

Legal Problems and Suggestions of Multiple Labor Relations

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ABSTRACT

The differentiation and transformation of labor relations from standard labor relations to non-standard labor relations has become a normalized trend, and the concept of multiple labor relations is conceptually opposed to the original one-fold labor relations. The current labor law in China focuses on the regulation of one-fold labor relations and does not explicitly recognize the legality of multiple labor relations. This paper summarizes the legal problems of multiple labor relations in China and proposes legal suggestions to improve the labor law system in China.

Keywords: *Multiple labor relations, Legality of labor relations, Legal advice.*

1. INTRODUCTION

Due to the deepening of the Internet in various fields, the new employment relationship is no longer limited to the existing labor relationship system, and the phenomenon of multiple labors has emerged at the historic moment, with a rapid increase. On the one hand, multiple labor relations have played a great role in promoting the development of market economy. On the other hand, the basic rights and interests of people with multiple labor relations are also increasingly prominent.

2. THE BASIC THEORY OF MULTIPLE LABOR RELATIONS

2.1 Connotation of Multiple Labor Relations

The concept of multiple labor relations was first introduced at the end of the last century. At present, domestic scholars have not yet formed a unified opinion on the concept of multiple labor relations, and most of them believe that multiple labor relations refers to the employment relationship between a worker and two or more employers at the same time or the formation of employment relations that meet the elements of labor relations. [1] On the surface, the traditional standard employment model

has been gradually overturned and the phenomenon of multiple labor relations in the new labor market has emerged, but in essence, it is due to the gradual differentiation of employers' organizations that the traditional one labor relations are broken and two or even more labor relations are formed.

2.2 Characteristics of Multiple Labor Relations

The main difference between multiple labor relations and traditional multiple labor relations is in the combination of means of production and labor force, the economic subordination and personal subordination between workers and employers. [2] In the new employment form, the personal subordination is obviously weakened, workers have a higher proportion of autonomy over their own labor, and the proportion of labor value is obviously increased.

2.3 Classification of Types of Multiple Labor Relations

Based on the differences in the manifestation forms of labor relations and the subjects of social insurance contributions, multiple labor legal relations can be divided into four types: master-slave structure, parallel structure, virtual-real coexistence structure, and comprehensive structure.

Firstly, the typical employment basis of the master-slave structure type is a combination of standard labor relationship and non-standard labor relationship, which is mainly manifested in the process of establishing a standard labor relationship between workers and employers, and in addition to single or multiple part-time jobs, in most cases, they are engaged in one or more part-time jobs while working full-time. This type of employment is based on the premise of standard labor relations and the extension of non-standard labor relations, and there is an obvious master-slave relationship between labor relations.[3]

Second, the typical employment pattern of the parallel structure type is the coexistence of two or more non-standard labor relations, which is concentrated in the workers' simultaneous employment in multiple flexible jobs, mostly manifested as part-time employment, in which multiple labor relations tend to be on equal footing, but the labor relations established later shall not affect the labor relations established earlier.

Third, the typical employment form of the virtual and real co-existence structure is the co-existence of two or more standard labor employment relationships, which mainly manifests that the workers have been separated from the actual management of the original employer, but the labor contract between the two parties has not been terminated, on the basis of which the workers establish another new labor relationship with the new employer, which essentially exists only one labor relationship. Most of the cases exist during the restructuring of the enterprise, and the employer gives the employees the right to choose to stay in the job or retire from the job to ease the business difficulties of the enterprise.

Fourth, the typical employment pattern of the integrated structure is the coexistence of labor relations and labor service relations, where labor relations are established between the employer and the workers but there is no longer an actual employment relationship, and the employer dispatches the workers to the employer, and the dispatched workers are managed and supervised by the employer. [3] Due to its high convenience and low risk, labor dispatch is common in the real labor market and is a special kind of multiple labor relations.

3. CHINA'S MULTIPLE LABOR RELATIONS LEGAL PROVISIONS

At present, multiple labor relations are only indirectly reflected in laws, local regulations and some normative documents in China. Among them, the legal level mainly relies on the Labor Law and the Labor Contract Law, and the basic labor law only provides for the restriction of multiple labor relations, and the administrative regulations are rarely involved. On the contrary, the regulations on multiple labor relations are mostly found in local legislation and normative documents with low validity, and most of the local laws and regulations are based on labor practices to protect workers, but the regulations vary from place to place and are very abstract. Finally, the judicial interpretation issued by the Supreme People's Court is mainly based on the practice of labor disputes, and the fundamental purpose is to protect the basic rights and interests of workers in multiple labor relations, but the scope of protection is limited to four categories of people, which has a strong limitation. In general, the current legal provisions for multiple labor relations in China are unclear and idle, and there are certain legal gaps.

4. MULTIPLE LABOR RELATIONSHIPS LEGAL ISSUES

4.1 Unclear Legal Status of Multiple Labor Relations

At present, the law, as the last line of defense for the protection of workers' rights and interests, supports multiple labor relations in an idle and vague manner. At the national level, there are only a few laws that protect the basic rights and interests of workers in multiple labor relations, and there are also some prohibitions and restrictions on multiple labor relations. At the local level, local legislation has been enacted to recognize the status of multiple labor relations, but the local regulations are not highly effective and not universal, and most of them are not detailed enough to be applied accurately. In addition, the Supreme People's Court has made judicial interpretations based on the current situation of judicial trials of labor disputes in China to protect the type of multiple labor relations that coexist in reality.

Among the four types of multiple labor relations, the parallel structure formed by part-time employment has been recognized by the Labor Contract Law of China. As for the multiple labor

relations which are both virtual and real, the judicial interpretation has made it clear that the four types of personnel and the new employer establish labor relations, which is a major breakthrough to the traditional labor relations theory. The lack of legal status of multiple labor relations is mainly manifested in the multiple labor relations of master-slave structure and the virtual-real structure except for the four categories of personnel, and the labor legal system in China does not classify the types of multiple labor relations, and its legal status has not been determined.

4.2 Unknown Labor Standards Regulations

Both full-time and part-time working hours are regulated in our labor legal system. The working hours for full-time employees are set at eight hours per day and forty hours per week; part-time working hours are set at no more than four hours per day and no more than twenty-four hours per week in aggregate. For the type of multiple labor relations in which the virtual reality coexists, the full-time maximum working hours regulations can be directly applied because there is in essence only one actually performed labor relationship. However, the law does not provide for the maximum working hours for multiple labor relations with master-slave structure and parallel structure, and these multiple labor relations are outside the labor law and cannot be protected by the maximum working hours system.

The minimum wage system protects the basic right to survival of workers, and the law provides for minimum wages for both full-time and part-time employment, with a monthly minimum wage for full-time employment and an hourly minimum wage for part-time employment. For multiple labor relations with virtual and real coexistence, the real employer is subject to the provisions of the minimum wage system because only one labor relation actually exists. For parallel structured multiple labor relations, not only the minimum wage is guaranteed, but also the pay periodicity is stipulated. The absence of the system is mainly manifested in the master-slave structure and in the multiple labor relations with imaginary and real structures except for the four categories of personnel, and the law does not stipulate whether the minimum wage system for these two types of multiple labor relations is to be applied separately or combined with the new standard.

4.3 Missing Social Security System

Work-related injury insurance is the core element of social insurance, and it was established to ensure that workers receive non-discriminatory work-related injury insurance treatment. The law stipulates that work injury insurance can be paid repeatedly, and each employer in the parallel structure and the virtual-real structure is required to pay work injury insurance for workers, and if they meet the circumstances of work injury, they are included in the protection of the work injury insurance system. In practice, due to the lack of regulations, only one labor relationship is recognized in these two types of multiple labor relationships, and most of the second labor relationship is recognized as a labor relationship, but the establishment of a work-related injury must be based on the existence of a labor relationship or a de facto labor relationship, which means that the second labor relationship recognized as a labor relationship will be separated from the labor relationship. This means that the second labor relationship recognized as labor relationship will be outside the protection of work injury insurance system.

The problem of pension insurance payment for multiple labor relations is also prominent, and pension insurance is different from work injury insurance in that it cannot be paid repeatedly. In the multiple labor relations, except for the structure of multiple full-time employment forms of virtual and real co-existence, the subjects of pension insurance payment in multiple labor relations types are unreasonable. In the master-slave structure, the main contributors are only full-time employers, which easily leads to unbalanced employment costs of each unit. In the parallel structure, pension insurance is paid by individual workers voluntarily and on their own, and it is no longer compulsory for employers to withhold and pay on their behalf. This is not only unfavorable to the collection of insurance funds, but also increases the risk of workers' survival. In the virtual and real co-existence structure, the main body of contributions is the non-genuine employer, which is seriously unfair to them.[4]

5. MULTIPLE LABOR RELATIONS SYSTEM LEGAL ADVICE

5.1 Clarifying the Legal Status of Multiple Labor Relations

Legislation needs to keep pace with the times, the social and economic forms are becoming more and more complicated, the emergence of new labor relations has broken the traditional labor model, and the emergence of multiple labor relations has challenged the traditional labor legal system, and the new labor model keeps forcing the legislation to adapt to it. First of all, the legal nature of multiple labor relations should be clarified. China has not been able to specify this kind of labor relations in theory and practice, mainly because of the contradiction between the lagging nature of the law itself and the novelty of multiple labor relations employment mode. Therefore, the law should clearly define the legal nature of multiple labor relations, and not just rely on regulations and rules with low validity and no universality, but also revise the current labor law system to regulate and protect multiple labor relations. [5] Second, it is needed to refine the specific criteria for determining labor relations. The judgment of labor relations should be based on personal subordination, economic subordination, and organizational subordination, and should be considered in the light of specific situations. To enhance the adaptability of the law, it is necessary to protect the legitimate rights and interests of both parties to labor relations, and to allow the subjects of labor relations to decide the content of labor contracts as much as possible independently and fairly.[5]

5.2 Establishment of Multiple Labor Relations Labor Benchmarks

The labor benchmark is an important institutional design to protect the legitimate rights and interests of workers. The continuous shortening of maximum working hours is also one of the opportunities to generate multiple labor relations, and stipulating the working hours and wage system for multiple labor is of great significance to both workers themselves and the development of enterprises.

The labor relations in today's society present a new trend of complexity and diversity, and the design of maximum working hours should also take into account the existence of multiple labor relations. Regardless of the type of multiple labor

relations, each of them should apply the corresponding provisions of labor law on maximum working hours. The multiple labor relations of virtual and real structure are based on one de facto labor relationship, and the maximum working hours regulations can be applied directly. In the master-slave structure and parallel structure, the calculation of maximum working hours should be restricted to the principle of cumulative summation and the legal working hours should be calculated on a monthly basis. Targeted design of corresponding working hour system is more suitable for the market and workers' needs, and also helps to meet the challenges brought by economic and social development.

The minimum wage system was originally established as a mandatory guarantee to safeguard workers' right to survival. The existing regulations no longer meet the needs of the new labor relations and must be supplemented and clarified. The combined application of the minimum wage by each employer is not conducive to the protection of workers' right to survival, and it is more reasonable to apply it separately. Although there are relevant provisions in the law on the application of multiple labor relations with parallel structure and part of imaginary and real co-existence structure, it is still necessary to make clear guidelines on the application of minimum wage for multiple labor relations with master-slave structure and imaginary and real co-existence structure except for four types of personnel.

5.3 Improving the Social Security System

In improving social security, in addition to effectively protecting the rights and interests of workers, the principle of fairness should always be followed. Especially in multiple labor relations, since there are multiple labor relations, a reasonable distribution of responsibilities among labor relations can reflect the meaning of social security itself.

Work injury insurance is an indispensable part of social security, but the current judicial practice is not based on the law, but more of a moral consideration, which is reasonable but not legal, and not legal enough. The legal status of multiple labor relations should be established as soon as possible, so that workers in multiple labor relations can legally enjoy work injury insurance. [6] In addition, when it is difficult to define the liability of industrial injury insurance, the legal basis can refer to the relevant provisions of the "joint employer

liability" of the United States, based on the degree of association between each unit and the worker, and bear joint and several liability in proportion, that is, each employer has the responsibility to provide full industrial injury insurance benefits to the worker, and the part that exceeds its own responsibility can be recovered from another employer.

The establishment of pension insurance focuses on social responsibility, requiring the government and enterprises to have certain obligations to maintain the basic livelihood of workers after they quit their jobs. Because each labor relationship and each employer's social responsibility is independent in multiple labor relationships, each employer has the obligation to pay pension insurance for its own employees, but the current pension insurance in China is not able to pay repeatedly. Based on this situation, it is recommended to implement one account with separate contributions from enterprises. Each worker establishes a unique personal social security account in China, and subaccounts corresponding to each employer are added under the account, and multiple employers pay pension insurance premiums to this worker's personal account according to a certain percentage of the worker's salary.[7]

6. CONCLUSION

One of the advantages of multiple labor relations is that it can greatly optimize the circulation of labor resources within the limits allowed by law. It is not only a breakthrough in innovation, but also outstanding in stabilizing people's livelihood and preserving employment, promoting the resumption of production and digital transformation of economy and society. The author believes that multiple labor relations are essentially in line with the relevant provisions of labor laws, and the lag of the existing laws is only reflected in certain aspects, which are not completely outdated, but only need to be improved. The improvement of the labor legal system should be based on China's national conditions, and the design should be strengthened at the institutional level, so that the attention to this issue can be increased accordingly, and the protection of the rights and interests of multiple labor relations can be gradually improved.

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