



新就业形态人员的职业伤害保障 Employment Injury Protection for Workers in New Forms of Employment

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Partnership Instrument Project improving China's institutional
capacity towards universal social protection

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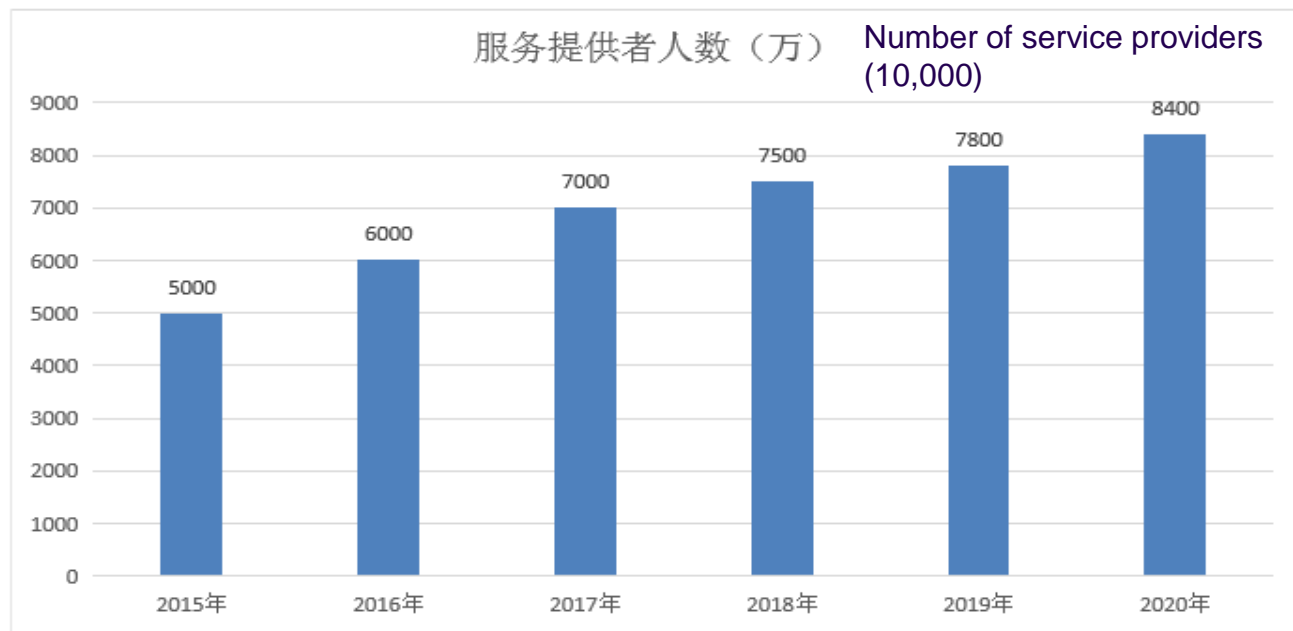
Basic ideas of providing employment injury protection for NFE workers

一、新就业形态人员职业伤害保障现状

The current situation of employment injury protection for workers in new forms of employment (NFE)

新就业形态人员规模庞大

NFE workers are at a large scale.



图：2015-2020年我国共享经济服务提供者人数

数据来源：国家信息中心历年《中国共享经济发展报告》

Source: China's Annual Report on Sharing Economy Development, the State Information Center.

Figure: Chinese service providers in sharing economy (2015-2020)

Table: Number of workers in selected platforms

表 部分平台企业从业人员数量

Online car-hailing

Intra-city freight delivery

	外卖 Food delivery		网约车	即时递送 Instant delivery		同城货运	
	美团 Meituan	饿了么 Ele.me	曹操出行 Caocao	达达 Dada	闪送 Shansong	货拉拉 Huolala	快狗打车 Kuaigou
从业人数 (万)	527	114	300	70	150	66	450

Number of
workers (10,000)

注：网络搜集整理，各家企业公布数据，统一口径有差异

Note: figures in the table come from the statistics published online by platforms.

新就业形态人员构成复杂。根据人社部等八部门《关于维护新就业形态劳动者劳动保障权益的指导意见》（人社部发〔2021〕56号），新就业形态人员包括三种类型：

The composition of NFE workers is complex. According to the *Guiding opinions on labour and social security rights and interests of workers engaged in new forms of employment* (No.56, 2021, MOHRSS), NFE workers consist of three types:

①符合确立劳动关系情形的

Workers eligible for establishing labour relations

②不完全符合确立劳动关系情形但企业对劳动者进行劳动管理的

（简称不完全符合确立劳动关系情形）Workers who are not fully eligible for establishing labour relations but are under the management of enterprises

③民事法律关系 Workers with civil law relations

部分新就业形态人员职业伤害保障缺失，仅能依赖商业保险保障

Some NFE workers are not covered in employment injury insurance, who can only rely on commercial insurance.

1) Workers eligible for establishing labour relations

①符合确立劳动关系情形的 ➡ 参加现行工伤保险制度

Covered by the existing work injury insurance scheme

2) Workers who are not fully eligible for establishing labour relations

②不完全符合确立劳动关系情形但企业对劳动者进行劳动管理的（简称不完全符合确立劳动关系情形）

➡ 无法参加现行工伤保险制度；
均有职业伤害保障需求；
迫切程度不一样。

Being excluded from the existing work injury insurance. All workers need to be protected from employment injury, though the degree of urgency may vary.

③民事法律关系 3) Workers with civil law relations

二、新就业形态人员参加工伤保险制度的难点

Challenges for NFE workers to participate in work injury insurance scheme

工伤保险简易业务流程图

an overview of the business process of work injury insurance scheme



难点1 参保缴费

1. Challenge for participation and contribution payment

现行规定 Current regulation

- 雇主责任制原则，强制参保；
Employer liability, mandatory coverage
- 由用人单位缴费，个人不缴费；
Employers pay contributions with no individual payment.
- 按月工资总额缴费，行业基准费率和浮动费率
Contributions based on monthly gross payroll, considering the industry benchmark rate and the corresponding floating rate.

新就业形态人员 NFE workers

- 是否强制参保？ Is it mandatory or not?
- 缴费主体是谁？ Who pays contributions?
- 如何缴费（缴费基数和缴费率）？
How to pay contributions (contribution base and contribution rate)?

难点2 工伤认定

2. Challenge for the determination of work-related injury

现行规定 Current regulation

- 列举法：7种工伤认定情形和3种视同工伤情形，其中上下班交通事故、因工外出、突发疾病死亡等争议较大。

Enumeration method: 7 categories that are determined to be work-related injury and 3 that are regarded as work-related injury. Some are controversial: traffic accidents on the way to and from work, travelling due to work, and death from sudden illness.

- 调查取证有用人单位的配合

Employers cooperate with authorities on investigation and obtaining evidence.

新就业形态人员 NFE workers

- 工作时间和工作方式灵活，是否因工作原因受伤较难确定，或者有较大的道德风险。

The flexibility of work time and work methods makes it difficult to determine whether the injury is work-related, or faced with higher moral risks

- 如果规定不合理，将变成意外伤害险。

It not properly regulated, it will become generic accident insurance

难点3 待遇责任和待遇水平

3. Challenge for the liability and level of benefits

现行规定 Current

- 待遇由工伤保险基金和用人单位共同承担。
The payment of benefits is borne by injury insurance funds and employers.
- 工伤保险总体待遇水平高，无论是从国际比较还是和国内其他社保制度比较。
The level of work injury benefits is high in general, either compared with international practices or with other social insurances in China.

新就业形态人员 NFE workers

- 用人单位承担的这部分待遇如何处理？
Who should bear the part of benefits provided by employers?
- 待遇水平高容易导致道德风险，尤其工伤认定困难情况下。
High-level benefits tend to cause moral risks, especially when the determination of work-related injury is difficult.

难点4 经办管理

4. Challenge for administration

现行规定 Current regulation

- 工伤保险业务流程均需要用人单位配合，包括参保缴费、工伤认定、劳动能力鉴定、待遇申请等。

Employers are obliged to be engaged in the business process of work injury insurance, including registration and contribution payment, determination of work-related injury, work capability assessment and claims for benefits.

新就业形态人员 NFE workers

- 原来用人单位的角色由谁承担？

Who will play the role of employer?

- 平台企业一般是信息技术行业，跨区域运行特点明显，不一定有地方实体机构；如果个人完成业务流程，将给经办机构业务量带来挑战

In most cases, platform companies belong to IT industry, which feature cross-regional operations, and may not necessarily have local entities.

If the business process is fulfilled by individuals, it will bring challenges to the business volume for social security administrations.

三、新就业形态人员职业伤害保障基本思路

Basic ideas of establishing employment injury protection for NFE workers

第一，坚持社会保险定位。 1. Stick to the principle of social insurance

- 社会保险制度定位，也就是由政府主导的保障制度。要有长期待遇，而不是一次性待遇，有别于商业保险。
Ensure it is a social insurance scheme led by the government, with a long-term benefit instead of a lump-sum payment provided by commercial insurance.

- 在现行工伤保险制度的大框架下建立和实施。基本制度理念保持一致。待遇水平基本保持统一，避免引发社会公平问题。

Establish and implement the scheme within the framework of the existing work injury insurance system, with compatible institutional concepts and a unified level of benefits to avoid the unfairness issue.

- 不同人群参保责任不同。对于不完全符合劳动关系情形的人员，采取强制参保政策，明确平台企业的参保缴费责任；对于民事法律关系的，采取自愿参保方式。

Clarify the liability of different groups. Workers not fully eligible for establishing labour relations should be mandatorily covered, with clearly defined responsibility of platform companies to pay contributions. For workers with civil law relations, voluntary participation applies.

第二，采取试点先行。 Pilot programmes

- 考虑到新就业形态人员构成复杂，可以先从不完全符合劳动关系情形的人员入手，并优先选择社会各界关注度较高、职业伤害风险较大的出行、外卖、即时配送、同城货运等行业，选择部分工作基础较好的省市先行试点，待制度运行成熟以后再有序地全面推开。

Cosidering the complex composition of NFE workers, it's practicable to conduct pilot programmes in selected provinces and cities with more advanced conditions, starting from workers not fully eligible for establishing labour relations, especially in those platforms with higher employment injury risks and social concerns, e.g. car-hailing, food delivery, instant delivery, and intra-city freight delivery. These progrmmes could be extended nationwide progressively when reaching mature.

第三，创新具体政策办法。 Policy innovations

- 一是参保缴费方面。平台从业人员采取按单缴费，每单必保、每人必保，缴费方式采取类似“按项目参保”方式，按上月接单总量乘以费率方式一次性趸交，凡是在平台上接单的从业人员每单都能受到保障。

1. As for registration and contribution payment, platform workers could pay contributions by each order. The payment method could follow the case of “project-based insurance participation”, i.e. a one-off payment is made by multiplying the total amount of orders in the previous month and the contribution rate. This guarantees that every platform worker is protected for each order accepted on the platform.

- 二是工伤认定方面。明确界定好保障情形。平台从业人员与现有认定情形基本一致，紧紧围绕接单过程。

2. The policy shall define the conditions for determination of work injury. Similar rules shall apply to platform workers, closely relating to fulfilling orders.

- 三是待遇政策方面。平台企业除了参保缴费责任外，还应承担职业伤害发生后的一定责任，但不应与传统用人单位完全一样。平台灵活就业人员能够获得的待遇与一般职工基本一致。

3. Policies related to employment injury benefits. In addition to contribution payment, platform companies should bear certain responsibilities when work injury occurs to platform workers, yet which should not be exactly the same as traditional employers. Benefits for platform workers should be basically consistent with those for employees.

- 四是经办管理服务方面。经办机构可以购买商业保险服务；待遇申请应更加便利；平台企业参保不一定要有地方注册实体，但要有服务实体。

4. Administrative management and service. Administrations can purchase commercial insurance services and facilitate the claims for benefits. For insurance participation, platform companies do not have to have local registered entities but should have service entities that can provide services for injured workers.

感谢聆听。

Thank you for your attention