

CASE STUDY: SOCIAL COMPLIANCE

COMPLIANCE WITH SOCIAL ASSURANCE SCHEMES IN CHINA

Industry

Supplier Management

Region

China

Intertek Solutions

Corporate Social Responsibility
Audit Solutions

Based on the CSR audits conducted by more than 200 auditors on our Intertek China team, we have found that the majority enterprises are not complying with and paying the five kinds of social insurance schemes as required by law. These required social insurances include, basic endowment, health, employment injury, unemployment and maternity insurances.

“According to the Social Insurance Law of the People’s Republic of China, it is explicit that all employees, including rural migrant workers, foreigner workers, and their employer, shall participate in all 5 kinds of social insurance schemes.”



The challenge

Many agree that while all are required by law, there are those that are considered ‘priority’ insurance schemes, and in particular is the safety accident insurance which is critical both for employees and employers. But even for those that are more prioritized, we have found various employers in non-compliance.

Below is a typical non-compliance issue as identified in a CSR report from a Chinese-based facility:

Insufficient social insurance participation. Through document review, the auditor found that 93 out of 160 (58.1%) employees did not participate in basic endowment insurance, and 12 out of 160 (7.5%) employees had not participated in employment injury insurance. Furthermore, the auditor found no employee that participated in the other three insurances which include basic medical insurance, unemployment insurance and maternity insurance. During employee interviews, 23 out of 25 (92%) randomly selected employees stated that the facility

participated in basic endowment insurance only for employees that had started employment over one year prior, and they did not know whether the facility participated other types of insurance.

Here the Non-Compliance is defined as:

- Not all employees in an enterprise are covered in one of the social insurance schemes as required by law
- Not all 5 kinds of social insurance schemes are covered as required by law
- No social insurance scheme covered at all

The legal requirement

There are two national laws in China which require both employer and employees to participate in social insurances. One is the Labour Law enacted in 1994 and was effective starting in 1995, and another one is the Social Insurance Law enacted in 2010 and effective in the middle of 2011.

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The following are the extracted articles which detail the legal requirements as translated into English:

Labour Law of the People's Republic of China

- Article 72 The sources of social insurance funds shall be determined according to the categories of insurance, and the practice of unified accumulation of insurance funds shall be introduced step by step. The employer and individual labourers shall participate in social insurance in accordance with law and pay social insurance costs.

Social Insurance Law of the People's Republic of China

- Article 10 Employees shall participate in the basic endowment insurance and the basic endowment insurance premiums shall be jointly paid by employers and employees.
- Article 23 Employees shall participate in the basic medical insurance for employees, and the basic medical insurance premiums shall be jointly paid by employers and employees in accordance with the relevant provisions of the state.
- Article 33 Employees shall participate in the employment injury insurance, and the employment injury insurance premiums shall be paid by their employers rather than the employees.
- Article 44 Employees shall participate in unemployment insurance, and the unemployment insurance premiums shall be jointly paid by employers and employees in accordance with the relevant provisions of the state.
- Article 53 Employees shall participate in maternity insurance, and the maternity insurance premiums shall be paid by employers rather than employees in accordance with the relevant provisions of the state.
- Article 95 Rural migrant workers shall participate in social insurance in accordance with this Law.
- Article 97 Foreigners employed within the territory of the People's Republic of China shall participate in social insurance analogically in accordance with this Law.



According to the Social Insurance Law of the People's Republic of China, it is explicit that all employees, including rural migrant workers, foreigner workers, and their employer, shall participate in all 5 kinds of social insurance schemes.

Some factories may consider commercial collective injury insurance for their employee to cope with the turnover of employees, but commercial insurance does not trump social insurance compliance requirements.

After the Social Insurance Law came into effect in July 2011 and considering the provision of Article 95 that rural migrant workers shall participate in social insurance, the popular opinion of varying industry actors in which it was not a 'hard requirement' or a 'must' for rural migrant workers to participate in social insurances as required by Labour Law, disappeared. Hence, whereas normally a waiver or confirmation letter from local a Social Security Bureau for an enterprise (not all enterprises in the area) would normally exempt certain kind(s) of social insurance(s) for some employees, this is rarely acceptable in China today.

In short, both the employer and its employees shall participate in all 5 kinds of social insurances except there is different local regulation or policy to exempt a certain group of employees from such legal obligation, and it is applicable to all enterprises in that area.

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