

Opinion Survey on the Social Insurance Law Report

Social Insurance Law Concern Group
June 18, 2012

I. Foreword

Social security is one of the social problems that Chinese people are most concerned about. It is also one of the hottest topics at the meetings of the National People's Congress (NPC) in the last few years. Under Article 45 of the Constitution of the People's Republic of China, Chinese citizens are entitled to protection from risks associated with old age, sickness, work-related injuries, unemployment and maternity. It is also stipulated that a social insurance system shall be established to ensure that citizens enjoy these rights. The enactment of the Social Insurance Law is therefore appropriate and necessary. The NPC issued the Draft Law on Social Insurance on October 28, 2008 and the public was invited to submit their opinions on the Draft Law which was amended and passed on October 28, 2010. The Social Insurance Law took effect on July 1, 2011.

A year has passed since the long-awaited Social Insurance Law was put into effect. To ensure that the law meets its purpose in strengthening and improving the social security system of China, we believe that there is a need to look back and review its implementation at this point.

With this in mind, a group of concerned individuals and groups conducted an opinion survey on the Social Insurance Law in the end of 2011 and beginning of 2012. The preliminary outcome and analysis of the survey is now ready for public release. We hope that it would prompt more in depth studies, surveys and hearings on this issue and more people would contribute their thoughts and opinions in an effort to improve China's social security system.

We have always been concerned about the development of the social security system of China. In view of the promulgation of the Social Insurance Law, the Concern Group was set up in January, 2009 to conduct a series of activities which include:

- Study Group: A dozen staff members of labour organizations conducted a 3-month study to learn about concepts, principles and measures of social security

around the world, as well as international labour conventions, human rights standards, etc. Participants shared with each other their opinions on the Draft Law on Social Insurance. The opinions were then edited and a statement of our common stand on the Social Insurance Law was released.

- Information and experience of social security system around the world were collected. Special attention has been paid to the Social Protection Floor Initiative which is actively promoted by the International Labour Organisation.
- Jointly organized and participated in the Asian Regional Round Table on Social Security which was held in Hong Kong (2009), Beijing (2010) and Chiangmai, Thailand (2011) respectively during which exchanges were conducted with scholars, labour organizers and civil servants. We have also been visiting social insurance associations and social insurance agencies in mainland China, such as in Shenzhen, Dongguan, Guangzhou and Zhuhai, etc.
- Advocacy: We have published leaflets, posters and manuals for distribution in industrial areas and have hold talks on the Social Insurance Law for workers. Some labour cases are being followed up by labour organisers. Finally an opinion survey on the Labour Insurance Law was conducted by NGOs in Jiangsu Province and Guangdong Province targeting workers participating in the activities of labour centres.

In the process of designing the questionnaire, we have sought advice and opinions from different people. Based on their suggestions, 25 questions were drawn up. Later the questions were cut down to 10 main questions to ensure that workers are able to answer the questionnaire in a short time. Since this is a pilot survey, the design of the questionnaire may not be very refined. We hope that there would soon be a more extensive, representative and scientific survey.

* Participating organizations include:

Asia Monitor Resource Centre

Hong Kong Social Security Society

Foshan Nanfeiyan Social Work Service Centre

Donggan Zhuguang Public Welfare Service Centre

Worker Empowerment

Dagongzhe Centre

Labour Action China

Zhujiang Workers Service Centre

Pugongying Handicapped People Mutual Help Centre, Heping County, Heyuan City

Acknowledgement

We would like to thank the following friends and organizations who have provided their assistance and opinions for this survey. They include:

Dr. Zheng Guanghuai, Social Work Department, Sun Yat-Sen University

Prof. Zhai Yujuan, Labour Law and Social Security Law Research Institute, Shenzhen University

Prof. Jia Junling and Prof. Ye Jingyi, Institute of Labour Law and Social Security Law, Beijing University

Prof. Han Guijun, School of Law, Zhongnan University of Economics and Law

Mr. Tony Fung, Worker Rights Consortium

Prof. Zhou Changzheng and Prof. Huang Xiumei, Labour Law Aid Project, Nanjing University

Survey Outcome

Table 1: Basic Survey Data

	Guangdong	Jiangsu	Total
Valid responses	327	537	864
Invalid responses	12	73	85
Total	339	610	949

1. On October 28, 2010, the Standing Committee of the NPC enacted the Social Insurance Law stating specifically that the law would take effect in July, 2011. Even though the law has been in effect for nearly a year, only one-fifth of the respondents of this survey know about the law and the date when it came into effect (see Table 2). This fact is disturbing and arouses concern about the actual progress of its implementation. The fact that so few workers know about the law may prevent its implementation as well. According to Table 2, one-third of the respondents know the law in part while half do not know anything about the law. In other words, over three quarters of the respondents do not know enough or are completely ignorant about the law and the date when it began to take effect. Such outcome is obviously neither proper nor satisfactory. The government should take action to make improvement in this respect.

Table 2: Do you know about the Social Insurance Law and that it takes effect on July 1, 2011?

	No. of respondents	Percentage
Yes	198	22.90 %
Partly	271	31.40 %
No	395	45.70 %
Total	864	100 %

2. Only 40% of the respondents know that workers and rural migrant workers who have an employment relationship with an employing entity are entitled to 5 social insurances, covering basic pension, sickness, work related injuries, unemployment and maternity (see Table 3). This is unacceptable. In view of the fact that half of the citizens should be entitled to these social insurances, the government should do its best to make sure that most citizens know of their social security rights and duties when implementing the Social Insurance Law and building the social security system.

Table 3: Do you know that workers and rural migrant workers who have an employment relationship with an employing entity are entitled to social insurances covering basic pension, sickness, work related injuries, unemployment and maternity?

	No. of respondents	Percentage
Yes	333	38.50 %
Partly	252	29.20 %
No	279	32.30 %
Total	864	100 %

3. From Table 4, it is obvious that 90% of the respondents are uncertain or do not know how their employers calculate the payment for their social insurance. According to the Social Insurance Law, the insurance premium an employer should pay for his/her employee is a certain percentage of the total wages plus overtime payment of the employee. However, only 9.4% of the respondents have given a correct answer. In other words, less than 10% of the respondents have the correct answer while over half of the respondents do not have any answer. It is obvious that the implementation of the social security system is far from satisfactory. It is also possible that employers have not abided by the law in making payments for the social insurance of their employees and have only arbitrarily paid the lowest amount, such as using the local

minimum wage level when calculating the payment. This is actually a violation of the Social Insurance Law. The fact that over half of the respondents have no knowledge of how the payment is calculated shows citizens' low level of awareness about their own rights. The central government and local governments have to improve public education and propaganda to ensure that citizens with average education understand and know their social security rights. This will not only make it easier for the Bureau of Labour and Social Security (BRSS) to implement the law but will also enable citizens to monitor more effectively the implementation of the law in an effort to safeguard their own rights.

Table 4: How does your employer calculate the payment for your social insurance?

Standard your employer uses when paying for your social insurance	No. of respondents	Percentage
A certain percentage of the local minimum wage	103	31.10 %
60% of the average social wages in the urban areas	14	4.20 %
A certain percentage of the total wage plus overtime payment of a worker	31	9.40 %
I don't know	183	55.30 %
Information lacking	533	-----
Base figure	864	331

4. Nearly 90% of the respondents agree that the official media should publicise the main contents of the Social Insurance Law (see Table 5). Such unanimity plus the facts revealed above demonstrate that public education and propaganda on social security are very inadequate. We think that both the government and NGOs have the responsibility and the need to heavily promote the contents of the Social Insurance Law through television, radio, newspapers, internet and NGO activities. However, many labour organizations that organise activities to publicise the law face unreasonable obstructions by local people in power. For example, security guards of a certain city have chased away a group of labour organisers who were holding activities to publicise the law.

Table 5: Do you think that the official media should publicise the main contents of the Social Insurance Law?

	No. of respondents	Percentage
--	--------------------	------------

Yes	753	87.20 %
No	40	4.60 %
No opinion	71	8.20 %
Total	864	100 %

5. From Table 6 and 7, it can be seen that the citizens are very concerned about their social security rights. Among the respondents who know that they have the right to enquire about payment records and personal interest records at the BRSS (271 persons), nearly 90% have attempted to do so (241 persons, 88.6%). This shows that the Social Security Law is in accord with the interest of citizens. The law enables employees to monitor their employers' payment for their social insurance and the work of the BRSS in keeping records of their social security benefits. If there is adequate propaganda by the central government and local governments, citizens are willing to enquire at the BRSS about their social security benefits and would know how to do it (see Table 6 and 7).

Table 6: Do you know that in the general provisions of the Social Insurance Law, it is stipulated that individuals have the right to enquire at the BRSS about payment made by their employees and their accrued benefits?

	No. of respondents	Percentage
Yes	271	32.40 %
Partly	222	26.60 %
No	342	41.00 %
Information lacking	29	-----
Base figure	864	835

Table 7: Have you ever tried to enquire at the BRSS about payment made by your employee and your accrued benefits?

	No. of respondents	Percentage
Yes	240	31.80 %
No	515	68.20 %
Information lacking	109	-----
Base figure	864	755

6. Among the respondents who have enquired at the BRSS, 70% were satisfied with the result of their enquiries, and only 30% were not satisfied (see Table 8). This percentage shows that BRSS has been doing quite well in responding to citizens' enquiries and should be commended. On the other hand, 30% of the respondents expressed dissatisfaction which shows that there is space for improvement in the work of BRSS in responding to citizens' enquiries. There is a possibility that BRSS offices in different places respond in different ways to enquiries. In its work in coordinating local administrative measures, BRSS should make an effort to ensure that all its offices adopt a common model of administration and to ensure that at least 90% of citizens are satisfied with BRSS.

Table 8: If yes, are you satisfied with the result of your enquiry?

	No. of respondents	Percentage
Satisfied	166	69.20 %
Not satisfied	74	30.80 %
No opinion	154	-----
Not relevant	470	-----
Base figure	864	240

7.

Table 9: Do you know how you may enquire about your social security record? (More than one answer may be chosen.)

Ways of enquiry	No. of respondents	Percentage
Via the internet	129	27.90 %
At the office of the BRSS	181	39.20 %
By phone	58	12.60 %
At the company	37	8.00 %
Don't know	57	12.30 %
Information lacking	402	-----
Base figure	864	462

The Social Insurance Law has not stipulated ways of enquiry but respondents

somehow think that they may enquire via the internet or at the company. The BRSS should therefore consider providing various means for employees to enquire about their personal social security record, in particular at the company. The BRSS should instruct companies to specify which department or which staff is responsible for employees' enquiry. To ensure that workers and employees know about the social security system and their rights and be able to enquire and have access to personal social security record, social security ordinances should stipulate that companies post information and news on social security at eye-catching places such as notice boards and walls of hallways, etc.

8. Under Article 82 and 83 of the Social Insurance Law, when a citizen's social security rights is violated, he/she may report or complain to social security offices or social insurance agencies as well as apply for administrative review or initiate administrative litigation in accordance with the law. He/She may also apply for mediation and arbitration. If he/she is dissatisfied with the result of mediation and arbitration, he/she may file for a lawsuit. Nearly half of the respondents agree with the legal proceedings stipulated in the Social Insurance Law as means to safeguard their rights. To guarantee citizens' social security rights, both the central government and local governments should make an effort to publicise and educate the public about these legal means.

Table 10: Do you agree that the following legal means be used to safeguard the rights of an employee when his/her employer does not pay for his/her social insurance? (More than one answer may be chosen.)

Legal means to safeguard employees' social security rights	No. of respondents	Percentage
Report or complain to social security offices or social insurance agencies	506	58.60 %
Apply for administrative review or initiate administrative litigation in accordance with the law	189	21.90 %
Apply for mediation and arbitration	346	40.10 %
File a lawsuit with the People's Court if unsatisfied with the result of mediation and arbitration	260	30.10 %
Base figure		864

9. It is a common consensus among social security experts and scholars that urban-rural integration should be pursued in social security and any difference should be eliminated. Outline of the 12th Five Year Plan (see Outline, P.95) has stated clearly

that the pension system of the urban area and that of the rural area should gradually merge. To achieve this goal, the pension system and public service entities shall undergo reform. Scholars and citizens also agree that there should not be any difference between social security benefits enjoyed by civil servants and those enjoyed by other citizens. In other words, civil servants should also contribute to and benefit from the same social security system. Local governments should therefore stipulate in provincial laws the development of local social security systems to that effect. Moreover, 40% of the respondents think that it is most pressing to eliminate the difference in the social security benefits enjoyed by local residents and those enjoyed by migrant residents. The implication is that fairer and more reasonable transferable social security benefits should be installed. Local governments should not, therefore, discriminate against citizens coming from other cities and migrant workers from the rural area in their social security rights. Instead, local governments should espouse the national policy established by the State Council and stipulated in Article 64 of the Social Insurance Law in coordinating social insurance funds on a provincial basis so that social security systems in the same province become uniform in their structures, standards, management, as well as in transfer of funds under the coordination of the provincial level administrative entities.

Table 11. The social security system needs to be improved. The elimination of which kind of differential treatment do you think is a pressing need? (More than one answer may be chosen.)

Type of differential treatment	No of respondents	Percentage
Difference between the urban area and the rural area	344	39.80 %
Difference between civil servants and other citizens	228	26.40 %
Difference between local residents and migrant residents	350	40.50 %
No opinion	93	10.80 %
Base figure		864

Recommendations:

- (1) The central government, local governments and NGOs should make a concerted effort to publicise the main contents of the Social Insurance Law and make use of official media as well as unofficial media, including television, radio, newspapers, internet and NGO activities to provide information, public education and propaganda on social security. The purpose is to ensure that most citizens have access to information about the development of the social insurance system.

- (2) Clauses of the Social Insurance Law and those of local social insurance acts should provide the basis for the content of publicity on social security. The following information should be included: date of enforcement of the law, criteria for entitlement to different types of social insurance, level of payment to be made by employers for the social insurance of their employees, rights and duties of citizens with regard to social security, means of enquiry and ways for employees to safeguard their rights.
- (3) Local social security acts should stipulate that provincial coordination be established to ensure urban-rural integration, uniform development and management of social security systems, as well as uniform transfer and use of funds within an area under provincial coordination. Local governments should also work towards bridging the gap between social security benefits enjoyed by civil servants and those enjoyed by employees of private companies and other citizens.
- (4) As a means to enable public monitor of the performance of frontline government officials, local governments should invite universities or academic institutions to conduct opinion survey on citizens' views of the performance of frontline government workers in areas under their coordination. Reviews should be conducted on programmes or administrative performance of government officials about which citizens have queries or feel frustrated. Reviews should be followed by improvement on administrative measures.
- (5) The Bureau of Labour and Social Security (BRSS) should establish regulations and instruct companies to put up posters on notice boards to publicise and circulate news about the social insurance system which is being established. Content of the Social Insurance Law such as employers should inform their staff and employees on how insurance premiums are paid and payment level, etc. should be publicized as well.
- (6) Some workers think that the Social Insurance Law lacks complementary laws and regulations. As a result, many workers are unable to or are obstructed from asserting their rights. Some examples are: workers having to pay for the medication of work-related injuries and sickness by themselves first; the difficulty in implementing the social insurance benefits of dispatch workers, etc. To safeguard workers' social security rights, concerned authorities should draw up regulations and guidelines in these respects as soon as possible.

Background Information of Respondents

Table 12:

Gender	No. of respondents	Percentage
Male	628	72.70 %
Female	236	27.30 %
Total	864	100 %

Table 13:

Age	No of respondents	Percentage
Below 18	18	2.10 %
18-21	80	9.30 %
22-30	323	37.40 %
31-40	249	28.80 %
41-50	156	18.10 %
51-60	28	3.20 %
Above 60	10	1.20 %
Total	864	100 %

Table 14

Academic qualification	No. of respondents	Percentage
Below Higher Secondary School	446	51.60 %
Higher Secondary School or Vocational School	285	33.00 %
Professional Training College	97	11.20 %
Undergraduate	31	3.60 %
Graduate or above	5	0.60 %
Total	864	100 %

Table 15:

Profession	No. of respondents	Percentage
Employees of government agencies or public service entities	10	1.20 %
Employees of companies or factories	676	78.20 %
Free lance workers (no regular employment or self-employed workers)	95	11.00 %
Other (unemployed or students)	63	7.30 %
Information lacking	20	2.30 %

Total	864	100 %
-------	-----	-------

Notes:

Nanjing University Legal Aid Programme for Migrant Workers Report (2012)

(1) Disputes on social insurance have been a major type of labour disputes in Nanjing.

At Nanjing Legal Aid Centre, in the first quarter of 2012, there were a total of 285 enquiries on social insurance which was the second largest type of enquiries. They represent 31.77% of all enquiries in the same period of time and was only 0.23% less than the enquiries on labour disputes. However, as a whole, the percentage of enquiries on social insurance in the first quarter was over 30% which was a rather high percentage.

There are 3 reasons for the high percentage of enquiry on social insurance: 1. Some small and medium enterprises lack a strong consciousness in paying for the social insurance for their employees. Others do not want to pay because they want to save on their production cost. When an enterprise pays overdue insurance premiums on the insistence of its employees, not only does it have to pay the overdue premiums, it would have to pay a fine which is quite high. If an enterprise has not paid social insurance premiums for its employees, when its employees suffer any work-related injury, become pregnant or unemployed, it would have to shoulder all the loss suffered by the employees in their social security benefits. 2. Some employees lack knowledge about labour laws and have not voiced out when their employers infringe on their rights and violate the law. Some employers therefore feel free to do what they like. Often employees speak out on their social security rights only when they are fired illegally by their employers or some other disputes erupt in the workplace. 3. In terms of monitoring the implementation of the law, government agencies responsible for monitoring labour practice are restrained by objective factors such as the lack of human power. Because of this, they are unable to monitor promptly and comprehensively the implementation of social insurance measures in all enterprises within their jurisdiction.

(2) There are some malpractices in social insurance.

During consultations, we have learnt from our clients that many enterprises tell workers that there is no need to pay for social insurance during the probation period. Social insurance premiums need to be paid only after they become regular employees.

Most workers also think that it is lawful for the enterprise to do so.

(3) Difficulties in safeguarding employees' rights to social insurance

In Nanjing, social insurance disputes do not come under the jurisdiction of the People's Court. They are settled through mediation and arbitration. However, in Nanjing, the arbitration body only tells employers to pay overdue premiums without stating clearly how the payment should be calculated. Consequently, most employers pay as little as possible which result in the legal rights of workers being violated.

Reference/Webpages:

1. www.social-protection.org
2. <http://aross.asia>
3. www.szlabourlaw.org
4. Hong Kong Social Security Society (2009): *Turning Threats Into Safety*, Hong Kong: Hong Kong Social Security Society, Sept., 2009 (Chinese)
5. Hong Kong Social Security Society, Asia Monitor Resource Centre: *Demolishing the Binary Structure and Building an Urban-Rural Integrated Social Security System*, Hong Kong, 2009 (Chinese)
6. China Legal Publishing House (ed.), *Latest Social Security Laws and Policies*, Beijing: China Legal Publishing House, Feb., 2009 (Chinese)
7. Administrative Law Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress (ed.), *An Exposition of the Social Insurance Law of China*, Beijing: China Legal Publishing House, Oct., 2010 (Chinese)
8. Peng Gaojian: *A Study of the Problem of Pension Insurance Liability in China*, Beijing: Peking University Press, Oct., 2005 (Chinese)
9. Lin Jia (ed.), *Social Law Review*, (Vol. 4), Beijing: China Renmin University Press, Jan., 2010 (Chinese)

Contact persons:

Choi Wing Sze, Sally sally@amrc.org.hk

Leung Po Lam, Apo apoleong@163.com

Yi Yeting yyeting@yeah.net