

Study on the Legal Concept of Equal Pay for Equal Work

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Abstract

Equal pay for equal work has always been an important aspect of labor dispatch, but even though the International Labor Organization and my country's labor laws and regulations have made relevant provisions on this, there are still many problems in the actual implementation and realization of equal pay for equal work. The root cause of these problems lies in the unclear definition of the legal concept of equal pay for equal work. The unclear definition of the concept will hinder the legislative perfection and judicial realization of the legal concept of equal pay for equal work. Therefore, this article aims to clearly define the legal concept of equal pay for equal work, so that equal pay for equal work can be implemented so that workers actually have the right to equal pay for equal work.

Keywords

Equal Pay for Equal Work; Labor Dispatch; Legal Concept; Labor Contract Law.

1. Questions

As a flexible employment method, labor dispatch plays a very important role in realizing the optimal use of labor and expanding employment, and equal pay for equal work has always been a very important issue in labor dispatch [1]. This requires laws and regulations to provide for equal pay for equal work to ensure the implementation of their rights. The Universal Declaration of Human Rights clearly states that "everyone has the right to equal pay for equal work without any discrimination." [2] The Convention on Equal Pay for Men and Women for Equal Work also stipulates equal pay for equal work. While joining these conventions, China also grants workers the right to equal pay for equal work in the Constitution, labor law and labor contract law [3]. However, The problem is that although the system of equal pay for equal work has been stipulated in our laws, there are still great difficulties in its specific implementation. The first problem is that our country's laws do not clearly define the legal concept of equal pay for equal work, and the vague definition of the concept of equal pay in laws and regulations directly leads to its difficulty in specific practice [4], because there will be conflicts between employers and workers. Differences in understanding of "equal work" and "equal pay". Therefore, the main question of this paper is what is the legal concept of equal pay for equal work? In order to solve this problem, the author will use the method of comparative analysis to compare the similarities and differences between the general interpretation of equal pay for equal work among different scholars and the international understanding of equal pay for equal work in my country's legislation, and put forward my own views and understandings [5]. Secondly, it analyzes the legislative and judicial status quo of the legal concept of equal pay for equal work in my country and puts forward the existing problems through the empirical analysis method [6].

2. The Theoretical Basis of the Legal Concept of Equal Pay for Equal Work

2.1. Scholars' Views on the Concept of Equal Pay for Equal Work

Laws promulgated in my country as early as 1994, It stipulates that "equal pay for equal work"

means that the employer pays the same pay to the laborers who have achieved the same performance in the same work [7]. However, this interpretation is not a legislative interpretation of equal pay for equal work, nor does it define its legal concept [8]. Although the revised Labor Contract Law has strengthened the protection of dispatched workers' right to "equal pay for equal work", the legal concept of equal pay for equal work is still not clearly defined. Under the premise of ambiguous legal provisions, many scholars put forward their own understanding of the legal concept of equal pay for equal work. Feng Yanjun, a professor at the Law School of Jilin University, pointed out in his article: The interpretation of equal pay for equal work should be viewed from both macro and micro perspectives. The macro aspect means that the same job should be subject to the same remuneration standards and the same rate of return; At the micro level, it means that on the basis of equal performance, equal labor remuneration should be lived, that is, equal pay for equal value [9]. Professor Yan Dong believes that equal pay for equal work means that workers do the same work in the same job position and get the same pay after achieving the same performance [10]. He Shuangfeng expressed his view on the legal concept of equal pay for equal work in his article that as long as workers do the same job or achieve the same performance, they will get the same job [11]. There are many scholars' views which are not listed here, but by comparing the views of these scholars, it can be found that the scholars' views on the overall concept of equal pay for equal work are similar. The main difference is on what is "equal work"? What is "equal pay"? Views are different. In the following, the author will focus on these two issues in the third part.

2.2. International Interpretation of the Concept of Equal Pay for Equal Work

2.2.1. International Labour Organization

On June 29, 1951, the 34th session of the General Conference of the International Labour Organization adopted the Convention on Equal Remuneration for Men and Women Workers for Equal Work. Promote the same labor remuneration and welfare benefits for male and female workers in the same work and when they achieve the same labor performance. Although this provision does not clearly define the legal concept of equal pay for equal work, it still provides conceptual guidance for the concept of equal pay for equal work [12].

2.2.2. Provisions on the Legal Concept of Equal Pay for Equal Work in Western Developed Countries and Regions

Western developed countries and regions have been relatively progressive in legislation on equal pay for equal work, but they have basically defined the legal concept of equal pay for equal work from the perspective of anti-discrimination. For example, the United States stipulates equal pay for equal work in the Fair Pay Act, which means that men and women who perform the same work in the same organization must receive the same pay [13]. The EU "Equal Pay for Equal Work Directive" also stipulates that "equal pay for work of equal value" explains equal pay for work of equal value, that is, equal pay for work of equal value [14]. Germany's "Employee Transfer Act" also makes a general provision on equal pay for equal work, that is, the transferred employees and the original employees should enjoy the same treatment and salary remuneration. To sum up, the western developed countries and regions do not have a clear definition of the legal concept of equal pay for equal work, mainly from the perspective of anti-discrimination [15].

3. Controversial Points in the Definition of the Legal Concept of Equal Pay for Equal Work

3.1. What is a "co-worker"

Equal pay for equal work is based on equal work, so it is particularly important to define the concept of equal work. The relevant laws of our country stipulate that equal pay for equal work

means that workers who have achieved the same performance in the same position are paid the same labor remuneration [16]. Obviously, the definition of "co-workers" as the same work in this provision is too rigid and absolute. Take an actual case in Shanghai as an example. In this case, the appellant, Cao Mou, believed that his salary should be the same as that of his colleague Dong Mou in the same position, and he also requested that his compensation be calculated on the basis of Dong Mou's double salary [17]. The judgment given by the court is that "co-workers" cannot simply be regarded as the same job in the same position, but should be comprehensively considered from the labor output and labor enthusiasm of the individual laborer, and differences are allowed. Moreover, the salary difference between Cao and Dong is within the normal range, so Cao's claim is not supported. In this case, the court did not restrict the interpretation of "co-workers" to the same work, but interpreted what "co-workers" were from multiple perspectives. This idea of defining "co-workers" is a good one. Some scholars believe that the concept of equal pay for equal work can be defined from both macro and micro perspectives, so the concept of "equal work" can also be defined in two ways [18]. On the one hand, from a horizontal perspective, we can interpret "co-workers" as the same work or similar work. On the other hand, from a vertical perspective, the understanding of "co-workers" should be cut from the quality of work performed by workers in the same and similar positions, their own work level, and the remuneration of work output. Only by defining it horizontally and vertically can we avoid a rigid and mechanized understanding of the concept of "co-workers".

3.2. What is "Equal Pay"

The contentious point of the academic understanding of the concept of "equal pay" is mainly the understanding of "remuneration", that is, whether "remuneration" simply refers to labor remuneration. As mentioned above, "equal work" is the basis of "equal pay", so since it has been proposed that the output performance of the same or similar positions may be different, the same labor remuneration obviously cannot be the standard for defining "equal pay". Wang Quanxing and Yang Haonan only stated that "work" is static and "remuneration" is dynamic in their article "On Equal Pay for Equal Work in Labor Dispatching" [7]. Since it is dynamic, "equal pay" cannot be rigidly defined as the same labor remuneration, but it should be defined in terms of labor remuneration levels. But since "equal pay" is defined in terms of pay levels, regionality and variability cannot be ignored. For example, if two companies are also engaged in the decoration industry, but because one business has more houses than the other, the workers of the corresponding business with good business will be more expensive than the workers of the other company with bad business who are in the same position. The salary is much higher, but the conversion ratio of the payment is the same, the more you work, the more you get. At this point, it cannot be said that the bad company does not follow the "equal pay" rule, because the bad company pays the same level of compensation as the good company. There are also regional differences are also an important factor[19]. Different regions have different levels of remuneration, such as Shaanxi and Zhejiang, and different levels of economic development affect the level of remuneration. Therefore, the judgment of "equal pay" should also take into account the geographical restrictions. Some scholars have proposed that labor benefits should be included in the understanding of "remuneration" in "equal pay" [3], this view is correct. Although my country's legislation on equal pay for equal work does not clearly stipulate that labor benefits should be included in the definition of "equal pay", in order to avoid the behavior of units transferring them into welfare programs in order to solve the control of total wages. The expansion of "equal pay" should be understood to include labor benefits as well.

4. Legislative Status and Problems of the Legal Concept of Equal Pay for Equal Work in My Country

4.1. Current Status of Legislation

The definition of the legal concept of equal pay for equal work in my country has always been ambiguous, and basically it is a principled regulation. As an important principle in labor dispatch, equal pay for equal work must be clearly and clearly defined in the law if it is to be implemented concretely. British jurist Mansfield once said that the ambiguity of the meaning of words is the cause of most disputes in the world. If the concept is not clearly defined, equal pay for equal work is just a slogan principle that stays on paper. As mentioned above, the correct definition of the legal concept of equal pay for equal work focuses on the understanding of "equal work" and "equal pay".

4.2. Existing Problems

1. The legislation is too principled, and there is no specific explanation of the concept of equal pay for equal work, which leads to many difficulties in the practical judicial application of this principle. In my country's labor contract law, "equal work" is defined on the basis of the same post, but the author believes that only defining "equal work" from the same position and similar positions cannot meet the specific application of the principle of equal pay for equal work, and the same position should be clearly defined. and judging criteria for similar positions. The understanding of "equal pay" in our country's legislation is that the labor remuneration is the same, but the location, time, etc. may affect equal pay under the premise of equal work, so the dynamic "remuneration" should be allowed to have appropriate differences rather than rigidity. It is considered "equal pay" only if the labor remuneration is exactly the same. Only when the legislation of equal pay for equal work is concrete can it change from a general principle to practical operation.

2. There is a lack of a special Equal Pay Law for Equal Work. Although many laws in our country have provisions on equal pay for equal work, such as Article 63 of the Amendment to the Labor Contract Law, there are still many deficiencies and defects in the legislation defining the concept of equal pay for equal work, that is, there is no specific and clear stipulation of what equal work is. Equal pay, which requires a special law to regulate equal pay for equal work. In his article, Li Yanan advocated that our country should conduct special legislation on equal pay for equal work, and used a special chapter to stipulate the important principle of "equal pay for equal work" in labor dispatch.

5. Judicial Status Quo and Problems of Legal Concept Definition of Equal Pay for Equal Work in my country

5.1. Judicial Status Quo

Since my country's legislation on the legal concept of equal pay for equal work is vague and too principled, there are many difficulties in the judicial implementation of equal pay for equal work. There are often situations where workers' rights are violated but cannot be protected, and different judges have different understandings of the concept of equal pay for equal work. Different judgments in similar cases have aggravated the confusion on the application of equal pay for equal work [20].

5.2. Existing Problems

1. Judges' judgments are too subjective. Discriminating Dispatched Workers With "Yihaodian" For example, Xu, a dispatched laborer in this case, applied for labor arbitration to Shenzhen Luohu District Labor and Personnel Dispute Arbitration Committee because of the fact that the

work content and quality of work are the same and the welfare benefits of regular workers are very different. The Yihaodian where they work is required to pay their corresponding welfare remuneration. But the Labor Arbitration Commission did not support its claims. Xu refused to accept the verdict and filed a lawsuit in Shenzhen Luohu District Court. After trial, the court ruled that Yihaodian would pay the wages, overtime and other remuneration related to Xu's work. The reason for the two different judgments in this case is that the judges have different understandings of the legal concept of "equal pay" in equal pay for equal work, that is to say, the two have different subjective understandings. Therefore, the judge's subjective understanding may lead to the complete opposite of the judgment result of the case. In the final analysis, this still needs legislative clarification.

2. The distribution of the burden of proof of "whoever advocates shall give evidence" rarely takes into account the particularity of the dispute over equal pay for equal work, and blindly requires workers to provide evidence that the unit violates the principle of equal pay for equal work, but basically fails to consider that a lot of evidence is often in the hands of the employer. In order to protect their own interests, the employer is basically impossible to take the initiative to hand over the evidence, so the worker cannot win the case without proof. Therefore, if the court wants to avoid this situation, it needs to give full play to its own initiative, and decide the distribution of the burden of proof based on the characteristics of each case, so as to better protect the legitimate rights and interests of workers and ensure the concrete implementation of the principle of equal pay for equal work. .

6. Conclusion

Equal pay for equal work is an important part of the labor dispatch system. To implement this principle, it is necessary to clearly define its legal concept. Since my country's laws have not yet clearly defined the legal concept of equal pay for equal work, this article will start from "equal work" and "equal pay". Two aspects to explain what is equal pay for equal work, I hope that the concept can be accurately defined from these two aspects. Although my country has made great efforts to implement the principle of equal pay for equal work, it is urgent to legislate the legal concept of equal pay for equal work in my country, because this is not only to improve the law, but also to ensure equal pay for equal work in judicial practice. Judges' different interpretations result in different judgments. The principle of equal pay for equal work should not be rigid or principled, but it can play a role in protecting the legitimate rights and interests of workers.

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