

## J. Y. Interpretation No.456 ( June 5, 1998 ) \*

**ISSUE:** Article 25, Paragraph 1, of the Enforcement Rules of the Labor Insurance Act, as amended prior to 1996, provides that the labor insurance program should be offered and limited to full-time employees and staff members. Does the provision contradict the Constitution?

**RELEVANT LAWS:**

Articles 23 and 153 of the Constitution ( 憲法第二十三條、第一百五十三條 ) ; Articles 6, Paragraph 1, Subparagraphs 1 to 5, and 8, Paragraph 1, Subparagraphs 1 and 2 of the Labor Insurance Act ( 勞工保險條例第六條第一項第一款至第五款、第八條第一項第一款及第二款 ) ; Article 25, Paragraph 1, of the Enforcement Rules of the Labor Insurance Act ( 勞工保險條例施行細則第二十五條第一項 ) ; Article 9, Paragraph 1, of the Labor Standards Act ( 勞動基準法第九條第一項 ) .

**KEYWORDS:**

labor insurance program ( 勞工保險 ) , full-time workers ( 專任員工 ) , part-time workers ( 非專任員工 ) , insured persons ( 被保險人 ) , insured units ( 投保單位 ) , principle of proportionality ( 比例原則 ) .\*\*

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\*\* Contents within frame, not part of the original text, are added for reference purpose only.

**HOLDING:** Article 153 of the Constitution proclaims that the nation shall implement a policy of labor protection. The government, in the interest of protecting the lives of workers and promoting social security, has enacted the Labor Insurance Act. The employees and staff members or laborers referred to in Article 6, Paragraph 1, Subparagraphs 1 to 5, of the Act, shall all join the Labor Insurance Program as insured persons and their employers or the organizations or institutions they are affiliated with shall become insured units. In addition, the employees and staff members referred to in Article 8, Paragraph 1, Subparagraphs 1 and 2, of the Act may also participate in the Labor Insurance Program as other qualified employees and staff members or laborers stipulated in the Act. For the employees and staff members or laborers participating in the Labor Insurance Program as insured persons, the Act does not limit its coverage to full-time employees and staff members. However, prior to the September 13, 1996 amendments to the Enforcement Rules of the Labor Insurance Act, Article 25, Paragraph 1, of said Rules

**解釋文：**憲法第一百五十三條規定國家應實施保護勞工之政策。政府為保障勞工生活，促進社會安全，乃制定勞工保險條例。同條例第六條第一項第一款至第五款規定之員工或勞動者，應以其雇主或所屬團體或所屬機關為投保單位，全部參加勞工保險為被保險人；第八條第一項第一款及第二款規定之員工亦得準用同條例之規定參加勞工保險。對於參加勞工保險為被保險人之員工或勞動者，並未限定於專任員工始得為之。同條例施行細則於中華民國八十五年九月十三日修正前，其第二十五條第一項規定：「依本條例第六條第一項第一款至第五款及第八條第一項第一款、第二款規定加保者，以專任員工為限。」以此排除非專任員工或勞動者之被保險人資格，雖係防杜不具勞工身分者掛名加保，巧取保險給付，以免侵蝕保險財務為目的，惟對於符合同條例所定被保險人資格之非專任員工或勞動者，則未能顧及其權益，與保護勞工之上開意旨有違。前揭施行細則第二十五條第一項規定就同條例所未限制之被保險人資格，逾越法律授權訂定施行細則之必要範圍，限制其適用主體，與憲法第二十三條規定之意旨未符，應不適用。

stipulated that “for those joining the Labor Insurance Program in accordance with Article 6, Paragraph 1, Subparagraphs 1 to 5, and Article 8, Paragraph 1, Subparagraphs 1 to 2, of the Act, the coverage is restricted to full-time employees and staff members.” Although this explicit exclusion of non-full-time employees and staff members or laborers from receiving the qualifications as insured persons is intended to serve the purposes of preventing those who do not have the status of workers from joining the Labor Insurance Program as imposters, thereby obtaining insurance benefits unlawfully, and draining the financial foundation of the program, it has not taken into account the rights and privileges of those non-full-time employees and staff members or laborers who are qualified as insured persons as stipulated in the same Act. Therefore, this exclusion is in conflict with the intention of protecting workers as proclaimed by the Constitution. Accordingly, by excluding those workers who are not disqualified by the Act as insured persons and limiting the subject of its coverage, the abovementioned Article 25, Paragraph 1, of the En-

forcement Rules of the Labor Insurance Act has exceeded the necessary boundaries of the authorization which the law has offered to prescribe in its Enforcement Rules. As it is incompatible with the purposes proclaimed in Article 23 of the Constitution, the said Paragraph shall no longer be applicable.

**REASONING:** Article 153 of the Constitution proclaims that the nation shall implement a policy of labor protection. The Government, in the interest of protecting the lives of workers and promoting social security, has enacted the Labor Insurance Act. In addition, pursuant to Article 23 of the Constitution, the freedom and rights of the citizens can only be restricted by the laws and should not exceed the necessary boundaries. When a law authorizes the administrative institution to prescribe implementing regulations in general, the said institution can enact the Enforcement Rules to implement the detailed and technical aspects of the enforcement of the authorizing law, provided that the regulations shall be consistent with the legislative purposes and do

**解釋理由書：**憲法第一百五十三條規定國家應實施保護勞工之政策。政府為保障勞工生活，促進社會安全，乃制定勞工保險條例。又依憲法第二十三條規定限制人民之自由權利，應以法律定之，且不得逾越必要之程度。法律概括授權行政機關訂定施行細則者，該管行政機關於符合立法意旨且未逾越母法規定之限度內，得就執行法律有關之細節性、技術性事項，以施行細則定之。惟其內容不得牴觸母法或對人民之自由權利增加法律所無之限制。本院釋字第三六七號解釋理由說明甚詳。勞工保險條例第六條第一項第一款至第五款規定之員工或勞動者應以其雇主或所屬團體或所屬機關為投保單位，全部參加勞工保險為被保險人。同條例第八條第一項第一款及第二款規定之員工亦得準用同條例之規定參加勞工保險。依勞動

not overstep the boundaries of the authorizing law. Furthermore, the contents of the Enforcement Rules shall not conflict with the authorizing law, violate the freedom and rights of the citizens, or add restrictions that are not specified in the authorizing law. The above has been explained in detail by this Yuan in the Interpretation No. 367. The employees and staff members or laborers referred to in Article 6, Paragraph 1, Subparagraphs 1 to 5, of the Labor Insurance Act, shall deem their employers or the organizations or institutions they are affiliated with as insured units, and shall all join the Labor Insurance Program as insured persons. In addition, the employees and staff members referred to in Article 8, Paragraph 1, Subparagraphs 1 and 2, of the Act may also participate in the program as other qualified employees and staff members or laborers stipulated in the Act. Pursuant to Article 9, Paragraph 1, of the Labor Standards Act, the types of work performed by the workers may be temporary, short-term, seasonal, for special purposes or of a continuous nature, but their status as workers remains the same. Since the ap-

基準法第九條第一項規定，勞工從事之工作雖有臨時性、短期性、季節性、特定性及繼續性之別，於其為勞工之身分並無軒輊。由於適用勞工保險條例所定被保險人之資格如何，影響勞工之權益，自應以法律定之。同條例對於參加勞工保險為被保險人之員工或勞動者，並未限定於專任員工始得為之，可知立法意旨於此已就憲法第二十三條所定比例原則為衡量。勞工保險條例施行細則於民國八十五年九月十三日修正前，其第二十五條第一項規定：「依本條例第六條第一項第一款至第五款及第八條第一項第一款、第二款規定加保者，以專任員工為限。」（現行規定業已刪除）行政院勞工委員會七十七年八月四日台七十七勞保二字第一六七八六號函復就「專任員工」解釋，指受僱勞工於僱用單位之工作時間內全部在僱用單位服務；或受僱用單位之支配，於室外服務，並依規定支領全部時間之報酬者而言。如僅以部分時間為僱用人工作，支領部分工時之報酬者，則非專任人員，即不得由投保單位為之投保，參加勞動保險為被保險人。用以排除非專任員工或勞動者之被保險人資格，雖係防杜不具勞工身分者掛名加保，巧取保險給付，以免侵蝕保險財務為目的，惟對於

plication of the qualifications of the insured persons stipulated in the Labor Insurance Act affects the rights and interests of workers, it shall be prescribed by law. The same Act, in addressing the qualifications for employees and staff members or laborers to participate in the Labor Insurance Program as insured persons, does not restrict them to full-time employees and staff members. Therefore, it is quite clear that its legislative intent and purposes have taken into account the principle of proportionality as proclaimed in Article 23 of the Constitution. Prior to the September 13, 1996 amendments to the Enforcement Rules of the Labor Insurance Act, Article 25, Paragraph 1, of said Rules stipulated that “for those joining the Labor Insurance Program in accordance with Article 6, Paragraph 1, Subparagraphs 1 to 5, and Article 8, Paragraph 1, Subparagraphs 1 and 2, of the Act, the coverage is restricted to full-time employees and staff members.” (This Paragraph has since been repealed). However, the Council of Labor Affairs of the Executive Yuan issued an interpretative letter titled Lao-Pao-Erh-Tzyh No. 16786 on August 4,

符合同條例所定被保險人資格之非專任員工或勞動者，則未能顧及其權益，與保護勞工之上開意旨有違。前揭施行細則第二十五條第一項規定就同條例所未限制之被保險人資格，逾越法律授權訂定施行細則之必要範圍，限制其適用主體，與憲法第二十三條規定之意旨未符，應不適用。

1988, stating that “the term ‘full-time employees’ refers to those workers employed by a hiring unit to provide services in the entirety of their working hours for that hiring unit, or workers controlled by a hiring unit to do full-time field work and receive full-time wages in accordance with related regulations. Those employed for part-time work and receiving part-time wages from their employers are not full-time employees or staff members. Therefore, they are not qualified to join the insured units and participate in the Labor Insurance Program as insured persons.” The purposes of this letter are to exclude non full-time employees or staff members or laborers from receiving the qualifications as insured persons. Although they are intended to prevent those who do not have the status of labor from joining the Labor Insurance Program as imposters, thereby obtaining insurance benefits unlawfully, and draining the financial foundation of the program, they have not taken into account the rights and interests of those non-full-time employees and staff members or laborers who are qualified as insured persons as stipulated in the same

Act. Therefore, this exclusion is in conflict with the intention of protecting workers as proclaimed by the Constitution. Accordingly, by excluding those workers who are not disqualified by the Act as insured persons and limiting the subject of its coverage, the abovementioned Article 25, Paragraph 1, of the Enforcement Rules of the Labor Insurance Act has exceeded the necessary boundaries of the authorization which the law has offered to prescribe in its Enforcement Rules. As it is incompatible with the purposes proclaimed in Article 23 of the Constitution, the said Paragraph shall no longer be applicable.