

Research on the Protection of Laborers' Rights and Interests in New Forms of Employment

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Abstract

Under the background of the rapid rise of platform economy, a number of new forms of employment workers have emerged, and their labor rights and interests protection is still not perfect, facing risks such as lack of clear labor relations, lack of labor standard protection, absence of retirement and pension system, high occupational risks, inadequate relief and security. Therefore, it is necessary to review existing laws and policies, improve the labor rights and interests protection system of workers with new employment forms, solve the problem of protecting the rights and interests of workers with new employment forms, and help the healthy economic development of new business platforms.

Keywords

New Forms of Employment; Platform Economy; Labor Relations; The Social Security.

1. Introduction

In recent years, with the rapid development of platform economy, the number of workers who rely on the Internet for employment has been increasing, resulting in the emergence of a number of new employment forms of workers represented by online taxi drivers, takeout delivery men, delivery men, network anchors, etc. New forms of employment can be from two angles of the productive forces and the productive relations for understanding, understanding from the perspective of productivity, "the new employment form" describes a new round of industrial revolution impetus productive resources, intelligent, digital and information through workers interact with production data, realize the virtual and the real production system flexible collaborative working mode. From the perspective of production relations, the new employment form refers to the employer-free and platform-based employment mode with the progress of Internet technology and the upgrading of mass consumption.

In the last five years, as human society as a whole has entered the era of mobile Internet, market transaction costs have fallen sharply, and the working mode of sharing economy or gig economy, which connects supply and consumption on Internet platforms, has flourished. During this period, the state has staged a series of policies to support the new economy and new industry development, especially in July 16, 2021 published "about new employment form laborer labor and social security rights and interests maintenance guidance", how to safeguard the labor rights and interests of workers of the new forms to make the administrative guidance, so it is necessary to conduct the thorough research to the protection of the rights and interests of workers of new forms, Understand the risks and challenges faced by the protection of the rights and interests of workers in new forms of employment, sort out the legal system for the protection of the rights and interests of workers in new forms of employment, so as to realize the long-term benign development of the new economy and new forms of business.

2. Risks Faced by the Protection of Labor Rights and Interests of Workers in New Employment Forms

New workers employment form is a product platform economy under the background of new forms, the work presents a flexible form, fragmentation, decentralized organization way, the characteristics of high intensity of labor, and most of the workers did not sign labor contract with platform, establish labor relations, and low rate of pay of occupational injury insurance of social endowment insurance,. This is not only not conducive to the healthy development of new business platform economy, but also brings no small challenge to social harmony and stability.

2.1. No Clear Labor Relationship has been Established with the Platform

The relationship between the new form of employment and the employer has always been controversial, and there is still uncertainty whether the labor relationship or civil employment relationship between the employee and the employer. Under this circumstance, the protection of the labor rights and interests of the employee is often outside the laws and regulations, which is extremely detrimental to the protection of the labor rights and interests of the employee. According to the White Paper on Adjudication of Labor Disputes of New Forms of Business in Qingdao (2016-2018), labor relationship is confirmed in labor relations of new forms of business The claim of the department accounted for 60.31% of the total number of labor dispute cases of the new form of labor, while only 3.77% of the total number of disputes confirming labor relations in the traditional labor dispute disputes. According to the ACFTU, 21 percent of workers in the new business have no contract or agreement of any kind. [1] In the new form of labor relations, the labor and capital rarely sign a written labor contract directly. Some practitioners sign electronic agreements with the platform; Some practitioners sign offline written agreements with the agency companies of the platform, and rarely adopt labor contracts. Common forms include principal-agent agreements, cooperation agreements, contract agreements, contracting agreements, lease agreements, etc. Some new businesses sign labor contracts with workers through labor dispatch companies. Only a very small number of new business enterprises directly sign labor contracts with workers.

According to the provisions of labor Law of the People's Republic of China, the object protected by labor law is the laborer who establishes labor relationship, and the sign of establishing labor relationship is to sign labor contract with employing units. However, the new forms of employment of laborers show many unique characteristics, resulting in the weakening of laborers' identity and economic subordination to the employer, which is difficult to meet the identification conditions of labor relations.[2] It also includes, business outsourcing, business contracting, multi-layer subcontracting, part-time work, one person to undertake multiple platform industries and other forms. Salary calculation and payment is calculated by the number of completed work tasks, relatively free work, relatively loose management. Under such conditions, it is difficult to determine whether the labor relationship or civil employment relationship between the workers and the platform, so the labor law is willing to protect the labor rights.

2.2. Lack of Labor Standards Protection

First, the income is unstable and there is no guarantee of minimum wage. The characteristics of platform economy determine that the income of employees will be affected by various factors, mainly manifested in the platform's share, platform policy subsidies, low season and peak season, and changes in the cost of workers' input into production materials, resulting in the unstable income of employees. Take takeaway delivery personnel near universities as an example. When relevant activities are launched on the platform and students are in school, their income is relatively high, even more than 10,000 yuan per month. During the winter and summer holidays, and the impact of the epidemic, their income fell sharply and even they could

not make ends meet. In addition, the platform sets strict reward and punishment measures, and the punishment for failing to complete the task is extremely severe. It is reported that delivery personnel have delayed delivery or lost orders three times in one day, which leads to customer complaints and may lead to the loss of a day's salary of delivery personnel. The employee's salary depends entirely on the number of tasks he/she completes. In case of illness, there is no sick leave system, and there is no related minimum wage system. During this period, the income is basically zero. Takeout deliverers and couriers are generally people with relatively low education level and no relevant professional skills, so it is difficult to survive under such circumstances.

Second, long working hours and no rest and vacation system. According to a 2018 study, ride-hailing drivers spend 46 percent of their working time taking orders, or more than half of their time on the road. [3] The average paid worker works 15.6 hours per week and 8.26 hours unpaid. According to a survey of couriers and food delivery workers in Wuhan from July 2019 to 2020, most couriers work 8 to 15 hours a day, with 13 hours accounting for the highest proportion. The working hours of delivery workers are usually 8 to 12 hours, with 10 hours accounting for the highest proportion. [4] Although workers in the new business model have relatively free working hours, employees do not have paid vacation benefits, whether it is sick leave, personal leave, or legal holidays, there is no vacation pay. In addition, some platforms impose working hours restrictions on practitioners. For example, Didi requires certified private taxi drivers to be online for more than 8 hours a day. If they fail to be online, their money will be deducted. 58 Home allows manicurists to take one day off every week, and only two days off every month. The specific day of rest should be agreed with the platform in advance, and the rest time must be waiting for the delivery order online at any time. [5]

2.3. High Occupational Risk but Insufficient Relief Protection

Under the new business model of the formats, part of the new form of employment laborer the existence of the higher professional risk, especially represented by Courier transport personnel, because of its long engaged in transportation timeliness, also greatly increase the possibility of traffic accident, on the other hand platform to control the time to finish the task orders, the rider was in a state of intense work, The risk of accidental injury remains high. In the first half of 2017, an average of one takeaway rider was killed or injured every 2.5 days in Shanghai. In the same year, 12 takeaway riders were killed or injured within three months in Shenzhen. In 2018, Cheng du traffic police detected nearly 10,000 violations of the law by riders within 7 months, resulting in 155 casualties, with an average of one rider injured or injured every day. In September 2018, Guangzhou traffic police investigated and punished nearly 2,000 traffic violations by food delivery drivers, with Meituan accounting for half. [6]

In addition, since most of the employees do not have labor relations with the platform, the platform does not need to insure the workers, and the workers are excluded from the coverage of social insurance. According to the Protection of Labor Rights and Interests of Employees of New Forms of Business (2019), only 38% of respondents' companies have paid work-related injury insurance for them, 36% have not, and 26% are not sure whether they have. Although some platforms have purchased personal accident insurance for employees, its coverage is too simple to solve the labor rights and interests of employees, such as medical treatment, pension and unemployment insurance.

3. Review of Laws and Policies on Protecting the Rights and Interests of Workers in New Forms of Employment

In recent years, relevant state departments have issued a series of relevant policies to protect the legitimate rights and interests of workers in new forms of employment. For example, the

Implementation Opinions on Enhancing the Vitality of Grassroots Trade Unions and Giving Full play to the Role of Grassroots Trade Unions (General Industry development Bureau no. 28, 2016) issued in October 2016 clearly requires trade unions at all levels to actively explore new ways for employees to join trade unions. Organize flexible workers into labor unions as much as possible; The Ministry of Human Resources and Social Security, together with the Central Comprehensive Control Office and the Supreme People's Court, issued the Opinions on Further Strengthening the Mediation and Arbitration of Labor and Personnel Disputes and Improving the Multiple Settlement Mechanism (Ministry of Human Resources and Social Security Of the People's Republic of China no.26, 2017), requiring the improvement of the multiple settlement mechanism for labor and personnel disputes, including new forms of labor disputes; The Ministry of Human Resources and Social Security, The National Development and Reform Commission, the Ministry of Transport, the Emergency Response Department, the General Administration of Market Regulation, the State Administration of Medical Insurance, the Supreme People's Court and the All-China Federation of Trade Unions issued the Guiding Opinions on Safeguarding the Rights and Interests of Workers in New Employment Forms (Issued by the Ministry of Human Resources and Social Security (2021) No. 56) on July 26, 2021. (hereinafter referred to as the guidance) and other guidelines on the protection of the labor rights and interests of workers in new employment forms, especially in this year's guidance issued for the protection of the rights and interests of workers to make a comprehensive guidance.

3.1. Review of Labor Relations Law and Policy

In July this year, the relevant departments issued the "guidance" clearly pointed out that in accordance with the establishment of labor relations, enterprises should conclude labor contracts with workers in accordance with the law. If an enterprise does not completely meet the circumstances of establishing labor relations but conducts labor management on laborers (hereinafter referred to as not completely meet the circumstances of establishing labor relations), the enterprise shall be guided to conclude a written agreement with laborers and reasonably determine the rights and obligations of the enterprise and laborers. The rights and obligations of both parties shall be adjusted in accordance with civil laws when individuals rely on the platform to carry out business activities or engage in freelance work. As for the content of this article, it can be regarded as dividing the new employment form of laborers into three forms, which are respectively the forms conforming to labor relations; Do not completely accord with the form of written agreement of labor relations and non-labor relations. There is no dispute between the form of labor relationship and the form of non-labor relationship, which can be regulated according to the laws in their respective fields, but the nature of written agreements should be analyzed and defined.

Generally speaking, "if the enterprise does not completely conform to the situation of establishing labor relations but conducts labor management on the laborer, the enterprise shall be guided to conclude a written agreement with the laborer", which in fact recognizes the labor management relationship between the enterprise and the laborer, and the enterprise and the laborer should determine their rights and obligations on this basis. Second, the context of the new forms of labor relations is not only a form, in addition to the previous traditional forms of labor relations, and according to the development in the new forms of new forms of labor relations, and the policy of "guidance" is in order to solve this is part of the new forms of labor rights and interests of security problems, they are the "guidance" of the application of the most important subject. As to why a written agreement should be made rather than a direct labor contract, there should actually be a reservation here. The reason lies in that, on the one hand, this type of employment is more complex, some can be attributed to labor relations, some can not be attributed to labor relations; On the other hand, due to the operation of eliminating labor

relations of platform enterprises in practice, people have different opinions on how to define this part of workers. Under such circumstances, it is not appropriate for the Guidance to simply draw a conclusion, whether it belongs to labor relations or not. In fact, this is a real nameless labor contract, the content is the enterprise to the laborer labor management of the rights and obligations formed, can also be called the "labor contract".

3.2. Review of Social Security Law and Policy

Starting from 2017, relevant documents of The State Council and the Ministry of Human Resources and Social Security state the basic attitude is that: workers in new forms of business who sign labor contracts with enterprises should participate in the social insurance for employees in accordance with the law, and those who do not sign labor contracts can voluntarily participate in the pension, medical insurance and housing provident fund as flexible employment personnel. The Ministry of Human Resources and Social Security has been exploring the mode of unemployment and work-related injury insurance for people with flexible employment. In the newly released guidelines, platforms are required to implement a fair employment system, eliminate discrimination in employment, not collect property from workers in the name of paying security deposits, deposits or other forms, and not illegally restrict workers from working on multiple platforms. We will improve the minimum wage and the system for ensuring payment. Perfect the rest system; Improve and implement the labor safety and health responsibility system, strictly implement the national labor safety and health protection standards; Improve policies related to basic endowment insurance and medical insurance; Strengthen occupational injury protection and information disclosure, and build a social security system for workers in new forms of employment. Beijing requires that workers with new employment forms be guided to participate in the "national insurance plan." Enterprises should participate in social insurance for "platform employees" in accordance with the law, and guide and support "platform workers" and "platform individuals with flexible employment" to participate in the corresponding social insurance according to their own reality.

Basis "social insurance law" and "unemployed insurance byelop" regulation, the ginseng that unemployed insurance keeps main body is town enterprise or institution worker, unemployed personnel has the following condition when can get unemployed insurance gold: it is to attend unemployed insurance according to the regulation, place unit and oneself already fulfilled capture cost obligation full 1 year according to the regulation; Discontinue employment for reasons other than his own will; The third is to have dealt with unemployment registration, and job requirements. Workers in the new employment form may not have a labor contract with the platform and have not paid unemployment insurance, so it is difficult to enjoy unemployment security treatment. However, according to the nature of labor of new forms of employment, most of them belong to flexible workers, and their careers are unstable, and unemployment often occurs. Additional in certain industry, still exist off-season, the laborer that signs labor contract right now can enjoy minimum wage safeguard, and do not completely accord with labor relation this and flexible employment person are in unemployed state, the life below this kind of circumstance is in order to safeguard. There is no guidance on unemployment insurance for workers in new forms of employment in the Guiding Opinions, and how to solve this problem still needs to be optimized.

4. Improving the System for Protecting the Rights and Interests of Workers in New Forms of Business

The development of Internet technology has injected new vitality into the labor market of all countries, but it has also brought great challenges to the protection of workers' rights and interests. The release of the Guiding Opinions on Safeguarding the Labor Security Rights and

Interests of Workers in New Forms of Employment has undoubtedly brought policy guidance for the protection of labor rights and interests of workers in new forms of employment, but it still needs further exploration to choose which mode to construct and improve the security system. China's gig economy and on-demand economy are already at the forefront of development, and there is no relatively mature sample for reference. Therefore, under the leadership of the government, it is necessary to establish a platform and tripartite participation mode for the protection of workers' rights and interests.

4.1. Bring New Forms of Labor Relations into the Legal System

The introduction of the Guidance provides a feasible way for the protection of the rights and interests of workers in new forms of employment, but in the long run, it is still necessary to include the protection of the rights and interests of workers in new forms of employment into the labor law.

First of all, the guiding Opinions are administrative guidance documents in nature and have no compulsory effect. In case of relevant disputes, they cannot be directly cited as legal provisions. Secondly, enterprises shall be instructed to enter into written agreements with laborers if they do not fully conform to the situation of establishing labor relations in the Guiding Opinions. The nature of written agreement still needs to be determined. Whether written agreement is different from labor law and civil law system, or should be included in the labor law system, the author thinks that it should be included in the labor law system. First of all, according to the above mentioned, the written agreement concluded under the condition of not completely conforming to the establishment of labor relations is the "labor contract", which is only a temporary measure taken in such a transitional period, without the intention of "three division". Moreover, the guidance does not support the "three division of labor law", the actual situation is just to "remove labor relations" of the new forms of labor into the scope of adjustment of labor law. In other words, the labor law should be used to regulate such forms of labor, so that they can return to the track of labor law regulation. Generally speaking, the vast majority of the new forms of business are still hired laborers with personal and economic subordination, and the other part are quasi-hired laborers with economic subordination only. The former is fully protected.

4.2. Improve the Social Security System

First of all, we should improve the social security system, establish a social security service system with wide coverage and low security, and bring the new type of workers in the new form of business into the social security system. We will improve the social security, medical insurance and pension systems for online shop owners, food delivery workers and ride-hailing drivers, and provide perfect social security and welfare for freelancers in the new economy. Conditions for workers in new forms of business to participate in old-age insurance in their workplaces should be relaxed and access conditions relaxed. For example, Guangdong has stipulated that people with flexible employment can participate in basic old-age insurance for enterprise employees in their domicile places. They can also participate in the basic endowment insurance of enterprise workers at the place of employment by their identity documents and employment registration certificates, so as to solve the pension problem of workers in new forms of business, especially those with flexible employment. On the other hand, the pension insurance premium rate of employees with new employment forms is 20%, but the contribution is entirely borne by individuals. Due to the fluctuating income of practitioners, due to the high pressure of payment and non-compulsory insurance participation, the initiative of insurance participation is not high. Therefore, it should be stipulated that the platform for insurance participation of workers with new employment forms should provide certain subsidies to encourage them to actively participate in insurance.

4.3. Establish a New Service System

To protect workers' rights and interests under the new business model, we should not only rely on the government and the judiciary, but also give full play to the initiative of social and market entities. [7] First of all, the role of trade unions should be brought into play. The Guiding Opinions point out that trade unions at all levels should strengthen the effective coverage of organization and work, broaden the scope of rights protection and services, and actively absorb new forms of employment workers to join trade unions. We will strengthen ideological and political guidance for workers and guide them to protect their rights rationally and legally. We will supervise enterprises to fulfill their employment responsibilities and protect the rights and interests of workers. Actively carry out consultations with industry associations, head enterprises or enterprise representative organizations, sign collective contracts or agreements, and promote the development of industrial labor standards. Therefore, it is necessary to give full play to the protection function of labor rights and interests of trade unions in the new forms of business, build trade union organizations into the main line of maintaining harmonious labor relations, bring workers in the new forms of business into trade union organizations to the maximum extent, and take trade union organizations as the rights protection of workers in the new forms of business. Will all kinds of social harmony, the unsafe factors in the bud, should actively explore under the new economy, new forms of trade union organization construction, promote the construction of trade union organizations network, platform, the new economy, freelancers, etc into the union system, give full play to the trade union in the new economy, new forms of right-maintaining function. [8]

4.4. Improve Labor Supervision Mode

For the workers of new forms of business, the first thing to be solved is the openness of information and the transparency of relevant systems. According to the guidance and supervision on the part of enterprises make revision platform to enter exit, order allocation, piece rate, is proportional to the, pay structure and pay, working hours, rewards and punishments, etc directly related to worker rights and interests of the system of rules and platform algorithm, fully listen to the opinions of the trade union or worker representatives proposal, will be the result of the public and told the workers.

Secondly, the government should strengthen labor supervision, labor law enforcement, severely investigate and punish all kinds of violations of the rights and interests of workers, effectively protect the legitimate rights and interests of workers under the new business model; The courts at all levels should smooth the connection of adjudication and trial according to the suggestions of the Guiding Opinions, identify the relationship between enterprises and workers according to the employment facts, handle labor security rights and interests cases of workers with new forms of employment in accordance with laws and regulations, select appropriate litigation procedures according to the size of the dispute, and improve the efficiency of solving problems. Mediation organizations, legal aid institutions and other specialized social organizations should, in accordance with the law, provide more convenient, high-quality and efficient services such as dispute mediation, legal advice and legal aid to workers in new forms of employment, so as to ensure that the legitimate rights and interests of workers in new forms of business are fully protected and their rights and interests are provided in a timely and effective manner.

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