

Research on the Legal System of "Shared Employment" under the Background of the Epidemic

Changxia Yang, Xinru Zhang and Yu Wang*

School of Law, Anhui University of Finance and Economics , Bengbu 233030, China

Abstract

In order to cope with the shortage of labor in the context of the epidemic, enterprises do not rigidly adhere to the form of flexible sharing of labor, which not only alleviates the employment imbalance crisis between demand enterprises and supply enterprises, but also helps idle employees to obtain employment. However, it also brings a lot of problems. In order to solve these problems, the Ministry of Human Resources and Social Security issued the Circular on sharing Employment guidance and Service in 2020. From then on, enterprises have clear operation guidelines for shared employment, which promotes the resumption of production and work. However, the legal regulation of shared employment in our country is not perfect, which brings a series of challenges to the judicial practice of our country. The problems need to be solved urgently, such as the weakening of the protection of employees' rights and interests, the fact that employees and third parties are difficult to claim by infringement, the enterprises are vulnerable to losses, the lack of a unified management platform and so on. An active sharing employment platform for cooperative employees of government-led enterprises should be established to enable enterprises to share human resources openly and centrally. At the same time, according to the Labor Law of the people's Republic of China, we should carry out legal regulation on shared employment, improve laws and regulations to clarify the protection of workers' rights and interests, adhere to the principle of independent consultation, and earnestly solve problems, so as to promote China's economic development under the epidemic and promote shared employment to become the new normal.

Keywords

Shared Employment; Flexible Employment; Infringement.

1. Status and Types of Shared Labor

The epidemic has brought many changes to people's lives. For example, the traditional food industry has been restricted from opening and operating due to the epidemic, and the banquets that consumers have ordered in restaurants have also been cancelled, causing employees in the catering industry to face unemployment. However, other industries such as e-commerce, platform software, supermarkets, etc., due to the increase in business, lack of employees, and labor shortages, a large number of employees are shared between the two to solve this contradiction. It can be said that the shared employment model is a self-help between enterprises in a special period. In fact, shared employees have appeared a long time ago, but there is no provision for their legal issues. From this shared employment under the epidemic, it can be seen that in This general pattern will continue to emerge in the future, so it is necessary to regulate it to deal with possible legal disputes over employee sharing.

In the mode of cooperation between enterprises, employers and employers cooperate with each other, forming a tripartite legal relationship between employees, but this is different from labor dispatch, the main differences are: first, labor dispatch requires the dispatching unit to

have the qualification to dispatch, the cooperation mode between enterprises, "employers" do not have the qualification of labor dispatch, only temporary measures under special circumstances. It not only satisfies the plight of the lack of employees in e-commerce and other "employing units", but also reduces the employment costs of catering companies, ensures the work, wages and welfare of workers, reduces social contradictions, and realizes win-win results. Second, labor dispatch disputes according to the provisions is applicable to the labor law, but when sharing labor, enterprises sign employee loan agreements, there is a cooperative relationship between employers and employees, there is still this labor contract between employers and employees, the labor law should be applied. The civil law shall apply to the formation of labor relations between employers and employees.

Enterprises invite short-term labor model, affected by the epidemic, some export factories that produce products are temporarily closed. Enterprises with labor shortages directly invite temporarily closed employees to join their companies, forming an employment relationship between the two parties. However, the original labor contract relationship between the employer and the employee did not change. It was just because of the epidemic that the employee stopped production and took a holiday. At this time, the new employment relationship affects the original employer, and the new employment relationship has not obtained the consent of the original employer. The new employer and the employee should be jointly and severally liable for the loss. After the company resumes production, it will issue a notice to the employees asking them to go to work on time. If the employee does not work on time and has a serious impact on the company, the original employer may terminate the labor contract.

This mode is similar to labor dispatch. Both the employer and the employer sign a contract with the human resources company. The wages are paid by the employer to the human resources company, and the human resources company pays the employer. There is no relationship between the employer and the employer. , the event in the contract occurs, that is, as soon as the agreed time arrives, the employee returns to the original employer. In short, shared employment involves multiple interests, and how to deal with conflicts between them is an urgent problem to be solved.

2. The Dilemma of Shared Employment

2.1. Weakening of the Protection of Labor Rights and Interests

The mode of shared employment is a temporary scheme that enterprises come up with in order to preserve the advantages of enterprises in the event of sudden events, but the legal protection of employees' relevant rights and interests is insufficient. When the employee temporarily leaves the original enterprise to demand the enterprise to work, the relationship between the employee and the two enterprises falls into a blurred situation. When the social environment is suitable, the seconded employee should also return to his former employment position in accordance with the agreement. However, when the demand enterprise works, it is difficult to guarantee equal pay for equal work. The basic reason for sharing employees includes the demand that the enterprise is busy with business for a short time. Enterprises are extremely short of labor due to the requirements of shipments, so enterprises need to borrow a large number of employees from other enterprises, which are certainly temporary and simple jobs. it is also because the wages, salaries and subsidies given by this demand unit are largely less than those of regular employees. This is totally unequal, and at the same time it is not in line with the contemporary spirit of equal pay for equal work. Moreover, the work of sharing employees in demand enterprises is heavy, and they should be distributed according to work, which is in line with China's distribution system. In addition, there is no shortage of employees who have been terminated by employers without good reason in the process of secondment. It

is difficult for workers to find the original employer or the current employer to protect their legitimate rights and interests.

Shared employees because they are not regular employees of the employing enterprise, there is no labor relationship between the two, the shared employees may not know their own between going to work in the employing enterprise, so when the salary, incentive and social security do not meet the expectations of the employee, the employee needs the procedure can require to improve their own treatment, but should find the employer or use the unit, many times do not know, employees also need to be able to reflect their own needs in a way, so that employees can coordinate with the enterprise, through consultation to obtain their own interests, Raise your salary or get a bonus. If employees are not given a chance to reflect their own demands for a long time, in the long run, the enterprise will also change into a hall of words, do not listen to the opinions of the front-line operators in the factory, and the managers, senior managers, etc. above will also lose contact with the grass-roots personnel, then the proposals finally provided by senior managers will also be inconsistent with the healthy and stable development of the enterprise because of the loss of the employee base, and even lead to the bankruptcy of the enterprise. From the above, it can be seen that an interactive adjustment mechanism must be established between employees and enterprises, employees react to their own opinions, enterprises through listening to the suggestions of basic employees, continuous improvement and adjustment of enterprise development plans, in addition, enterprises can also express their future development plans to employees through this interactive adjustment mechanism, give employees a goal, employees can also know what they need to learn in the next period of time through this, employees can give themselves a learning plan.

2.2. It is Difficult to Claim Compensation for Infringement

The shared employee model basically has a certain public welfare attribute, and the employer is not allowed to make a profit from it, and the employer also needs to bear the responsibility for the work injury of the shared employee when working in the employing unit, which is not fair. This makes the employer of the shared employee may refuse to share the employee because of the excessive responsibility and the risk, which is not conducive to the re-optimization of human resources and the development of emerging employment forms. Article 6 of the Notice stipulates that if a shared employee is injured due to work during the work of the employing unit, he or she may be hospitalized for accidental injury or unfortunately infected with new crown pneumonia in accordance with the "Work Injury Epidemic Period" if the employee suffers a work accident during the work of the employing unit or encounters a traffic accident on the way to work. What should employees do, is it to find the original employer or the employing unit, is the infection with the new crown epidemic counted as a work injury? How can I be sure? A series of other problems need to be solved urgently. In addition, there are also cases of causing damage to others during the work period, who should be liable, the employer that has a labor contract relationship with the employee or the employing unit that is using the employee's human resources, and there are many cases of damage in practice, so the subject of responsibility needs to be clear to resolve the dispute.

2.3. Enterprises are Vulnerable to Losses

Shared employment is also a major threat to the employer, that is, the enterprise. When the employee is seconded out, the employee enters the employer to work, the society is constantly changing, and the working environment is constantly changing. During the period of the employer, a lot of things may happen to work, after a period of work to the agreed time to return to work, many employees are not willing to return to the original enterprise, but later in the enterprise to work, the establishment of labor contract relationship. For example, during the period when employees are sharing employees, employees have moved to change their living environment, and the distance to work has also changed. compared with employing enterprises,

it is more convenient for employees to go to work, and it may be more suitable for them to pick up their children from work. There are a lot of employees like this. It is also possible that the assessment and evaluation mechanism and promotion mechanism of the original enterprise are not suitable for sharing employees, resulting in employees fixed in a position for a long time, wages and salaries have not been raised, so the work is meaningless, and the employment enterprise may be more suitable for them. it is more convenient to promote here, and after working for a period of time, employees think that the employer is more suitable for them, so they do not want to go back. The original enterprise originally planned to lend employees for a special period, but when it expires, the employees will come back to work and resume production. Unexpectedly, they are faced with a lack of staff, which leads to a shortage of staff and a reduction in production.

Secondly, when employees go to work in the employing unit, they are likely to go further in private without the consent of the employing unit, which may also damage the legitimate rights and interests of the employing unit, such as infringing trade secrets, which is also a serious threat to the original enterprise. in case it is an important thing, the enterprise will face great competitive pressure. Employees go to the employing unit to work in private, and when production resumes, the original enterprise definitely hopes that all employees can come back to work. After all, shared employees have worked in the original enterprise for a long time and have more experience, so they can participate in production directly when they go to work. There will be no time consumption. However, employees work directly in the employer in private and cannot come back, which also brings great labor losses to the original enterprise.

2.4. Lack of a Unified Public Welfare Platform

For the sustained and healthy development of shared employees, we must have an employment platform in line with laws and regulations, the main purpose of which is to manage the access of enterprise members and clarify the relevant rights and obligations. However, at the beginning of the development of shared employees, they are temporary programs adopted by enterprises, the two enterprises negotiate and determine their rights and obligations with each other, and the enterprises involved come from different industries, so most of the shared employee platforms are uneven and imperfect, so the barriers to entry and standards are low, resulting in difficulties in protecting the rights of employees and enterprises, and at the same time, it also brings adverse effects on the market and social order. As an intermediate platform, the shared employee platform should try its best to improve its regulations and determine the scope of responsibility. At present, there have been shared employment platforms such as Ali, Woku Technology, etc, but their internal agreements are not perfect and the protection of employees is not perfect. Under the present circumstances, the form of shared employees is developing well, and it is more appropriate to have a shared employment platform that complies with laws and regulations, justly balances the interests of all parties and meets the needs of society. Only in this way can we promote the growth of a new model of shared employment, coruscate new vitality after the end of the epidemic, and promote the optimal allocation of social resources.

3. Suggestions on Shared Employment Laws and Regulations

3.1. Establish a Systematic and Standardized Employment Platform Where Government-Led Enterprises Cooperate with Employees to Actively Cooperate

With this epidemic, shared employment has entered our lives, brought new thinking to our work, and given people more and more flexible employment methods. We can digitize sharing and make sharing more frequent. At present, we have shared bicycles and shared chargers in

our lives, in fact, we can establish a systematic and standardized employment platform for government-led enterprises to cooperate with employees, and the employing units and employers apply to enter the platform, and the platform remains neutral to evaluate the employing units and employers to determine whether they meet the conditions for shared employment.

The rights and obligations of the platform should be clarified in legislation, which is the basis for promoting the healthy and stable development of sharing employees. Government departments take the lead in standardizing the management system of the platform and improving the mode of supervision. Although the shared employee is different from the traditional way of employment, it can easily solve the employment demand dilemma of the enterprise. In addition, the shared employee model and labor dispatch are different, they do not need to have the relevant qualifications and do not need to be approved. Because of this, a large number of enterprises take advantage of this characteristic and wear the cloak of shared employees, which is essentially labor dispatch, from which the original employers get a lot of profits, which seriously infringes upon the interests of employees and hinders the development of a new employment mode of shared employees. It is completely impossible to rely solely on enterprise self-discipline and employees to use the law to protect their rights. In order to obtain huge benefits, enterprises and capitalists can do anything, but enterprises and capitalists do not do anything just because the interests are not huge enough. As long as they can obtain huge benefits, enterprises will mercilessly infringe upon the rights and interests of employees. Employees themselves are also in an inferior position in this process, so in order to maintain the balance of rights and interests of both sides and ensure the stable and healthy implementation of shared employees, it is necessary to establish a platform for government-led enterprise cooperation.

The shared employee platform should have a compulsory insurance system, and the standard to determine the nature of compulsory insurance is that the detailed tasks planned by the platform are the risks caused by the shared employee and the third party, and whether the nature of the insurance should be established as compulsory insurance. Compulsory comes from the laws and regulations issued by the state, basically within the scope of the provisions of the civil subject or individual must participate in insurance. In addition, in the absence of laws and administrative regulations, the government and insurance companies cannot force the purchase of insurance contracts. Commercial insurance is basically the principle of freedom of contract, which can be joined at will, but the scope of those dangers such as labor liability insurance is very large, and the shared employee platform must require compulsory insurance. The intervention of the state in the mode of shared employment is only to protect the rights and interests of employees and reduce losses. The economy and society need to control less and cannot be overly involved, so the scope of compulsory insurance needs to be strictly limited, not just to buy, because it is also necessary to safeguard the interests of enterprises and achieve fairness and justice. In the process of compulsory insurance, share the employee platform to the insurance company to apply for insurance, when the insurance accident occurs, the third party who suffers from the loss of economic interests due to the illegal acts of the insurer and the insured, he can obtain compensation directly through the insurance company. The sharing employee has the sports risk, in addition, the laborer's anti-risk ability is very weak, so his insurance nature should be compulsory. Therefore, for the shared employee platform which may bring great risk to the participants and the third party, it is more appropriate to require its insurance nature as compulsory insurance. The shared staff platform urgently needs to set up an evaluation mechanism to evaluate the credibility of both sides. It is more appropriate for the government department to do this job, because it can evaluate both from a fair and impartial position. The standard of enterprise evaluation needs to comprehensively consider all kinds of factors, mainly referring to the score of the sharing employees to the employment enterprise,

the mortgage provided by the employment enterprise at the beginning of participation and the amount of liquidated damages in the signed contract and so on. On the other hand, the rights and obligations are consistent, and the employers regularly evaluate the shared employees' working ability, completion and communication ability. At the same time, the evaluation results will also affect the evaluation results of the enterprise owned by the employees. The two are a benign interactive situation.

3.2. Adhere to the Principle of Independent Consultation

When sharing labor, if the employee causes damage to others during his or her work, first of all, let's see whether there is an agreement in the agreement. Under normal circumstances, the employer and the employer have negotiated and stated clearly in the agreement that the employer or employer shall bear it, or bear it proportionally. If there is no agreement, the two sides negotiate autonomy of will. If the negotiation fails, the employee should not be held responsible for no intentional and major fault, and the employer who benefits from the production of the product should bear the responsibility. After all, the employer should not be held responsible for the benefit, and the employer should not bear the responsibility for not making a profit during this period. If the employee has intentional or gross negligence, the employer of the compensation may recover the compensation from the employee.

In addition, a collective labor consultation mechanism between employees and employers should be established to enable employees to negotiate collectively with employers to protect the rights and interests of workers, and shared employment can use the collective bargaining system to adjust and balance labor relations, which is also the general law of the market economy. Therefore, shared employees can analyze and learn from the experience of highly developed countries in the market economy, strongly requiring enterprises to carry out collective bargaining or labor-capital joint decision procedures, reach an agreement through voting procedures, and negotiate to resolve the contradictions between employees and employers, in order to achieve a win-win situation of cooperation.

3.3. Improve Relevant Laws and Regulations to Confirm the Subject and Method of Assuming Responsibility

According to the Notice on Doing a Good Job in Sharing Employment Guidance and Services issued by the Ministry of Human Resources and Social Security in 2020, the original employer pays social security on time, so the employee is injured during the work of the employing unit, and can enjoy the treatment of work injury according to the "Work Injury Insurance Regulations", the labor relationship between the employer and the employee, so the employer should bear the responsibility for the work injury, and the employer does not profit in it. According to the principle of fairness, it cannot be allowed to be damaged in it, so when signing a shared employment agreement, the employer and the employing unit coordinate the obligations and responsibilities between each other and let the employing unit compensate. In addition, if the personal injury of the shared employee due to the infringement of the third party is in line with the work injury, the employee has the right to require the third party to bear the tort liability, which is based on the civil tort damages, and the employee can also obtain the compensation for the work injury insurance from the employer enterprise in accordance with the labor law. Of course, after the enterprise assumes responsibility, it can ask the employing unit for the agreed compensation, and there is no joint and several liability between the two units. If the third party is the employing enterprise that causes the employee to suffer a work injury, the employee has the right to require the employing unit to bear civil compensation liability, and can also claim compensation for work injury and personal injury at the same time. The essence is that according to the existence of the labor relationship between the employer and the employee, then the work injury insurance liability should refer to the labor relationship.

On the other hand, there must be a reason for the termination of the labor contract, if the employee is at fault to terminate the labor service relationship, there is no doubt that the employer does not bear any responsibility, and the employee and the employer bear the responsibility according to their own fault. Whether the employer or the employer compares the employees, the employees are in a weak position. If the employer terminates the labor service relationship without a legitimate reason, according to the agreement previously signed between the employer and the employing unit, the employing unit will definitely give certain compensation, and the employee can safeguard his legitimate rights and interests according to the agreement, and the agreement does not stipulate the issue of compensation for unreasonably terminated, and he can protect his rights and interests according to the Contract Law. Employees can apply for labor arbitration with their own labor contracts, shared employee agreements, work evidence and records, etc.

3.4. Improve Corporate Culture and Strengthen Employee Loyalty

In practice, it is easy to lend offices, cars and raw materials, after all, things are controllable, while employees have their own consciousness, thoughts and emotions, and each employee has different requirements for the enterprise he wants to work for. So it is easy for employers to lend employees, but it is impossible for employees to come back and return to the state before they did not share employees. Therefore, when employers share employees, there is an urgent need to make full and meticulous internal and external plans, fully consider the development of events, and minimize the occasional loss of employers. At the same time, enterprises need to enhance employees' sense of belonging, so that employees really like their original work unit, employers give employees full respect, care and promotion mechanism, so that employees think that they are very happy to work in this enterprise. There will be development in the future, and of course wages will certainly rise. Otherwise, under the same conditions, why do employees choose the original enterprise, the original enterprise cares about employees, establish trust with employees, and let employees trust their own enterprises, employees will naturally return to the original employer in accordance with the agreement. Therefore, the original enterprise must strengthen its own cultural construction, improve employee loyalty, set up a fair and just employee assessment mechanism, take the employee's ability and efforts as the assessment standard, and then promote the employee according to the assessment standard. If the employee applies for a shared employee without the consent of the original employer, once the employee harms the legitimate interests of the employer, the employee and the employer shall bear joint and several liability for the loss. Therefore, in practice, the original employer and the employer should negotiate, sign an agreement, reasonably distribute rights and obligations, and employees should obtain the consent of the original employer to reduce contradictions.

4. Conclusion

Epilogue At present, shared employment has become a more important thing in the society and has great promotion value. However, there are many problems in practice. Therefore, it is necessary to clarify the protection of labor rights and interests from the law as soon as possible, adhere to the principle of independent consultation, and establish government-led enterprises to cooperate with employees to take the initiative. A systematic and standardized employment platform, while improving corporate culture and strengthening employee loyalty, so as to build a more scientific, stable and harmonious shared employee model in the whole society, and promote high-quality economic and social development.

Acknowledgments

Anhui university of finance Graduate Research Innovation Fund Project(ACYC2020481).

References

- [1] Jonathan Goldberg, Grant Wilkinson: Post COVID-19 labour law considerations, Without Prejudice, Vol. 20(2020) No.5.
- [2] Monica Costa Dias, Robert Joyce, Fabien Postel-Vinay, et al: The Challenges for Labour Market Policy during the COVID-19 Pandemic, Vol. 41(2020) No.2, p.371-382.
- [3] Adam Sagan, Christian Schüller: Covid-19 and labour law in Germany, European Labour Law Journal, Vol. 11 (2020) No.3.
- [4] Manuel Antonio García-Muñoz Alhambra: Covid-19 and labour law in Spain, European Labour Law Journal, Vol. 11(2020) No.3.
- [5] Xiaolin Yin: Sharing economic model under the new labor relations law studies, Journal of Qinghai Normal University (Social Science Edition), Vol. 43 (2021) No.4, p.48-53.
- [6] Lijian Wang: Research on employment relationship and social security practice dilemma of self-employed workers on sharing economy platform, Social Security Review, Vol. 5(2021) No.3, p.12-22.
- [7] Linhan Zhang: Gender inequality in employment of sharing economy platform and its legal Countermeasures, Journal of Suzhou University (Philosophy and Social Sciences Edition), Vol. 42 (2021) No.1, p.84-94.
- [8] Yanqiu Zhu: Informal employment: Practical defects and regulatory approaches of "shared employees", China Human Resources Development, Vol. 5 (2020) No.12, p.70-80.