

New social insurance law updated

[17th December, 2010 Issue 15]

The new PRC Social Insurance Law was announced by the 11th session of the Standing Committee of the National People's Congress on 28 October 2010 and will come into effect on 1 July 2011.

The existing social insurance system contains five basic social security insurances, i.e. basic pension, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance. The new Social Insurance Law is the first comprehensive law to regulate the fundamentals of the social insurance system in China including collection of social insurance premiums, management of social insurance funds, supervision of social insurances schemes and relevant non-compliance penalties.

The highlights are as follows:

1. The new law is applicable to all legal enterprises in China and all individuals including foreigners working in China.
2. The new law has stressed the importance of compliance and enforcement. There are detailed penalties clauses in places for non-compliance.
3. The new law is not intended to cover all of the details for implementation of the five social insurance schemes, and has not provided for national united social insurances contribution rates. Therefore, employers would still need to refer to the local regulations for contribution rates of the social insurance schemes.
4. Implication for employers
 - **Registration process of social insurance must be completed with 30 days once the legal entity was set up.** (i.e. obtain business license or registration certificate)
 - **Stress the obligations of the employers to pay social insurance premiums on time for its employees.** Under the new law, an employer fails to pay social insurance contribution in full and on time will be penalized at a rate of 0.05 percent of the outstanding payment per day starting from the date of default. On default of payment by the due day, an additional penalty may be charged between 100% to 300% of the late payment of the social insurance premiums.
 - **Increase enforcement of the collection of employer's portion for the social insurance.** The new measures include checking employers' bank accounts; allowing banks and other financial authorities to withhold the payable amounts from the bank account after getting approval of the local administrative authorities; applying court action to auction off employers' assets to pay the outstanding social insurance portion.
 - **An employer cannot avoid payment of the social insurance even if its employees has agreed voluntarily give up such rights.**
 - **Lower cost for the employers to pay work-related injury.** Under the new regime, items including food allowance, reimbursement of accommodation and traffic fees for medical

treatment outside the city where the employee works, as well as the one-off medical subsidy required to be paid to an employee suffering work-related injury when his/her contract of employment is terminated will be covered by the work injury insurance fund.

5. Implication for employees

- **Allowing transfer of individual social insurance accounts.** The new law allows the basic pension, basic medical and unemployment insurance relationships of an individual to be transferred/carried with him/her when the individual changes a job or moves to another province or city, and make clear that premium contribution years in different locations will be calculated cumulatively.
- **More flexible for contribution to pension insurance when reaching retirement age**

6. Foreign employees in China are eligible to participate in the social insurance schemes. According to Article 97 of the new law, foreigners working in China may participate in the social insurance schemes in accordance with the provisions of the Social Insurance Law. Foreign employees in China will be entitled to the same social insurance benefits. But employers still need to wait for the detailed implementation rules for further actions.