

Research on the Weak Subordination and the Guarantee of the Bottom of the New Employment Form

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ABSTRACT

The wide application of Internet technology supports the fine management and labor market segmentation of platform enterprises, and also supports the independence and flexibility demands of practitioners in new employment forms, weakening their subordination, and the existing protection of workers' rights and interests is not applicable to practitioners of new employment forms. In order to protect the employment rights and interests of new employment form practitioners, this paper analyzes the weak subordination performance of new employment form practitioners and platform enterprise groups from the recognized weak subordination. In practice, drawing on the practice of safeguarding the rights and interests of online catering delivery workers by the trade union of online catering delivery industry, this paper puts forward that it is a feasible strategy to respect the flexibility of reemployment form and the stability of rights and interests protection to take the trade union as the main body and provide comprehensive protection for the new employment form.

Keywords: *new employment form, weak subordination, collective labor relations*

1. INTRODUCTION

At the beginning of 2020, COVID-19 came out of the blue and new forms of employment emerged. In May 2020, General Secretary Xi Jinping put forward the requirement of "taking advantage of the trend and making up for the weak links" for the new employment pattern. According to the annual report on the development of China's sharing economy (2020) released by the State Information Center, about 78 million people are in new forms of employment, accounting for 9.7 percent of the country's total number of employed people. Some of these flexible workers are employed in fields such as Courier services, part-time customer service on Taobao and live streaming platforms, as well as in Crowd Work and app-based work-on-demand Via apps. These flexible workers are paid on a piecework basis, which is weaker than that of offline companies or online platforms.

Since 2018, the trade unions of multi-location delivery workers have been established in China.

Through precise and inclusive services and the signing of collective contracts, the employment skills of delivery workers of multi-location delivery services have been improved to provide employment rights and interests protection for them. The innovative ways in which trade unions work inspire us, in the face of The weak subordination of new employment forms to platform enterprises, we can start with the supportive role of trade unions and collective contracts as the breakthrough point, and ascertain the responsibilities and rights of trade unions, platform enterprises, associations and governments, providing labor compensation for new employment form, such as the right remedy for security, safety and health, It is a feasible strategy to respect the flexibility of new employment forms and the stability of rights and interests protection.

2. LITERATURE REVIEW

After 2015, scholars with the combination of

technology theory and market theory, around the new employment form, from subordination weakening and how to standardize governance, thought that the new employment form is a flexible employment way of Internet technology (Ji Wenwen et al., 2016)^[1], emphasizing the combination and derivative with traditional industries (Zhu Wanfen, 2019)^[2], focusing on emerging formats. Although there are various types of new employment forms, According to the combination of production factors, interaction mode of subjects, labor process, platform control rights and workers' autonomy, etc. It is concluded that the subordination of new employment forms is weaker than that of standard labor relations^{[3][4][5][6]} (Wang Quanxing, 2018; Wu Qingjun et al., 2018; Tang Meifang, 2019; Wang Tianyu, 2020).

Based on the weak subordination of the two, there are three consensus on the guarantee idea of new employment form: First, priority should be given to decoupling industrial injury insurance from labor relations, and implement preferential protection of occupational security, and increase social protection according to the identity of social workers (Tian Thought, 2019)^[7]. Second, strengthening the representation of industry trade unions to the network platform workers, taking online taxi drivers into the security category of the collective labor law (Li Gan, 2017)^[8], and attach importance to collective consultation (Wei Yihua et al., 2019)^[9]. Third, to prevent the generalization of labor relations, the rights and interests of practitioners should be classified (Bai Yongliang, 2017; Wang Quanxing et al., 2019)^{[10][11]}. To this end, it is of practical significance to learn from the practice of the trade union, the trade union takes the lead, the government and trade associations act together, to provide the basic guarantee for the new employment form practitioners.

3. THE WEAK SUBORDINATION OF THE NEW FORM OF EMPLOYMENT IS IN LINE WITH THE BASIC SECURITY

3.1. The weak subordination analysis of new employment form

Subordination is the essential attribute of labor relations, which originates from labor's subordination to capital and manifests itself as the subordination of individual workers to individual labor users. In the academic world, the German jurist Kirk firstly proposed the concept of personality dependency and believed that the labor relationship is a ruling relationship in the personality law (Nishitani, 1987)^[12], which has been accepted by the German judicial circles since the 1920s.

After the Second World War, the German Representativeness Theory held that the personality subordination of workers refers to: "Except for other provisions in laws, group agreements, business agreements and labor contracts, under the command of the employer, the employer unilaterally decides the place, time and type of labor and they decide to work". According to the German Labor Law, the personal subjugation of workers to their employers is : (1) they perform extensive reporting obligations to their employers; (2) Application of collective contract rules; (3) shall not solicit customers independently; (4) Accept all labor assignments; (5) cannot participate in profit distribution; (6) Reimbursement of payroll taxes and social insurance expenses paid by employers, etc. (Wilhelm Dutz, 2003)^[13].

Germany's theory of personality dependency has been learned and developed by Japan and Taiwan, and has extended the scope of economic dependency and organizational dependency^[14] (Lin Gengsheng, 2002). Generally speaking, the emphasis of personality subordination lies in command, command, supervision and the right to reward and punish, which affects the psychology and emotion of workers. Focusing on the economic dependence of economic dependency; Organizational subordination means that workers need to be incorporated into the employer's organizational management system and receive its command, command, supervision, rewards and punishments.

This subordinate theory describes the labor relations in the scale production of the Ford system, which limits the personhood and exclusivity of labor benefits and makes laborers become hired laborers with subordinate characteristics. In the law, it is the oblique protection of workers' rights and interests, such as the right to employment, the right to labor remuneration, the right to rest and vacation, the right to safety and health, the right to vocational training, the right to social insurance and the right to form a trade union, which are called workers' rights.

With the wide application of Internet technology, the new form of employment depends on the set of all the things, people gathered force, all the sharing of economic form, the practitioners on the basis of human capital, competency and opportunity cost, select their Labour tasks from platform work pool, realizing the multiple matching with different platforms and different labor tasks, in exchange for income. Therefore, compared with the subordination of standard labor relations, the subordination of practitioners of new employment forms to platform enterprises is weak, and the differences between the two are listed in Table 1.

Table 1. The labor relationship formed by traditional employment and the weak attribute relationship of the new employment form

	From the attributes of the standard labor relations	The weak dependency of practitioners of new employment forms to platform enterprises
Personality dependency	German "labor law" in (1) (2) (3) (4) (5) (6).	Real-time monitoring of online labor hour platform, similar to (1); The trade union of online food delivery industry has been established (2).
Economic dependency	A person has a full-time job, own labor + other people's means of production.	Practitioners can receive orders from different platforms, with different degrees of economic dependency.
Organizational dependency	Members within the organization (principles of organization and management)	Members outside the organization (market competition principles)

In terms of personality subordination, the "de-labor relationship" and result-oriented approach during contract signing weaken the personalization and specialization of labor payment. However, platform enterprises can maintain the node online monitoring of practitioners through rule making, job evaluation, economic penalty, etc., in order to obtain the public praise effect. However, it will be completely inconsistent with (3) and (4). For example, crowdsourced riders can take orders on different platforms and refuse to take orders when the weather is bad. As a billing method, it is completely inconsistent with (5) and (6). In terms of economic dependency, the new employment forms have different economic dependence degrees, such as earning extra money, earning "pocket money" and maintaining a livelihood. The new employment pattern has no organizational dependency and follows the principle of market competition, which leads to the inadequacy of labor rights and interests protection. Since then, the weak subordination has given birth to a higher stage of socialized mass production.

3.2. The new form of employment needs to be guaranteed

In the international labor legislation, we adopt different standards for different forms of labor with different subordinate attributes. For example, the International Labour Organization, in its 1981 Convention on Workers with Family Responsibilities (No. 156), stipulates that "when appropriate, their rights may be determined on a pro rata basis"; And in the Employment Relations Recommendation adopted in 2006, the provision that "Member States shall pay special attention to ensuring that workers particularly affected by the uncertainty of the existence of employment relations are effectively protected" applies

to all types of workers, including, of course, those in the informal economy.

Although the affiliation of the new employment form practitioners to the platform enterprises is weaker than that of the standard labor relationship. However, the remuneration obtained by most practitioners of new employment forms has the property of subsistence right, and they are not independent market subjects. Faced with labor safety and health, force majeure, occupational injury and other risks, they do not have enough ability to deal with them. They need social safety net protection in terms of safety and health, rights relief and other aspects.

4. PRACTICE EXPLORATION OF TRADE UNION'S PROTECTION OF RIGHTS AND INTERESTS OF NEW EMPLOYMENT FORMS

With the rapid development of new forms of employment, Chinese trade unions have actively innovated their trade unions according to the changing environment and the needs of social workers, giving birth to the trade unions in the Internet finance industry, the Truckers' Union and the Food Delivery Workers' Association, and carried out the exploration of collective contracts in the industry.

4.1. Trade unions and their maintenance functions

In November 2015, the All-China Federation of Trade Unions implemented institutional reform and set up an online work department. By creating a public welfare platform, truck drivers who join the union can enjoy fuel discounts and mutual insurance. Around, Local trade unions have set up new institutions, optimized their functions, and provided universal

membership services through scale advantages and mutual insurance, such as since 2017, Shanghai, shijiazhuang, they top-down establishment of the online delivery industry trade union, providing members with health insurance, skill promotion award, advanced evaluation of model workers, legal aid for rights and interests protection and other member services; By the end of 2018, the number of members of eight groups in Shandong, Guangxi and other provinces (autonomous regions), including truck drivers, couriers, nursing workers, nursing assistants, and homemakers, all exceeded 200,000.

4.2. Collective contracts guarantee new forms of employment

In February 2019, Beijing Express Association and Beijing Federation of Trade Unions jointly signed the "Special Collective Contract on Labor Protection" in the express industry. In September of the same year, the trade union of Bengbu City, Anhui Province signed a collective contract with the company to regulate the labor relations in the region and the industry. This is a specific practice for trade unions to adapt to labor practices, bring practitioners of new employment forms into collective labor relations, and innovate and maintain their functions according to the current conditions.

5. MULTI-ENTITY GOVERNANCE WILL PROVIDE A GUARANTEE FOR NEW FORMS OF EMPLOYMENT

Under the conditions of market economy, the wages of social labor are determined by the market, and the focus of the "bottom-line" guarantee of the new employment form lies in the field of labor safety and health and the field of rights relief, so as to realize the unity of flexibility under normal conditions and safety in case of accident, and to provide a pioneering exploration for making up the "legal shortcomings".

5.1. The governance idea of the basic security guarantee

Under the existing local administrator system, relying on China's trade unions and trade associations system comprehensive advantages, on the basis of the union " maintenance worker rights and interests to promote enterprise development "work principle, the Labour administrative department of the people's governments at corresponding levels, led by trade union organizations, trade unions and trade associations started collective negotiations, reduce the proportion of enterprise contributions in contribution sharing, drawing on the social insurance procedures of standard labor relations, we will guarantee the labor standards for workers in new forms of employment from the

perspective of collective labor relations, and help form a self-coordination and self-balance mechanism in the labor market. This is not only the collectivism mission entrusted to the trade union in the industrial digital age, but also the concrete way for the trade union system to establish authority and public credibility.

5.2. Responsibility of multiple subjects under the basic security guarantee

The new form of employment is the inevitable result of the interaction between the development of economic formats, market competition and technological progress, as well as the result of the active choice of multiple subjects. Therefore, it is necessary to cooperate with multiple subjects to promote the symbiosis and co-prosperity of the new employment form and the platform business ecosystem.

5.2.1. Trade unions play a constructive role

Trade unions are the organizers and steerers of collectivized governance and should play a constructive role among platform enterprises and new employment forms. First of all, we can learn from the practice of trade unions in the online food delivery industry, and integrate workers in the industry into trade unions extensively and fairly. Secondly, by learning from the practices of the trade unions in the online booking and delivery industry since 2017, we will provide professional support services, rights and interests maintenance services and other precise and inclusive services for the practitioners of new employment forms in a wider range of industries. Third, in a broader scope, according to the productivity characteristics and industrial characteristics of the new employment forms, we should formulate industrial labor regulations on occupational safety and health, wages and working hours, and protection of special workers, so as to make an early attempt to form a standardized system and legislation.

5.2.2. Industry associations and platform enterprises actively act

In platform business ecosystem, enterprises as the core network and dominate dominate in the main body, increasing marginal benefit from boundary extension, subjectively with the maintenance of network cluster and ecosystem benign evolution, such as series of the platform "care", Meituan company group accidental injury insurance and security of enterprise internal mutual each other aid, all are platform enterprises' exploration of the protection responsibility of external labor market subjects. Therefore, in the next step of work, the industry association can, according to the "Guiding Opinions on Promoting the Development of Sharing Economy", "carry out the cohesion and

coordination of industry guidance", cooperate with the collective negotiation of trade unions, through collective contracts, determine the labor safety standards of the industry, to achieve collaborative governance.

5.2.3. *Give play to the government's responsibility in guaranteeing labor standards*

The role of government in labor relations is mainly to promote the harmony of interests and fair and reasonable working conditions through the formulation of labor policies, employment public service system and coordination of labor relations. Therefore, comply with the application of emerging technology and the change of the labor market, in 2020, The Ministry of Human Resources and Social Security and other three departments jointly released the new career such as network delivery personnel, all media operators, the Labour administrative departments of the government should take appropriate way, with the equivalent level trade union and enterprise representatives, to formulate practical, can the smooth implementation of industry labor standards, In terms of labor safety standards, such as the safety qualification of platform enterprises, the sharing of occupational injury protection fund between industry unions and platform enterprises, and the connection of new employment forms to industrial injury identification system, the legitimate rights and interests of all parties are protected in a fair, just and open principle.

5.2.4. *Enhance practitioners' awareness of occupational injury protection*

Maslow's hierarchy of needs said that people after meeting the demand of material, require the emotional and belonging needs, with regards to new forms of employment, the sense of belonging brought by joining a group organization is an important component of motivation, therefore, to join trade unions, adding new practitioners of collective ownership, which is conducive to improve the work performance; Secondly, skills promotion awards are beneficial for practitioners of new employment forms to improve their skills at work, learn from work, improve the application of digital technology, expand the function of the platform's business biosphere, and objectively benefit the protection of their rights and interests.

6. CONCLUSION

Against the background of new forms of business, workers have freed themselves from the shackles of traditional employment models and concepts, and become more independent and flexible in employment. However, the existing protection system of workers' rights and interests cannot meet the needs of practitioners of the new form of business. First of all,

trade unions should play their due role in order to protect the labor rights and interests of the workers in new forms of business. Secondly, with the government as the main body, enterprises and society as the participants, they should actively protect the labor rights and interests of workers in the new form of business; Finally, the worker is the key, they should improve the worker's occupational safety awareness. The labor rights and interests of the practitioners of the new form of business can be guaranteed through the linkage of multiple subjects and various aspects, so as to realize the healthy development of the new form of business.

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