



Research on the Protection Mechanism of Workers' Right to Health in China

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ABSTRACT

The issue of labour's right to health has been widely concerned and discussed at home and abroad, but there are still many problems in the legislative protection of labour's right to health in China. This paper aims to solve the problem about how to optimize and improve the protection mechanism of labourers' right to health in China. It adopts the method of analysing legal norms to solve the defects and loopholes in the protection mechanism of labourers' right to health in China from three aspects including legislative concept, administrative law enforcement, and improvement of corporate responsibility. The result is to make it easier and more convenient for Chinese workers to apply the right to health legislation. The innovation of this paper, compared with previous studies by scholars, lies in the fact that starting from the legislative concept. This paper emphasizes the prevention of damage to workers' right to health. Meanwhile, workers themselves should have a certain degree of understanding of the right to health protection mechanism. This means that workers need to know not only the laws that protect their right to health, but also how to apply the laws correctly in different situations to protect their right to health.

Keywords: *The Right to Health, Labour Protection, Corporate Responsibility.*

1. INTRODUCTION

Human capital is gradually becoming the most important capital of enterprises. Employee health is a core human capital of enterprises and a critical factor in labour productivity. Therefore, good employee health management is a necessary guarantee for enterprise development. From the perspective of the national macro policy or the micro aspect of the health needs of individual employees and their families, enterprises do employee health management is the trend. For enterprises, good employee health management enhances employees' sense of belonging. From the current analysis of Chinese enterprises' staff motivation levels, many enterprises are still simply staying at the level of material motivation. If they can pay attention to the health needs of employees and meet them, it will significantly enhance the sense of identity and security of employees. Companies that have implemented health management have seen a significant reduction in employee sickness and hospitalization rates. A significant reduction in the total amount spent on employee health care, thus reducing costs. On the other hand, it also makes the employees feel that the company

cares for them. The employees are healthier, more energetic, and more united, directly improving the company's productivity. The competition of enterprises is also the competition of talents. Companies arrange health management programs for their employees to help them maintain or restore their health. In return for the organization's investment in their health, employees will respond to the organization with more energy, thus producing better job performance and bringing higher job satisfaction. This positive feedback will also enhance employees' trust in the company, resulting in a more vital willingness to stay. The company's attention to employee health management can also reflect the company's human side, highlighting corporate social responsibility and playing a good brand effect.

Research scholars from different countries have provided different in-depth analyses on the issue of the corporate right to health, depending on their own country's context. The UN Working Group on Business and Human Rights said that more companies are committing to human rights. More governments in all regions are developing national action plans. However,

the statement notes that significant gaps and challenges remain. Business-related abuses persist across all sectors and regions, putting workers and communities including indigenous peoples, at-risk and leaving them with little opportunity for protection or redress for the harm caused. When injuries occur, significant barriers to rights holders in obtaining redress and holding those responsible accountable remain a significant challenge.

Existing scholarly research on workers' right to health focuses on the definition of workers' right to health, the content of the right, rules for specific rights remedies, and governance. Scholars have reached a consensus on the need for government and corporate improvements in legislation and corporate social responsibility. Some scholars such as Kai Zhang argue that China can improve the jurisprudence of labour rights and specific strike rights to fill the gaps in individual labour rights. [1] Another option is to increase corporate responsibility. For example, Wu Guangsheng suggested that it was significant for enterprises to implement employees' right to information. [2] Employees can fully understand their rights, the direction of the company's operation and development, the company's shortcomings, and the direction they should strive for. This paper will be divided into three parts through a layered approach. Firstly, the author analyses the current situation and problems of employee health rights management in today's enterprises. Then, the causes of the problems will be analysed. Finally, recommendations will be made based on the problems and the current situation. In this step, some bills and existing legislation will be used to argue the case. The purpose of this paper is to discuss the existing laws and regulations around the world that guarantee employees' labour and health rights. It explores these issues and their causes in depth. There is some consensus that governments and companies should strengthen legislation and corporate responsibility.

2. PRESENT SITUATION AND DEFICIENCY

2.1. *Developments Regarding Legislative Protection of Workers' Right to Health*

In the world, protecting workers' right to health is the duty of contemporary states and the legal responsibility of transnational corporations. This proposition is gaining more and more international recognition. The transnational corporations are increasingly associated with several political and social functions, covering all aspects of life involving labour and work, posing a comprehensive threat to the rights and interests of individual workers. The transnational corporations have taken advantage of the weak guarantee of the right to health in developing countries including Asia, Africa, and Latin America, causing a series of health tragedies for workers. Transnational corporation profit from

violations of workers' right to health and exploit workers by extending their working hours and exposing them to unsafe working conditions for long periods. In general, the problem about the right to health such as forced labour and inhumane treatment dominated the discussion. The problem about environmental and labour rights including excessively long working hours, use of child labour, hot and toxic working conditions and denial of maternity leave were also hotly discussed. In terms of its rules of protection, there is a general emphasis on international law (e.g., *the Universal Declaration of Human Rights*, *the Covenant on Civil and Political Rights*), regional law, host country law and industry norms, and corporate self-regulation. In terms of the main promotion and analysis of its power, it mainly includes the United Nations Commission on Human Rights, WTO, IMF, OECD, and other international organizations, non-governmental organizations, the legislation of a few countries, and the statutes of some transnational corporations. In terms of responsibility framework, the three levels of "state protection, company respect, and citizen effective relief" gradually tend to be mainstream.

Internationally, the earliest occupational safety and health legislation can be traced back to the 13th century *German Miners' Protection Act*. In 1802, Britain set up the original factory law "*Protection of Workers' Physical and Mental Health Act*" and the earliest issued "*Occupational Safety and Health Act*" in the United States. This series of laws and regulations are set up for the protection of workers. They stipulate the working hours of workers, labour protection, and working environments including room temperature in the workplace, lighting, ventilation, and other industrial health standards. The worldwide protection of workers' right to health legislation was gradually formed in developed countries at the beginning of the 20th century. For example, the first International Labour Conference in 1919 stipulated numerous legal regulations on the protection of working hours and the right to health of women and children. Many developed countries such as Britain, France, the United States, and Germany are the earliest and most perfect countries in the protection of occupational safety and health and labour right to health. Similarly, legislation protecting workers' right to health and occupational safety and health began to take shape in many countries only in the late 20th century. Japan, for example, didn't formally enact the Workers compensation Act until 1915.

In developing countries like India, Vietnam, and China, due to the abundant cheap labour force, the overall economic development level is very limited and slow. Moreover, due to the large population base of developing countries, the basic salary of employees is around 2,000 yuan. In order to gain more competitive advantages in export commodities, they have to lower prices. However, raw material prices have been rising, so we can only sacrifice labor costs as the price of competition, lower the

cost of workers. This directly leads to the characteristics of cheap labor in developing countries. The domestic legislation of labour right to health protection in developing countries has problems that cannot be ignored. In addition, developing economies in transition often face serious problems of national external debt, financial crises, structural adjustment, and privatization. These problems, however, have led to a significant decline in the country's financial capacity and a deterioration in Labour employment and working conditions. Research published by the International Labour Organization shows that the protection of workers' right to health in developing countries is gradually weakening, which can be seen from the legislative reform of workers' right to health in developing countries. This can be seen in the weakening of the laws used to guarantee the working environment of workers and to enforce the protection of workers' right to health. This can also be seen in the hesitancy to establish better laws and regulations with better legal regulatory effect.

In China domestic, there are still some deficiencies in the legislative protection of workers' right to health, which is mainly reflected in the legal protection mechanism including legislation, judicial practice, administrative law enforcement supervision. The Law on the Prevention and Treatment of Occupational Diseases on the protection of workers' right to health issued in May 2002. The Regulations on Work-related Injury Insurance established in January 2004 were both established and implemented in the early 21st century. These laws indicated that China's enlightenment development in the protection of workers' right to health was much later than that of developed countries such as Britain and the United States. In addition, the two laws on the protection of workers' right to health have been amended four times in December 2010, December 2011, July 2016, November 2017, and December 2018 respectively. This also shows that China is constantly exploring and discovering problems and deficiencies in the legislative field of protecting workers' right to health, and timely taking corresponding measures to correct them.

2.2. The Inadequacy of Legal Protection Mechanism

China's legislation on employee health protection is mainly embodied in *the Regulations on Work Injury Insurance*. However, the complex and slow process of identification of work-related injuries has led to a certain lack of efficiency in the process of appealing and providing evidence against labour and health violations. With such problems, workers feel less confident in using legal means to protect their rights as a means when their health is infringed. Meanwhile, the right to health cannot be effectively protected. Compensation for different forms of work-related injuries is not clear and strict,

leading to increasingly rampant violations of employees' right to health by enterprises.

On the other hand, China has several laws protecting workers' right to health such as *The Law on the Prevention and Control of Occupational Diseases*. Most of these laws focus on judicial relief after the violation of workers' right to health and irreversible physical injury, to provide legal relief channels for workers. China's relevant laws and regulations on the protection of workers' right to health further demonstrate the phenomenon of insufficient protection of workers' right to health. There are few clear legal regulations to prevent violations of workers' right to health arising from occupational diseases in the course of their work. China should start by preventing workers from having their right to health damaged and their physical health harmed, and formulate laws on how to prevent workers from having their right to health infringed at work.

From the perspective of judicial practice, many domestic laws in the process of providing judicial relief to workers do not facilitate the victims of labour. Meanwhile, many domestic laws increase various obstacles in the process of labour prosecution. For example, it takes a long time to file a case. Labour victims have to provide a lot of evidence and fill in a lot of complicated procedures in the process of prosecution. This is undoubtedly a significant obstacle for many working people wishing to protect their right to health through the use of justice. In China's domestic labour class, not all workers are highly educated and skilled in using laws and regulations to safeguard their right to health. When legislating, the state or local government should consider whether it is possible to open a convenient channel for workers who are not high intellectuals and reduce some unnecessary procedures.

3. THE CAUSE OF THE PROBLEM

Occupational safety and health legislation in enterprises is the basis for the development of occupational safety and health supervision and management and judicial remedies for occupational health rights. Moreover, the fundamental purpose of the labour law is to protect the vulnerable groups in enterprises and to balance the rights held by both employers and employees. However, the purpose of all business activities is to pursue the value of efficiency, which leads to irreconcilable contradictions between the purpose of the current occupational safety and health legislation and its proper purpose, resulting in the negative results mentioned above. Fundamentally, the legislator must be guided by the question of corporate profitability. In formulating the specific content of the right to occupational health for workers, there is a certain risk that the content of the right may be compromised by the needs of economic development. Secondly, as mentioned earlier, one of the reasons for the existence of

workers' right to occupational health is to balance the rights of both employers and employees. If economic development is the main purpose of the legislation, the result will be to weaken the ability of labour law to provide protection. Moreover, some supervisory and law enforcement departments may ignore workers' health rights for the sake of local economic development and harbour and defend the behaviour of illegal enterprises. Besides, the reasons for the lack of supervision of employees' occupational health in enterprises are the lack of a special body in the state safety and health supervision department to monitor the implementation of the labour protection system. Meanwhile, the confusion in the distribution of state safety and health supervision and management functions is also one of the reasons for the existence of its problems. The problems in judicial remedies are largely attributed to the fact that labour arbitration is too cumbersome and complicated as a precursor to judicial remedies. When enterprises infringe on workers' rights and interests, they can go through litigation to defend their legitimate rights and interests. However, before filing a lawsuit in court, they are required to apply to the arbitration. They can only file a civil lawsuit in court if the arbitration body makes a result that is unacceptable to the defender. The main purpose of labour arbitration is to facilitate the timely handling of labour disputes at a low cost and to facilitate workers in asserting their legitimate rights. However, the reality is that this seems to provide workers with multiple avenues of redress, but increases the burden on workers. Companies are likely to use these procedures to deliberately delay the process and prevent workers from receiving timely protection for their health. Meanwhile, the right to occupational health focuses on the prevention of occupational hazards that may affect workers' health. Some workers may not consider it meaningful to protect their rights from injuries that have already occurred to them. The backlog of human, financial, and material costs may discourage workers from pursuing their rights and cause them to abandon them. The right to occupational health revolves around workers' occupational health. It mainly includes kneeling their right to occupational health training, occupational health examination and treatment, the right to be informed of relevant occupational hazards, and the right to own personal protective equipment. However, the lack of universal coverage of the right to occupational health has led some workers to be unaware of these rights, not to mention the fact that they are aware of the labour arbitration process.

4. SUGGESTIONS

4.1. *Proposals on Legislation*

The current labour law plays a crucial role in protecting workers' employment rights. However, the specific provisions have become outdated, making the

enforcement work of labour inspection departments more difficult. It is not conducive to better protection of workers' legitimate rights and interests. Therefore, it is imperative to improve labour legislation as soon as possible to make its provisions more specific and clearer and increase operability so that most workers can benefit from it. Firstly, it is necessary to conscientiously implement *the Regulations on labour Security Supervision*. China should establish an early warning system for enterprises to report unpaid wages, record labour contracts, and wage guarantee payments to prevent workers' rights and interests from being damaged. Moreover, China should also establish a sound supervision and protection system and thoroughly clean up discriminatory policies. Secondly, the legislature should treat the labour and employment rights of migrant workers reasonably and lift employment restrictions appropriately. [3] The right to labour and employment is the basis and prerequisite for realizing workers' other labour rights. Only when employment is realized can workers' other rights be realized in specific labour relations. Regarding the right to equal employment, the concept advocated in one of China's labour law provisions is that workers have the right to equal employment and choice of occupation. [4] Implementing the right to equal employment is mainly to oppose employment discrimination. However, the reforms of state-owned enterprises that began in the 1990s laid off large numbers of urban workers. Many city governments attempted to protect the preferential employment rights of urban workers. To alleviate the severe employment pressure, they introduced various policies to restrict rural labourers from entering urban employment including total control on rural labourers entering urban employment and job type restrictions. They also adopt the ways about collecting mandatory management fees and labour regulation fees against migrant workers. Therefore, when some restrictions are removed, it is possible to reduce the employment discrimination against rural workers. In addition, the legislation on labour dispatch needs to be further developed and improved. For China, Zheng believed that two cities, Jiangsu and Shanghai, could start legislation on labour dispatch by introducing local regulations. [5] For the rest of the country, especially the central and western regions, labour dispatch legislation can be borrowed from the eastern regions. The pipeline's massive employment risks and high social costs can be avoided. Furthermore, as an essential component of fundamental labour rights, the right to strike plays an essential role in protecting workers' legal rights and promoting social justice globally. [6] Despite the increasing incidence of strikes and other confrontational industrial actions, we can find a gap in the legislation on the right to strike in China. [7] The Chinese government has not established legal rules to regulate strikes or solve strike problems. This is mainly because the current Constitution, labour Law, and Trade Union Law in China explicitly does not include striking

as a right of employees and trade unions. By effectively establishing and regulating trade unions, the state and enterprises make their labour disputes decrease and thus productivity rise. [8] Since striking is not a legal right of employees and trade unions, the act of striking is not protected and guaranteed by law. [9] The state is not obliged to protect employees or trade unions from striking, which is mainly shown that strikes do not enjoy criminal immunity and civil immunity. According to Zhang, *the 1993 labour Dispute Resolution Regulation* did not contain a dispute resolution mechanism for collective bargaining agreements. It means that enterprise unions are not listed as parties to labour disputes, and the effectiveness of union participation in dispute resolution is questionable. These legislative gaps highlight the need to revise and strengthen the relevant laws and regulations to make them more straightforward in terms of procedure and content.

4.2. Improvement of Corporate Responsibility

From the perspective of companies, companies should consciously abide by the laws and regulations issued by the state to protect workers' right to health. For example, article 33 of the Law on prevention and Control of Occupational Diseases stipulates that workers have the right to know about occupational-disease-inductive factors. That is to say, workers have the right to know whether what and what occupational-disease-inductive factors exist in their working environment and the employer should truthfully inform them. [10] Most directly and commonly, the employer clearly states in the labour contract the occupational-disease-inductive factors that the labourer may be exposed to at work. [11] The company shall not conceal or inform the employees of false information to deceive the employees into participating in labour to achieve the purpose of violating the right to health of workers.

Nonetheless, the company should give the workers the right to make their own choice. The workers have the right to choose whether to do the job or not when they know the occupational-disease-inductive factors exist in the working environment. [12] The workers have the final say and the company should not force workers to do so, to safeguard the right health of the workers.

In addition, the company will follow the labour protection policy. Its purpose is mainly to create secure, health, comfortable working conditions, eliminate and prevent occupational disease, and safeguard labourers' health to participate in social production. As early as 1956, the State Council promulgated the Regulations on Factory Safety and Health, the Technical Regulations on Safety in Construction and Installation Works and the Regulations on Reporting of Work-Related Injuries to Employees. It pointed out the need for enterprises to improve labour conditions so as to protect the production safety and health of workers. [13] Therefore, companies

should ensure that the working environment provided for workers is safe and non-hazardous to protect the right to health of workers. The above is to discuss the protection of workers' right to health from the perspective of corporate law-abiding.

In terms of abiding by the law, due to China's basic national conditions, social background, and different educational levels of labourers compared with developed countries, labourers have little understanding of labour's right to health and its protection regulations. The state should arouse labourers' awareness of safeguarding their right to health. The state should also strengthen the study of some legal regulations promulgated by the State on the protection of workers' right to health. Specifically, the companies play a leading role. They convene employees to carry out specific training on labour's right to health protection regulations before and after their entry into the company. Management can regularly hold relevant lectures on labour law and related laws and regulations, or enter a university to take relevant courses. Meanwhile, more attention should be paid to workers' needs for the right to health. Raising their legal awareness is necessary to improve the situation of workers and their health not being adequately protected.

From the perspective of improving corporate responsibility, enterprises are required to set up rules and regulations for the protection of workers' right to health. [14] This can be done by ensuring a clean and hygienic working environment and ensuring the air quality index of the working environment to reduce and avoid the probability of workers suffering from respiratory diseases. In addition, when workers need to engage in dangerous machinery work or heavy work, the company should provide certain professional training and safe protective equipment in the process of work to avoid injuries to employees. [15] The enterprise must set up a reasonable working time for the labourer and fully guarantee the employee's right to rest. Today, sudden death, depression, suicide, cardiovascular disease, and other threats to the right to health of employees have increased drastically. Companies should avoid requiring their employees to work overtime, as this compromises their sleep and mental health. Therefore, in the rules and regulations of the company, the working hours and rest time of the workers should be stipulated. For instance, it should be clearly stipulated in the legislation that the working hours of employees should not exceed 8 hours a day, and the company should not ask employees to work overtime and work beyond the stipulated hours. For example, the company shall not press employees to work more than 56 hours a week, and the company shall give employees 2 hours nap time every day, so as to prevent and reduce the incidence of occupational diseases and ensure employees' right to health.

In terms of employees' rest time or holidays, the relevant laws shall fully consider that the company shall

not use holidays and weekends to pressure employees to do physical labor or any other form of work. The rest days and holidays of the employees should not be arbitrarily deprived so that they can engage in the corresponding labour of the company. It is also a form of corporate responsibility to protect workers' rights of healthcare.

5. CONCLUSION

This paper provides a detailed analysis of the problems and causes of the management of employees' right to health in today's companies. It is concluded that the lack of legislation has led to the lack of attention to the health status of employees by the relevant laws and management. In addition, most companies only aim at economic development with maximum profit and neglect the company's social responsibility. Therefore, this article suggests that the existing legislation on the right to health should be strengthened. Companies need to increase their sense of corporate responsibility so that employees are aware of their rights. For its purpose, employees who implement health management will feel cared for by the company and have a greater sense of belonging and enthusiasm for their work. This benefit will attract good employees to join the company and naturally inject more innovative ideas. They will be more agile and collaborative in their thinking, develop more creative solutions to problems, and have a more vital ability to execute. It can directly improve the productivity of the company's employees. However, there are some limitations and shortcomings here. Each country has a different management model because of the different economic development and cultural background. Therefore, it is not easy to analyse and elaborate on specific norms in detail. More cases and existing legislation should also be used in the evidence to emphasize the seriousness of the problem. Future research will be more rigorous and detailed by comparing and analysing each country's situation.

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