

臺灣醫師勞工 健康服務法制研析— 以日本法制為借鏡*

An Analysis on the Regulations of Occupational
Health Service of Physicians in Taiwan—
A Lesson from Japanese Law

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摘要

國際勞工組織於第161號職業衛生服務公約提出職業健康服務概念，由醫護人員進入職場，推動職場危害防制與人員健康促進。臺灣「勞動健康保護規則」具體規範醫護臨場服務制度的細節，甫於2021年12月22日修正，改變事業單位人數計算基準，並針對分散型事業單位另訂特別規定。考量過往相關文獻缺乏，本文聚焦於醫師臨場服務制度研析，並與日本產業醫師制度對照。本文提出臺灣臨場服務制度相關問題，包含

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事業單位人數計算基準模糊、臨場健康服務涵蓋密度不足、派遣人員健康管理權責不明、分散型事業單位規定形成法律漏洞等。最後，本文就未來可能的修正方向提供建議。

The International Labour Organization (ILO) proposed the concept of “Occupational Health Service” (OHS) in the C161 Occupational Health Services Convention, which is provided by medical staff entering the workplace to promote workplace hazard prevention and personnel health promotion. The “Regulations of the Labor Health Protection” in Taiwan specifically regulates the details of the on-site service system for physicians and nurses. It revised on December 22, 2021 to change the basis for calculating the number of people in the enterprise, and set special regulations for decentralized enterprises. Considering that there was no relevant literature in the past, this study focuses on the OHS of physicians in Taiwan, and compares with the OHS system in Japan. This paper proposes issues related to the OHS system in Taiwan. First, the basis for calculating the number of people in the enterprise is not clearly stipulated in the articles. Second, the coverage rate of OHS for physicians in Taiwan is still significantly insufficient. Third, the rights and responsibilities for the health management of dispatched labor in Taiwan are still unclear. Forth, the regulations of decentralized enterprises forms legal loopholes. Finally, this study provides suggestions on future amendments.

壹、前言

國際勞工組織（International Labour Organization, ILO）章程規定必須保護工人免於因工作導致生病和受傷的原則，然而，每年仍有278萬人因工作而死亡，經濟損失相當巨大，約占世界年度GDP的3.94%¹。ILO對此訂定職業安全與健康標準，第161號職業衛生服務公約將職業衛生服務定義為「具有基本預防功能，基於建立和維持安全健康工作環境的目標，向雇主、勞工及其代表提供建議的服務，以達成工作上的最佳身心健康狀況，並據此適性調配工作」²。

ILO另提出「基本職業健康服務」（basic occupational health service, BOHS）策略³，由經職業健康服務培訓之醫護人員提供職場健康危害的預防與控制⁴。臺灣推動BOHS的模式，係將個人基本健康指標控制（如高血糖、高血壓、高血脂控制等）與職場特有工作暴露危害因素（如化學物質、過勞、心理壓力等）加以整合⁵。職業健康服務制度必須包含以下功能：定期職場現場訪視、監測評估職業危害、訂定職場健康改善方

1 International Labour Organization, World Day for Safety and Health at Work 2019, <https://www.ilo.org/safework/events/safeday/lang--en/index.htm> (last visited Aug. 1, 2022).

2 Occupational Health Services, International Labour Organization, https://www.ilo.org/global/topics/safety-and-health-at-work/areasofwork/occupational-health/WCMS_354275/lang--en/index.htm (last visited Aug. 1, 2022).

3 JORMA RANTANEN, BASIC OCCUPATIONAL HEALTH SERVICES: A WHO/ILO/ICOH/FIOH GUIDELINE, FINNISH INSTITUTE OF OCCUPATIONAL HEALTH 5 (3rd ed. 2007).

4 黃建元，臨場服務——勞工健康的保護利器，奇美醫訊，133期，2021年6月，22頁；Jorma Rantanen, *Basic Occupational Health Services — Their Structure, Content and Objectives*, 1 SJWEH 5 (2005); Jorma Rantanen, *Basic Occupational Health Services*, 15 AFR NEWSLETT ON OCCUP HEALTH AND SAFETY 34-37 (2005).

5 杜宗禮，我國職場勞工健康照護之發展近況，台灣醫界，55期，2012年12月，45頁。