

Criminal Liability for False Declaration of Labor Insurance Salary: A Preliminary Study on the Comparison with Article 266a of the German Criminal Code and the Discussion on Legislation

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Abstract

The great numbers of false declaration, including over-reported and under-reported, and even non-declaration of labor insurance salary have been a serious issue under the current labor insurance declaration system. In the practice of the courts, these cases are often dealt with as either forgery or fraud. However, there are many shortcomings when dealing with related problems in both of these crimes, even including unacceptable loopholes in punishment.

When we focus on the German Criminal Code, which is adopted by Taiwan's Criminal Law, it can be found that in Article 266a, such problems are already ruled out of fraud and forgery and related regulations of punishment have been independently stipulated. Nevertheless, if we insist on checking the result as an element of this offense, Article 266a of the German Criminal Code is not really a successful clause. Moreover, the regulations on social insurance charges in German social law are not the same as of those in Taiwanese law, so there will be structural difficulties if the whole clause is adopted completely in Taiwan. Under this circumstance, when considering the exclusive problem of "under-reported false declaration" in Taiwan, it would be theoretically necessary for us to refer partly to Article 266a of the German Criminal Code and set up independent and special regulations of punishment for these false declarations and non-declarations

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of labor insurance salary in the Labor Insurance Act or the Penal Code in order to compensate the loopholes in punishment. Since the application of the objective crime is limited in this case, the focus of criminal liability should lie in the act. At the same time, the punishability threshold is more reasonable, if the term "the specific hazards offenses" is applied. As a result, the verification of causality is no longer necessary. The legal property can be better and efficient protected.

Keywords: Labor Insurance Act, Labor Insurance Salary, false declaration or non-declaration, illegally deduction of premiums, abstract strict liability, misconduct.