

The Basic Conception of the Occupational Injury Protection System of the New Industry

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Abstract: *The rapid development of digital economy and platform employment has boosted the generation of a large number of employment opportunities and jobs, but the employment personnel engaged in these jobs are difficult to get the corresponding relief when they are hurt in the work. In order to strengthen the protection of the labor rights and interests of employees, relevant departments launched the pilot work of occupational injury protection, but the implementation of a number of measures in turn did not make the occupational injury protection system really landed. Starting from listing the practical basis of the occupational injury protection system, this paper discusses the feasibility of constructing the occupational injury protection system, and proposes the basic ideas of constructing the occupational injury protection system from the construction of the occupational injury insurance system, including taking the "new" and "old" of the platform employment relationship as the total support, clarifying the subject conditions, and expanding the scope of the protection. Clarify the form of risk sharing, innovate the payment mode and improve the rules of occupational injury identification.*

Keywords: *New employment form; Platform employment personnel; Occupational injury protection; Occupational injury insurance*

1. Introduction

In the general field, workers are strictly regulated by employers as to when and where they work. But with the development of new technologies, a new type of digital business model has emerged, which is more platform and open than the former. In this model, the supply and demand sides are subject to fewer spatial restrictions, so relatively more accurate and efficient matching can be achieved. Workers can choose freely whether to accept the tasks issued by the platform and which platform to choose. The labor remuneration after accepting the tasks is calculated according to the amount of orders received, and the economic dependence on the platform is weakened. The relationship between the two is not only different from the traditional labor relationship in the past, but also different from the contract relationship, and the legal nature is not clear. In various research literatures, this group is usually referred to as "practitioners of new forms of employment" ^[1], which is also the subject of this study "practitioners of new forms of employment (hereinafter referred to as 'platform employees')".

2. The practical basis of the occupational injury protection system for the new type of business

2.1. Realistic necessity

In the era of digital economy, new business forms have become an important choice for people to find jobs and start businesses. They provide more jobs for certain groups, but the environment in which they work is often subject to high security risks. In this case, they should be protected by a sound labor security system. By blurring the labor relationship between them, they avoid the obligation to pay social security, which makes it difficult for the employees to clarify the specific subject of responsibility when they suffer occupational injury, and further leads to some practitioners to express their demands through other irrational channels, which further increases the social instability factors. From the perspective of civil law, platform employees can file lawsuits against their employers when they are injured in their professional activities. However, whether they can actually get compensation is often affected by many factors, the most important of which is the compensation ability of their employers. Therefore, it is difficult to get effective protection in practice. In the field of labor law, industrial injury insurance can disperse the risk of injury in occupational activities to a certain extent, but when they want to seek occupational injury protection, they are faced with layers of obstacles: in the current system, the premise

of industrial injury insurance is the existence of labor relations between labor and capital, but the positioning of the relationship between platform employees and employers is fuzzy.

2.2. Policy support

Although the labor legal system has yet to regulate this new type of employment relationship, in recent years, relevant departments have issued a number of normative documents to strengthen the protection of platform employees. On July 7, 2021, the executive meeting of The State Council pointed out that "Pilot occupational injury insurance for flexible employees will be carried out, focusing on travel, food delivery, instant delivery and other industries". With the accumulation of experience, the scope of application and functional positioning of the pilot is increasingly clear. However, the Ministry of Human Resources and Social Security also made it clear in a document that platform employees and platforms are different from the traditional "enterprise + employee" mode, which leads to the lack of legal basis for including such groups into the protection scope of the current labor law. Therefore, "after preliminary research and demonstration, the occupational injury protection mode is initially proposed". In the report on the work of the Government in 2022, the target for this year's work is also clearly listed as "carrying out pilot programs for occupational injury protection in new forms of employment".

It can be seen that both in terms of practical needs and policy considerations, the protection of platform employees when they suffer injuries in their professional activities has attracted high attention. However, there is no clear response from relevant policies and regulations to what mode should be used to carry out the safeguard work and how to construct the safeguard system.

3. The feasibility analysis of constructing the occupational injury insurance system of the new business type

After combing domestic literature, it is found that scholars who think it is necessary to build a special occupational injury insurance system for platform employees are not the only cases ^[2], which is due to the advantages of the system itself and the feasibility of building the system.

3.1. The government will increase support for workers in new forms of business.

Policy support plays an obvious guiding role in promoting the development of the occupational injury insurance work of the new industrial personnel. The relevant government departments in our country have issued various policies to adapt to the employment conditions of the new industrial forms. The State Council, for example, has issued a document that calls for "all-out efforts to ensure the overall stability of the employment situation" and requires "Make it clear that...Measures for the employment, employment services and rights and interests of people with new forms of employment, and the launch of pilot programs to protect people with new forms of employment from occupational injury."

3.2. The degree of attention of each subject is constantly improved.

On the one hand, the platform employees' own insurance demand and awareness is the most important factor. In the past, people's living standards were relatively low, so they tended to be passive and resistant to insurance, believing that insurance was a "only lose money" business, and the sluggish demand naturally could not drive the growth of the insurance industry. However, with the continuous development of the society, people's ideas have gradually changed from not participating in the past or not taking the initiative to understand the relevant policies now, and even voluntarily participate in insurance through specialized institutions and report the difficulties and problems in the insurance process to the relevant departments. In the new era, people's economic and living standards have been improved to varying degrees. People have a stronger demand for life, health and safety protection, but the current security system is unable to meet the needs of the public. On the other hand, to some extent, the more protection platform employees receive, the less responsibility platform may assume. Therefore, besides practitioners themselves, platform is also an important force to promote the development and improvement of security system.

3.3. The innovation of the management system and the continuous improvement of the service level of relevant institutions.

At present, our country is also vigorously promoting the construction and improvement of the social

security system, social security agencies are naturally an important part of it, and the service level of the agencies largely determines the satisfaction degree of the masses to the security system. Through the investigation of pilot areas, it is found that different from the processing mode of industrial injury insurance, the occupational injury insurance system for platform employees has great flexibility in the processing process, such as relying on the Internet and big data and other new technologies to develop the processing platform and simplify the processing process, which is the innovation of this system, and also the relevant handling agencies actively adapt to the new situation. Improve their own service level is an important embodiment.

4. The basic idea of constructing occupational injury insurance system

Combined with what has been mentioned above, occupational injury protection has its space and necessity, but the problems in some pilot areas cannot be ignored^[3]. The insurance coverage in some areas cannot fully adapt to the new characteristics of the current platform employment. The insurance participation process is still tedious and complicated. Some places still impose unreasonable restrictions, such as requiring local residency or requiring people to enroll in insurance at the same time as other types of insurance. Some areas have adopted the mode of choosing whether to participate in insurance independently, which will lead to the platform and employees have participated in commercial insurance, under the premise that the willingness to participate in the pilot insurance is reduced. All the above cannot guarantee the comprehensive implementation of occupational injury protection system. The construction of occupational injury insurance system should promote its advantages and avoid its disadvantages, give full play to its advantages compared with the existing model, and summarize and reflect on the problems in the pilot, and truly respond to the needs of real life.

4.1. Based on the "new" and "old" of the platform employment relationship.

First of all, it should be clear what is new about the relationship between platforms and employees compared with traditional labor relations. Since it is not labor relations, the occupational injury insurance system based on it cannot follow suit according to the existing industrial injury insurance system and civil tort system. As mentioned above, in ordinary labor relations, the laborer has a strong economic dependence on the employer, and the employer has a strong control over the laborer. Industrial injury insurance should naturally be borne by the employer. However, enterprises in the platform economy are different. In terms of both economy and personal freedom, the subordination of employees to them is significantly reduced. Therefore, it is obviously unreasonable for a certain platform to bear the burden. Secondly, although the platform relationship is new, it does not mean that it is completely different from the existing labor relationship. Naturally, the occupational injury protection system can also learn from the unique parts of "non-labor relationship" in industrial injury insurance, such as the establishment of insurance fund to realize risk sharing. The new insurance is still by the existing industrial injury insurance agencies for handling, to avoid agencies, personnel miscellaneous.

To be specific, first, an occupational injury insurance fund should be set up with an independent account. The fund comes from the premium paid jointly by the platform and the employees, which is also a more stable advantage compared with commercial insurance. Second, clear payment principles and specific methods, can refer to the calculation method of industrial injury insurance, according to the expenditure to determine the premium amount and proportion. There are more than ten specific occupations on the platform. The risks of different occupations are different, so the premiums should be adjusted. In addition, premiums should be dynamically adjusted according to the accident rate in the previous payment cycle. Third, no additional agencies for occupational injury insurance should be set up, but workers' injury insurance agencies should handle it.

In addition, the establishment of this system is to ensure that platform employees can get basic protection in life after suffering occupational injury. However, this purpose cannot be realized only by relying on this new system, so it needs to be connected with other department laws, such as contract, tort and other systems in civil law and special laws such as the Social Insurance Law. Therefore, it is also necessary to make necessary adjustments to the relevant legal provisions.

4.2. We will clarify the subject conditions and expand the scope of guarantees.

In the age of digital economy, it is obviously no longer of obvious practical significance to divide employment into formal and informal forms. Naturally, the establishment of the new insurance system

should not make a distinction. Instead, it should realize the diversification of risks as far as possible by expanding the number of risk sharing groups, so as to protect the interests of all employees as far as possible. Therefore, the conditions of the insured personnel should be set as low as possible, as far as possible, the establishment of no labor relations, not to be protected by industrial injury insurance employees into it, specifically:

(1) Platform employees must meet the conditions of ordinary workers. Should conform to the corresponding age and labor ability conditions, and the employer has not established a labor relationship. Although platform employees are "unstable" on the whole, which is also the reason why the system should protect this group. However, when subdivided, they are engaged in a variety of occupations, so the specific insurance procedures and methods should also consider the different characteristics of different occupations to avoid "one-size-fits-all."

(2) The conditions of the insured personnel shall be open, and no unnecessary restrictions shall be imposed on the platform employees. In some pilot areas, conditions that are not necessarily related to insurance participation, such as the household registration of the insured personnel, the nature and form of the employed personnel, whether to participate in other insurances, are restricted, and this insurance system is regarded as the "security for the minority", which obviously goes against the original intention of the system and is difficult to achieve comprehensive and effective protection.

4.3. Clarify the form of risk sharing and innovate the payment mode.

The benefits available for distribution under the new employment form are still created jointly by both platforms and employees. Sharing benefits should share risks, so the risks suffered by the employees in the process of occupational activities should also be shared by both parties. On the one hand, although the platform does not have strong dominance over employees like the employers in labor relations, it will also formulate relevant rules and regulations to require employees to abide by. Therefore, when employees suffer injuries in the process of occupational activities, the platform should also assume limited employer responsibilities, such as the obligation to withhold insurance costs of employees. Or when the employee needs to settle the claim, he/she shall assume the obligation to prove that the employee is receiving the order on his/her platform. On the other hand, employees should also undertake the obligation to abide by the rules and regulations of the platform as well as limited employee and risk prevention obligations.

However, the employment form under the platform economy has obvious flexibility characteristics, so in practice, it often appears that the employees receive orders on different platforms at the same time. In this case, different platforms may participate in the insurance. Therefore, we can innovate the payment mode and refer to the mode of calculating remuneration according to the order quantity of some takeout platforms and taxi platforms. Pay premiums on a la carte basis. With the help of new technologies such as big data, the fees payable by the employees can be equally divided into each order, and then the rates can be determined based on the characteristics of different occupations. The platforms and employees can jointly pay the fees, and the platforms can withhold the fees on their behalf. When the employees need to settle claims, the platform has the obligation to provide evidences and other assistance obligations. Finally, specialized organizations will verify the relevant certificates and pay compensation to those who meet the conditions, so as to provide basic guarantee for the life of the employees after they suffer occupational injuries.

4.4. Improve the rules for identifying occupational injuries.

First of all, it should make clear the identification rules that take "working state and working reason" as the key elements." Occupational injury insurance", as the name implies, the employment personnel should be in the state of work, due to work injury. The existing identification standard of industrial injury is based on the "three industrial" as the elements for assessment. Under the new business mode, due to the particularity of the employment form, the working time and place of the employees are more dispersed, and the way is more flexible. If the "three industrial" is still taken as the elements, the requirements are obviously too high and the identification difficulty is too large, which is not conducive to the protection of the personnel and property of the employees. Therefore, when identifying occupational injuries, the focus should be placed on whether there is a causal relationship between the injuries suffered by employees and the work they are engaged in, and the requirements for working time and place should be appropriately relaxed. Secondly, it should be made clear that the main body of proof responsibility in the identification of occupational injury is the employment personnel. In ordinary labor

relations, the employer has a strong control over the relevant proof materials in the process of proof, and most workers are in a vulnerable position. Therefore, in this case, the employer bears the main burden of proof. However, in the new employment form, the dominance between the platform and the employees is obviously weakened. In addition, the employees in real life often work for multiple platforms at the same time, so the platform cannot fully grasp the whereabouts and status of the employees. Therefore, in this case, if the platform is still required to bear the burden of proof, it will inevitably bear too much responsibility, which will lead to a serious imbalance in the protection of interests. In this case, the employee should be required to bear the primary burden of proof that there is a causal relationship between the injury he or she has suffered and the work assigned by the platform.

5. Conclusions

In recent years, it is not uncommon to see the news that employees of new forms of business have suffered injuries in the process of professional activities, but it is difficult to get comprehensive and effective protection, which has a negative impact on the current high-quality economic development that cannot be ignored. Even though many departments have issued normative documents to promote occupational injury protection, this system cannot be truly implemented. After clarifying the practical basis of the occupational injury protection system, this paper expounds the feasibility of the occupational injury protection system, and further puts forward the basic assumption of constructing the occupational injury protection system, in order to better respond to the new requirements of the digital economy era.

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