



Research on the Law Application of Retirees' Re-employment

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Abstract. The reemployment of retirees is a special form of employment in the labor market, which is accompanied by economic development, the prolongation of population life and the increasing degree of aging. The current labor law of our country has many defects in the legislation related to the reemployment of retirees. In practice, retirees and reemployed often conflict with employers on the identification of legal relationship and the application of industrial injury insurance. The urgent task is to expand the scope of labor relations recognition, cancel the age limit of labor relations recognition; Unbinding the labor relationship with the identification of work-related injuries, and establishing a special work-related injury insurance system.

Keywords: retirees · re-employment · Labor relations · Identification of work-related injuries

1 Introduction

Due to the continuous intensification of population aging, the burden of elderly care in China has increased, and the composition of the labor market in China has changed. A new form of employment has emerged in society, which is the reemployment of retirees. In China's labor law, the provisions for eligible age workers are very clear, but the legal provisions for retirees are not satisfactory. Currently, The court's review of issues related to retired reemployed personnel is mainly based on Article 32 of the Supreme People's Court's Interpretation on the Application of Law in the Trial of Labor Dispute Cases (I) (hereinafter referred to as the "Labor Dispute Interpretation (I)"), which is incomplete and has caused confusion in the determination of the relationship between retired reemployed personnel and employers. Therefore, only by improving the relevant laws on retired and re employed personnel can the legitimate rights and interests of retired and re employed personnel be truly protected [1].

2 Problems in the Application of the Law on Reemployment of Retirees

2.1 The Subject Scope of the Recognition of Labor Relations in Retirement and Reemployment is Too Narrow

At the legal level, the employment relationship of retired and re-employed persons has not been clearly defined in China's labor legislation. In practice, some places believe that if the retirement age is exceeded, it can only be regarded as a labor relationship. Others believe that even if the retirement age is exceeded but no pension insurance is received, it can be regarded as a labor relationship. In the current legislation, the Labor Contract Law and Interpretation of Labor Disputes (I) Taking the enjoyment of pension insurance benefits as the reason for terminating the labor contract, [2] Regulations on the Implementation of the Labor Contract Law The legal retirement age shall be taken as the reason for termination of the labor contract. However, taking the retirement age and enjoying pension insurance benefits as the reasons for termination of the labor contract has narrowed the scope of the main body of labor relations recognition and deprived the retirees of their right to life and development.

2.2 Protection of the Rights and Interests of Retired and Re Employed Workers in Compensation for Industrial Injury

Labor Relations should not be Completely Tied to the Identification of Work-Related Injuries

The identification of work-related injury is the premise of work-related injury insurance benefits. Because of China's ambiguous attitude towards the legal relationship between retired and re-employed persons and employers, both the social insurance administrative departments that exercise the function of identification of work-related injury and employers tend to identify according to the labor relationship. First, it can avoid difficulties for administrative departments to choose when laws and regulations conflict with each other, Second, it can reduce labor costs [3].

The Current Industrial Injury Insurance System is not Suitable for Retired and Re-employed Persons

It is the legal obligation of the employer to pay the work-related injury insurance premium for employees, but the payment conditions of the work-related injury insurance premium have strict age limits, and the retired and re-employed personnel obviously have exceeded the limit, and the employer cannot pay for them. Reply of the Supreme People's Court on Whether the Regulations on Work related Injury Insurance are Applicable to Retirees China is beneficial to laid-off reemployment, but there are also two problems: first, it conflicts with the Regulations on Industrial Injury Insurance; Second, in order to save costs, employers are unwilling to pay. Since then, the judiciary and relevant administrative departments have issued various legal documents, and the local government has also explored on the basis of national legislation, but eventually caused confusion. Therefore, the existing industrial injury insurance system is not applicable to retired and re-employed persons.

3 Perfecting the Law Application of Retirement and Re-employment in China

3.1 Expand the Scope of Recognition of Labor Relations of Retired and Re-employed Persons

The Age Limit for Canceling the Determination of Labor Relations

Retired and re-employed persons cannot be recognized as labor relations because they have reached the statutory retirement age. However, according to the different ages, it cannot be recognized that there are two kinds of irrationality in labor relations: on the one hand, Article 15 of the Labor Law only stipulates the lower limit of the employment age, and does not stipulate the maximum employment age. On the other hand, there is no contradiction between the retirement age and the right to work. [4] Although they are over age, retirees are not incapable of working. The employer is willing to hire retired show workers, which means that retired re employed workers meet the requirements of the employer. Therefore, the Labor Law should be amended to After Article 15 of the Labor Law, "The provisions of this Law can still be applied to workers who have reached the statutory retirement age" is added.

Cancellation of Pension Insurance Benefits as the Standard for the Recognition of Labor Relations

In practice, local courts usually take Article 32 of the Interpretation of Labor Disputes (I) as the legal basis for hearing the issue of retired and re-employed persons. All localities believe that the right to subsistence has been satisfied by enjoying the pension insurance treatment, and then tilt the protection of this group to damage the rights of age appropriate workers. However, first, the above point of view refers to the fact that the protection of the right to life ignores the right to development; Second, the pension insurance amount is low, which may not be able to meet the survival of retirees; Third, retirees have paid pension insurance fees during their employment, and it is their legal right to enjoy pension insurance benefits; Fourth, other countries have not taken pension insurance treatment as the identification standard of labor relations. I think we can cancel the pension insurance treatment as the standard of labor relationship recognition. For retirees who have already enjoyed pension insurance treatment, we can appropriately negotiate to reduce their wages, which can not only protect the legitimate rights and interests of retired and re-employed people, but also maintain social fairness.

3.2 Improve the Protection of the Rights and Interests of Retired and Reemployed Workers in Industrial Injury Compensation

Beyond the Restrictions of Labor Relations, Expand the Scope of Employment Injury Insurance

The premise of applying industrial injury insurance is to prove labor relations, and the identification of industrial injury is closely related to the identification of labor relations. In practice, the court held that pension insurance benefits and work-related

injury insurance benefits are in conflict, in fact, they are completely different concepts. Industrial injury insurance is to provide material compensation to workers who are injured in the process of employment, while pension insurance is to provide material protection to retired workers according to Article 45 of the Constitution, so the two are not antagonistic. As stated above, the author believes that the identification of labor relations through age and pension insurance benefits should be canceled, and the relationship between reemployed personnel and the retirement of employers should be identified as a special labor relationship, so as to remove the tie between industrial injury insurance benefits and labor relations. Therefore, item 2 of Article 2 of the Regulations on Industrial Injury Insurance At the end of the article, add "This Regulation is also applicable to the re employed retirees in accordance with the law" to clarify the qualifications of retired re employed persons as the subject of the Industrial Injury Insurance Regulations [5].

Establish Special Industrial Injury Insurance System

First of all, the law should clearly stipulate that employers have the obligation to pay work-related injury insurance premiums for retired and re-employed persons during their employment. Secondly, according to Article 34 of the Social Insurance Law And Article 8 of the Regulations on Industrial Injury Insurance According to the regulations of the State, the payment standards of different industries are determined according to the degree of industrial injury risk in different industries. [6] However, based on the relatively weak physical conditions of retired and re-employed people, in order to avoid imposing excessive risk prevention obligations on employers and increasing the burden of industrial injury insurance institutions, the current payment standards of industrial injury insurance cannot be fully applied to retired and re-employed people. It is recommended that social security institutions integrate the age To engage in occupational risks in the industry, and formulate a stepped rate of payment of work-related injury insurance slightly lower than that of workers of the right age.

4 Conclusion

With the increasing degree of aging, more and more retirees choose to return to work to realize their value. However, China's labor law still has many shortcomings in terms of retirement and reemployment, and the rights and interests of retired and reemployed people have not been protected. Through consulting relevant materials, this paper analyzes the current situation of the legislation on retirement and reemployment in China, and summarizes the defects of the legislation, the identification of the labor relations of retired and reemployed persons, and the application of industrial injury insurance. In view of the above problems, combined with the advanced experience of foreign legislation, put forward relevant suggestions to improve legislation and practice. In terms of employment relations, I think we can expand the scope of labor relations recognition, cancel the age limit of labor relations recognition, and establish a flexible retirement system supplemented by pension incentive system; In the identification of industrial injury, we can untie the labor relationship with industrial injury insurance. I hope to take this article as an opportunity to let more people in the society care about the problem of retired and re-employed people.

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