

護理勞動權益： 通勤災害是否屬職業災害？

Nursing Labor Rights: Do Commuting Accidents
Belong to Occupational Accidents?

邱慧洳 Hui-Ju Chiu *



摘要

通勤災害為勞工保險條例之職災勞保給付所涵蓋，然其是否屬勞動基準法上之職業災害而有勞動基準法第59條規定之適用，則有爭議。本文擬介紹一則護理人員於上班途中發生車禍，其主張此通勤災害屬職業災害，請求醫院雇主依勞動基準法第59條規定予以補償之判決。本件之爭點涉及「通勤災害」、「職業災害」以及勞動基準法第59條關於雇主補償責任等概念，本文擬藉此判決探究之。

The payment of labor insurance because of occupational accidents according to Labor Insurance Act covers the commuting accidents, but it still problematic whether the latter belongs to the occupational accidents according to

*臺北護理健康大學通識教育中心教授 (Professor, General Education Center, Taipei University of Nursing and Health Sciences)

關鍵詞：通勤災害 (commuting accidents)、勞工保險條例 (Labor Insurance Act)、勞動基準法第59條規定 (Paragraph 59 of Labor Standards Act)、職業災害 (occupational accidents)、護理人員 (nursing staff)

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Labor Standards Act and whether paragraph 59 of Labor Standards Act therefore could be applied. A Judgment would be introduced in this essay. According to which, one of the nursing staff had a car accident on the way to work and argued that a commuting accident like this should be an occupational accident, claiming the hospital as the employer to compensate him/her according to paragraph 59 of Labor Standards Act. The legal issues are about the concepts like the commuting accidents, the occupational accidents and the obligation of compensation concerning the employer according to the paragraph 59 of Labor Standards Act. They would be discussed in this essay by introducing the judgment.

壹、案例事實

甲為X醫院血液透析室之護理人員，其主張於2016年5月5日上午6時15分，騎乘機車至X醫院之上班途中，前方機車騎士乙因路口紅燈起步而驟然減速，致其閃避不及追撞乙後倒地，受有腰椎骨折，當日即至X醫院急診治療，惟迄2017年12月31日尚未復原，爰依勞動基準法（下稱勞基法）第59條第1、2款規定請求X醫院給付醫療費用與不能工作期間之工資補償。惟X醫院抗辯：甲通勤時之風險非X醫院所得掌控，又依臺北市車輛事故鑑定委員會之鑑定意見，系爭車禍之主要肇事責任為甲疏未注意車前狀況，系爭車禍不能視為職業災害¹。

1 本件改編自臺灣臺北地方法院106年勞訴字第263號民事判決。