



Legal Analysis of Labor Relations Disputes on Internet Platform

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Abstract. The purpose of this study is to explore whether employment on the Internet platform constitutes a labor relationship in the labor law. The research results show that the current labor relationship identification standard is difficult to directly apply to the relationship identification in the new sharing mode of platform employment. The court has greater discretion in the determination of the employment relationship of the platform. For labor disputes, the court tends to strictly grasp the standard of confirming labor relations. For infringement disputes, they tend to identify labor relations to make platform enterprises bear the liability for compensation.

Keywords: Internet Platform Employment · Labor Relation · Labor Law · Labor Disputes

1 Introduction

Internet platform employment is a new form of employment that recruits, organizes, manages workers and controls the whole labor process through the information network platform. Due to the relatively short time of employment on the Internet platform, there is still a lack of relevant laws and policies on the identification of employment relations on the Internet platform. According to the different legal relationship between the platform enterprise and the service provider, the current employment mode of the Internet platform can be divided into four types: direct signing mode, intermediary mode, outsourcing mode and new sharing mode. Among them, under the current legal framework of China, the legal relationship of the first three platform employment modes is relatively clear, and the labor relationship of the new sharing mode is relatively controversial.

This study mainly analyzes the legal basis for the application of the four modes of employment on the Internet platform, summarizes the main controversial points of the academic community about the employment relationship on the platform, and analyzes the judicial precedents of the court on the employment dispute on the platform and the characteristics of its judgments. The research results provide a basis for enterprises to apply the Internet platform employment in compliance with the law and avoid the risk of labor relations disputes.

2 Laws on Platform Employment

According to the different legal relationship between the platform enterprise and the service provider, the platform employment can be divided into four types: direct signing mode, intermediary mode, outsourcing mode and new sharing mode. The legal relationship of the first three platform employment modes is relatively clear, and the labor relationship of the new sharing mode is relatively controversial [1].

2.1 Direct Signing Mode

As the main body of employment, platform enterprises directly sign labor contracts with labor providers. The platform directly hires labor service providers under the direct signing mode. The nature of the labor contract is clear. The appearance of labor service providers wearing platform uniforms, using platform logos, and wearing work cards is consistent with the identity of their workers. The act of providing labor services is a duty act. In case of infringement, the platform shall bear the corresponding consequences. The legal relationship reflected is simple and clear, and the Labor Law is applicable.

2.2 Intermediary Mode

Internet platform enterprises, as intermediaries, provide information services for both supply and demand of labor services. The relationship between the platform and the service provider is in line with Article 424 of the Contract Law, which states that “the intermediary provides the client with the media services for concluding the contract, and the client pays the remuneration”, which constitutes the intermediary contract relationship. When the infringement needs to be identified as the subject of liability, the Internet platform, as a network service provider, can introduce the provisions of Article 194 to Article 197 of the Civil Code. If the service provider’s service causes damage to others, the Internet platform does not need to bear the liability for infringement without its own fault. The Internet platform only provides information services for contract signing, and has no causal relationship with infringement [2].

2.3 Outsourcing Mode

The Internet platform enterprise authorizes part of the business or the business of a certain area to the contracting organization through signing a cooperation agreement with the contracting organization, and then the contracting organization signs a labor contract with the labor service provider. This model is applicable to the Labor Law, and a labor relationship is formed between the contracting organization and the labor service provider. Although there may be irregularities in employment, the platform needs to bear the liability for infringement in the case that the court determines it as “fake outsourcing and real dispatch”. However, there is no essential difference from the general labor relations disputes. There is evidence to follow in the labor law, and there is rich judicial experience to rely on [3].

2.4 New Sharing Mode

Individual service providers directly register and receive orders on the platform APP, and can independently decide whether to provide services, when and where to provide services. At the time of registration, some platform enterprises will sign a “cooperation agreement” with the service provider, and some platform enterprises will not sign any form of agreement with the service provider. The new sharing mode, as the most innovative part of the employment mode of the Internet platform, is also the most controversial employment mode. Due to the relative lag of the current labor relations identification standards and labor legislation, there are great differences between the Internet platform enterprises and the labor service providers in this mode as to whether they constitute a labor relationship [4].

3 Disputes Over Determination of Labor Relations

From the perspective of laws and regulations, it is difficult to apply the current labor relationship identification standards directly to the relationship identification in the new sharing mode of platform employment.

3.1 Lack of Legal Basis

China’s current law does not define “labor relations” or “workers”. In practice, the provisions of Article 1 of the “Notice on Matters Related to the Establishment of Labor Relations” issued by the former Ministry of Labor and Social Security in 2005 are widely applicable. If the employing unit has not signed a written labor contract with the laborer, but simultaneously meets the following conditions, the labor relationship is established. (1) The unit and the laborer meet the subject qualifications prescribed by laws and regulations. (2) The labor rules and regulations formulated by the employing unit according to law are applicable to workers, who are subject to the labor management of the employing unit and engaged in paid labor arranged by the employing unit. (3) The labor provided by workers is an integral part of the business of the employing unit. “Having all the circumstances at the same time” means that labor relations can only be recognized when all the constituent elements are established.

However, many differences between platform employment and traditional workers in the new sharing mode have led to difficulties in identifying labor relations. First, the platform employees have strong work autonomy, and can freely choose the working time, place, quantity and even whether to work, while the traditional workers generally receive instructions within the organization, and basically do not enjoy the above rights. Second, traditional labor relations have a clear “one-to-one” orientation, that is, one employer corresponds to one worker. However, the new sharing mode obscures the corresponding directionality. Is the employer a platform enterprise or customer? Or the service provider itself? There are major disputes. Third, the platform enterprise pays the labor remuneration based on the realization or cash flow of the labor service provider. It is equivalent to using the labor income of workers to pay their labor remuneration, which is the most taboo and prohibited practice in the labor law.

3.2 Academic Disputes on Labor Relations

From the perspective of academic research, researchers have three views on whether there is a labor relationship between platform enterprises and service providers in the new sharing mode.

The first view is that there is no labor relationship between the platform and the service provider. Wang (2019) takes online taxi drivers as the research object, and believes that there is no labor relationship between online taxi platform and drivers [5]. The evidences are as follows. (1) The online taxi driver can independently decide whether to work, as well as the working time and place; (2) The labor tools are owned or leased by the online taxi driver; (3) The role of appearance factors such as uniforms and badges is to prove its identity as a service provider of a specific platform to the outside; (4) The right to negotiate should be regarded as the terms of the standard contract, and the drivers of online car rental should abide by the cooperation agreement rather than the rules and regulations.

The second view is that there is a labor relationship between the platform and the service provider. Chang & Zheng (2021) believes that platform enterprises can monitor and control the labor process of platform workers through system planning and software settings [6]. Although the platform does not restrict platform workers to change jobs, platform workers must consider the impact of credit rating system on their job opportunities and income when considering whether to change jobs, so they will be quite cautious. The platform workers have high living pressure and strong substitutability, and the platform income is their main source of income. Platform workers are in a weak position in terms of information acquisition and rulemaking.

The third view is that the legal relationship between the platform enterprise and the service provider is difficult to determine according to the current laws and regulations. Su and Wang (2016) proposed that the employment of sharing economy is a kind of “instrumental autonomous labor”, which is between subordinate labor and autonomous labor. It is similar to “quasi employee” in German law, “quasi subordinate labor” in Italian law and “contract labor” in Japanese law.

The main controversial points of the three views are as follows. First, is the relationship established between the platform enterprise and the service provider through the cooperation agreement a simple cooperative relationship, or is the cooperative relationship also a labor relationship? Second, is it a simple intermediary service or a work order for the platform enterprise to send orders to the service provider by providing customer information? Third, are the rules formulated by platform enterprises, such as the need to wear work cards and uniform clothing, general market rules or labor management rules? Fourth, is the remuneration transferred by the platform enterprise to the service provider the customer enjoying the service or the platform enterprise itself? Fifth, is the income of the platform enterprise from the services provided by the service provider the information service fee or the profit similar to that of the traditional enterprise? Because the above disputes cannot be determined according to the current laws and regulations, the employment relationship of the new sharing mode has been recognized as “labor relationship exists”, “labor relationship does not exist” or “difficult to determine” in the academic circle.

4 Judicial Practice of Labor Relations Disputes

Due to the lack of targeted legal and normative basis for determining the employment and labor relations of the platform at present, the judges have a large space for discretion in deciding cases, and the determination of labor relations is highly controversial. From the result of the case judgment, the court may strictly grasp the criteria for confirming labor relations according to the different circumstances of the case. For disputes of infringement liability type, the court is more inclined to identify the existence of labor or employment relationship between workers and platform enterprises, or identify the infringement as a duty act to make the platform enterprises bear the liability for compensation.

4.1 Labor Disputes

The judicial cases related to platform employment are mainly labor disputes. The appeal of this type of case mainly includes industrial injury compensation, salary payment, illegal dismissal, etc. Compared with traditional labor relations, the particularity of the platform employment case is that it adds a “threshold” for the identification of labor relations. Once the relationship attribute is clarified, the subsequent case handling is the same as the traditional labor relations case.

From the result of judicial adjudication, the court has two tendencies in determining the employment relationship of the platform. First, the court tends to hold a strict substantive management view. It is required that enterprises must provide workers with detailed management of labor and business at least to the time and place. The actions of workers must be under the control of the enterprise to meet the conditions for labor relations. Second, the court tends to hold a loose view of externalization management. As long as workers follow the basic system of the enterprise, they should be recognized as constituting labor relations.

4.2 Infringement Disputes

Infringement disputes in platform employment are mainly manifested as disputes caused by personal loss of service providers and personal or property loss of third parties. The dispute cases of tort liability of platform employment mainly include disputes caused by injury of employees or personal or property losses to third parties due to traffic accidents. It mainly involves the protection of occupational safety and health rights of platform labor providers. In the cases of tort liability disputes, the service providers have more urgent demands for the compensation of platform enterprises and even the public power relief. In the reality of “weak labor and strong capital”, the court tends to incline to protect the “weak” and use a lower standard to judge whether the labor relationship is established in the case of infringement disputes, that is, to determine that there is a “labor relationship” or “employment relationship” between the platform enterprise and the service provider. Even in many cases of infringement disputes, in order to avoid the potentially controversial issue of “the determination of the relationship between the platform and the service provider”, the court will skip the determination of the nature of the legal relationship between the two parties and directly judge the responsibility of the platform and its distribution proportion.

5 Conclusions

From the perspective of laws and regulations, it is difficult to apply the current labor relationship identification standards directly to the relationship identification in the new sharing mode of platform employment. According to the current laws and regulations, there are grounds and rationality for determining the “existence” or “non-existent” labor relationship between the platform enterprise and the service provider. The court has greater discretion in the determination of the employment relationship of the platform. Judging from the judgment results, the court tends to strictly grasp the standard of confirming labor relations for labor disputes, but tends to recognize labor relations for infringement disputes, so as to make the platform enterprises bear the liability for compensation.

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