the "Social Insurance Law", and appropriately add the "Occupational Disease Classification and Catalog." Unify the judicial interpretations and legal interpretations for the identification of work-related injuries of infectious diseases, and minimize administrative litigation caused by deviations in understanding of legal provisions. By improving the legal system and regulations, we will lay a good foundation for building a harmonious society and provide important support for the great rejuvenation of the Chinese nation.

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