

Platform economy practitioners Research on Legal Status and Rights Protection

Xinhui Yang

School of Law, Qingdao University of Science and Technology, Qingdao, Shandong 266061, China

Abstract

The rapid development of the Internet platform economy has spawned many new and flexible working methods. The corresponding platform economy practitioners will inevitably conflict with the platform and cause disputes during the employment process. There are no regulations in the current labor law. The identity of the platform economy practitioners in the circumstances that cannot be defined, the entire society and judicial judges must not blindly determine whether the labor relationship is or not, and also deny the protection of the rights and interests of workers. Legislators in my country should transform the existing "dual" structure into a "three-dimensional" structure, and establish intermediate types of workers to provide corresponding legal protections for platform economy practitioners. At the same time, the social insurance system needs to be decoupled from labor relations, and enterprises also need to assume the responsibilities of social governance, and jointly protect the legal labor rights of platform economy practitioners.

Keywords

Labor relations; Internet platform; Practitioners; Protection of workers' rights and interests.

1. Introduction

With the rapid development of the sharing economy, the number of groups seeking jobs based on the network platform has expanded, and many new types of flexible employment have emerged. The academic circles refer to this group as platform economy practitioners. "Brother", "Take-out brother", "Internet celebrity live broadcast" some new types of jobs, such as "online appointment driver", "online appointment housekeeping", etc. show the unique advantages of platform economy practitioners, which will provide the life of the general public Great convenience. However, we are also facing difficulties while enjoying the convenience brought by the rapid economic development. At present, according to my country's labor law, workers can be employed by a certain unit and have a relationship with it in the sense of labor law, or no relationship at all. Workers who have their own labor contracts can get five Insurance and housing benefits, and enjoy various rights conferred by the labor law; on the contrary, they do not enjoy any rights under the labor law. Therefore, how to identify the identity of "platform economy practitioners" and effectively protect their legitimate rights and interests is a problem that we urgently need to solve.

This article believes that no matter what the legal position of platform economy practitioners is, the rights and interests of any practitioner must be protected accordingly. This article will conduct a legal analysis of the legal nature of "platform economy practitioners" and propose corresponding rights protection measures. By increasing employment opportunities that meet social needs, in order to stimulate the social labor force, increase social vitality, and promote the healthy development of the Internet platform.

2. Traditional Labor Relations Identification Standards

Under the traditional labor relationship, while the worker pays the labor, he himself also enters into a subordinate relationship that is highly compliant with the employer and its will, strictly accepts the unit's control and supervision, integrates into the employer's organization, and has a strong personality, this personality subordination feature is one of the important considerations in the "Labor Law" for special protection of workers. In China, Article 1 of the "Notice Concerning Matters Concerning the Establishment of Labor Relations". Employers recruit labor If the employer does not enter into a written labor contract, but at the same time meets the following conditions, the labor relationship is established: (1) The employer and the employee meet the subject qualifications required by laws and regulations; (2) The various labor rules and regulations formulated by the employer apply to Laborers, laborers are under the labor management of the employer, and engage in paid labor arranged by the employer;(3) The labor provided by the laborer is an integral part of the employer's business. Is an important legal basis generally recognized and applied by judges when trying controversial cases to judge labor relations, and focuses on personality subordination. The "Notice" embodies the idea of "subject qualification subordination" and is invoked by judicial practice. In practice, it focuses on examining whether workers are under the management and supervision of employers, whether they should abide by corporate rules and regulations, whether they are subject to corporate working hours, Task arrangement, whether to obtain labor remuneration and use this as the main source of living, etc.

In my opinion, platform economy practitioners exhibit the following characteristics: 1.Obviously weak subordination, practitioners can adjust working hours and locations at any time according to their own plans, and are not subject to platform control and restriction.2.Unlike standard labor relations work units strictly in accordance with the implementation of the contract, platform practitioners can reach agreements with different Internet platforms to provide services for them.3.In terms of labor standard conditions, such as labor hours and labor remuneration payment methods are very flexible, and there is no fixedness. From these characteristics, it can be seen that although it is different from existing labor relations and non-labor relations, it should still be given the status of workers. Therefore, it is necessary to differentiate between "workers" and the actual situation, and a new concept can be created between "workers" and non-workers,namely, the third type of workers. For example, in the United Kingdom, item b of workers, German class employees "class employees" refer to those who have economic subordination and need preferential protection like employees.

First, the intermediate types of workers are different from the workers in the labor law. Such groups are not integrated into the Internet platform organization, nor are they under the leadership and control of the platform, that is, there is no personality subordination between the two. Second ,the intermediate workers must have economic subordination to the platform, which means that the main income of the intermediate workers comes from the contractual relationship with the platform. Third, intermediate workers must be given protection like workers .In judicial practice, the relationship between the two parties should be determined according to the specific circumstances of the case, and corresponding rights and protective measures should be given.

3. The practical dilemma of the rights protection of platform economy practitioners

(1) The ambiguity of subordination in Internet employment

The new employment methods under the Internet economy are diversified. They can be divided into platform assignment, competition, two-in-one and other types. In the process of adapting to diversified employment forms, the adaptability of the three subordination standards in different forms is also different. Obviously, the personality subordination of the platform assignment type is no different from the traditional employment form, and the three subordinations of the competitive type and the two-in-one type have been weakened to varying degrees. First of all, most of the current network platforms allow working hours, locations, places, and labor tools to be independently selected and determined by the practitioners, which reduces the platform's control and command over the workers and weakens the personality subordination. Secondly, including many other national workers who have established the third type of workers, those who choose to work on the Internet platform often do not rely on only one platform service, but choose a variety of options, and the wages they earn are no longer based on the service of a company. The main source; at the same time, the payment form and cycle of labor remuneration are completely negotiated by both parties. It can be seen that due to the challenges and shocks of the Internet employment model, the traditional standards considered to be the king of labor relations have long been unable to meet the needs of practice. When we use subordination standards to distinguish labor relations, the contradictions shown are also obvious. Some features can still be used to prove the labor relationship between the two parties, but the working hours, locations, salary payment methods, management methods, etc. brought by the flexibility of the platform Distinctive features make the judgment thought that personality subordination is the core feature is broken, and the contradictions in it cannot be easily ignored.

(2) Value selection and benefit measurement

At present, the enjoyment of various social security, rest and vacation rights in my country is completely based on the existence of labor relations, such as work-related injury insurance and tort liability. If it is given, if it is not, it will be rejected by the labor law. This "one size fits all" model makes in judicial practice, judges must choose between practitioners and Internet platforms when trying related disputes. This dilemma of completely separating the benefit measurement from the legislative value goal urgently needs the legislators to deal with it. solve.

4. Countermeasures to protect the rights of platform economy practitioners

In recent years, many people have followed the development trend of the Internet and have gradually shifted from entities to the Internet, and the number of employees in the platform economy has shown a rapid growth trend. According to the National Information Center, there were nearly 80 million people employed on the platform in 2019 alone. Platform practitioners represented by couriers, takeaway riders, and online ride-hailing drivers are vulnerable to occupational injuries such as traffic accidents due to their professional characteristics. In addition, the current Internet platform employment model is complex. Whether or not the practitioners constitute a labor relationship is still inconclusive, and platform operators have not paid work-related injury insurance for most of the practitioners, and it is difficult for platform practitioners to be included in the scope of work-related injury insurance fund protection. Based on the above realities, the issue of the protection of labor rights and interests of platform practitioners has aroused widespread concern in the society. How to assume the responsibility of platform practitioners due to work-related injuries has become a difficult problem in practice.

Through the above analysis, it can be seen that in order to fundamentally solve the current labor law protection methods "one size fits all", the scope is too narrow to effectively deal with the protection of the rights and interests of "platform economy practitioners" due to work damage,

and to establish an effective long-term mechanism, we must start with the amendment of the labor law and other relevant legislation, and solve it from the legislative basis Existing problems and contradictions.

(1) Change the "dual" legislative model. Based on the current "one size fits all" defect in my country's labor legislation for rights protection and social insurance, legislators should consider differentiating the labor forms of "platform economy practitioners", one is the standard labor within the framework of labor law, and the other is the intermediate type. Workers, the third is independent workers. Then, the most favorable reason for the establishment of an intermediate type of labor system under the Internet platform economy is that the new types of employment emerging in this context cannot adapt to the existing labor-related legislation, and the opponents believe that platform practitioners are related to labor in the sense of traditional labor law. There is no essential difference between workers or laborers. Based on the opposing viewpoints, we cannot deny that there are big differences between platform practitioners and traditional laborers or laborers in terms of working methods, time, location, or wages. The flexible working model makes the traditional personality subordination standards unable to quickly and accurately Identify the relationship between the two. From Germany and Spain, which have used the concept of "intermediate category of workers", all directly use economic subordination as the standard for determining labor relations. This change in subordination cannot be ignored. In future legislation, we should strengthen the investigation of economic subordination and explore the formation of a three-dimensional framework for workers' identification.

(2) Appropriate reform of the social security system focusing on work-related injury insurance. The characteristics of "platform economy practitioners" are difficult to adapt to the existing social security system. Therefore, my country's relevant legislation should properly reform the social security system to adapt to the professional needs and risks of platform economy practitioners and provide necessary employment for non-labor relations. The protection of rights and interests reduces the difference in the content of rights protection between laborers and non-laborers. Of course, in view of the characteristics of flexible employees, this social security mechanism, which is different from entity regular employees, also has its own unique characteristics and core requirements. In order to increase the actual coverage of insurance for platform economy practitioners, clarify the distribution of responsibilities due to work-related damage, and effectively protect the legitimate rights and interests of practitioners, we must add incentives and conveniences to the compulsory.

5. Concluding remarks

The rapid development of network informatization will inevitably produce new types of enterprises and new types of practitioners. As a social security law, labor law should conform to the trend of the times while protecting the legitimate rights and interests of the majority of workers, no matter the workers in the traditional sense. It is also a new type of laborers, which should be included in the scope of labor law protection. Of course, although the subordination standard can no longer meet the needs for the identification of new types of labor relations, and it is urgent for legislators to amend the legislation to solve them, but we cannot completely abandon them, but fully consider the various types of new platform practitioners and platforms. Elements, change and application follow the focus of the attribute standard in the past, proceed from the protection of the fundamental rights and interests of employees, and make a final judgment through comprehensive evaluation.

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