

Problems and Countermeasures of Legal Protection of Laborer's "Off-line Right" in China in the Information Age

Ping Yang*

¹Guizhou Qiannan College of Science and Technology, Qiannan, Guizhou, China

*Corresponding author: 377703350@qq.com

Abstract: Compared with the traditional office mode, telecommuting and online office mode have become more and more common in recent years, such as online office through mobile phones, computers and other electronic equipment, and can receive and complete work tasks anytime and anywhere in the non-fixed work place. This work mode, on the one hand, can improve the work efficiency of workers. It is more flexible and convenient; On the other hand, it is easy to cause the overlap of working hours and rest time of workers, and it is difficult to distinguish the boundary between work and life, which extends the working time limit, and it is difficult to identify overtime, and it is difficult for workers to "offline" from work, thus infringing on the right to rest of workers. Therefore, the "off-line right" of workers should be protected by legislation. However, at present, the provisions of the "off-line right" of workers in our country are not perfect, and there are still many problems, such as the scope of the subject of rights is not clear, and dispute relief is difficult. Based on the status quo and existing problems of the legal protection of laborers' offline right in China, learning from foreign experience, according to the reality of our country, this puts forward relevant suggestions for the improvement of legal protection, such as adding the relevant provisions of laborers' offline right in China's Labor Law.

Keywords: Laborers; Off-line Right; Legal Protection

1. Introduction

With the development of science and technology, the age of information technology has emerged, and how workers work has changed accordingly; it is no longer the traditional office mode with a fixed workplace, and telecommuting and online office modes are becoming more and more common, which leads to the situation in which workers do not go off duty, but continue to work even after work. It is not possible to delineate the time between work and rest, which leads to the prolongation of the time limit for workers to work. This makes it impossible to distinguish between work and rest time, leading to an extension of the time limit for workers to work. It makes it more challenging to recognize overtime work, thus infringing on workers' right to rest. As a derivative of the right to sleep, the "right to be offline" refers to the right to choose to refuse to answer work phone calls or respond to work messages on electronic communication devices after work hours so that workers' personal lives are not disturbed, to ensure that the workers' private lives are peaceful during non-work hours^[1]. Employers use electronic devices such as mobile phones to release work tasks to workers anytime and anywhere, thus putting workers in a long-term "on-call" state and making it difficult for them to "go offline" from work. Foreign developed countries (e.g., France, Italy, Germany) are aware of this problem and have gradually attached importance to protecting workers' right to be offline in their legislation and practice. However, China's legislative system does not contain specific provisions on the right of workers to be offline, and the provision of such a right is of great social significance.

Firstly, the determination of workers' "right to be offline" is conducive to protecting their right to rest. Article 43 of China's Constitution stipulates that workers have the right to rest, and the right to sleep means that workers can get enough rest during the off-duty time and holiday time; only when they get enough rest can they be healthy and long hours of work may infringe on their health, so workers should be free from the employer's disturbances during their rest time, to better enable them to be fully refreshed and recharged for the next day's work. Therefore, workers should be free from the employer during their rest time to better refresh themselves and prepare for the next day's work. Therefore, establishing the "right to be offline" for workers can change the "squeezing" of labor by employers in the information age and safeguard the right to rest for workers.

Secondly, establishing the "right to be offline" for workers is conducive to balancing life and work. According to Marx, human beings are social creatures, and workers cannot only have professional activities but also family activities, which are to some extent separate and not opposed. People want to change the status quo of work over life; this balance is not only the objective external performance of the balance but also a substantive sense of the workers from the physiological and psychological sense of balance; in this balance, workers not only from the personal life of the satisfaction but also can improve the efficiency of work. To maintain this balance between life and work, workers should be given the "right to be offline," so they do not have to work longer hours than they would otherwise.

Lastly, the Civil Code's provisions on the right to peace of mind make it possible to establish the "right to be offline" for workers. Article 1033 of the Civil Code of China stipulates the right to peace in private life, that is, "Unless otherwise provided for by law or with the express consent of the right holder, no organization or individual may carry out any of the following acts: (a) disturbing the peace of other people's private life using telephone calls, text messages, instant messaging tools, e-mails, leaflets, etc." This provision of the Civil Code makes it possible for labor law to establish workers' "right to be offline." This provision of the Civil Code provides some reference and guidance for the establishment of workers' "right to be offline" in labor law.

2. Problems in the legal protection of Laborers' "offline rights" in China in the information age

The right to rest refers to the right of workers to obtain the necessary time to recover their physical and mental strength and to use it for recreation and at their disposal after a certain amount of physical and psychological exertion in labor by the law^[2]. China's current Labour Law protects the right to rest by restricting the working hours of workers in the office, thus ensuring that workers have sufficient time to take care of their families, studies, and recreation. However, under the information-based office environment, there is an overlap between office and non-office areas, which leads to unclear boundaries between working hours and non-working hours. The specific provisions of the legal protection of the workers' "right to be offline" are also missing; the subject of the right is unclear, and the workers have difficulties remedying the disputes over the "right to be offline" and other problems. The lack of specific provisions on the "right to be offline," the lack of clarity regarding the subject of the right, and the difficulty of redress for workers in "right to be offline" disputes.

2.1. Lack of legal protection for worker's "right to be offline"

At present, China's relevant provisions on workers' right to rest are mainly contained in the Constitution and the Labour Law. Article 43 of the Constitution and Chapter 4 of the Labour Law have made principled provisions on workers' working hours and rest and leave. However, the provisions on workers' right to be offline in the information age in China are still missing and have not considered the violation of workers' right to rest caused by being disturbed during their rest in the context of the information age. However, the provisions on the "offline rights" of workers in the information age are still missing and do not consider the violation of the right to rest caused by the disturbance of workers' rest time in the context of the information age. In the age of information technology, the boundaries between office and non-office premises and between working and non-working hours are becoming increasingly blurred. Is it counted as working time when an employer asks a worker to complete work through office software during off-duty or rest? Should workers be reimbursed for work tasks performed during their rest time? Can a worker refuse to do a task assigned by the employer during the off-duty time or rest time? Can workers log out of their work software during off-duty or rest time? All these practical problems need to be solved urgently, but the current laws and regulations do not have relevant provisions^[3].

2.2. Lack of clarity as to the subject matter of the right of workers to "go offline"

From our current situation, most scholars believe that workers who have signed an employment contract with an employer can enjoy the right to be offline. Still, the right to rest of some flexibly employed persons who do not have an employment relationship is usually infringed upon, and the legitimate interests of this part of the workforce are not considered. If only workers with labor contracts enjoy the right to be offline, it is unfair to these flexibly employed workers. To establish the "right to be offline" in line with China's actual situation, it is necessary to define which subjects enjoy the "right to be offline," which subjects are not entitled to the "right to be offline," and which subjects are entitled to the "right to be offline" or not, depending on the situation. It is necessary to define which subjects are

entitled to the "right to go offline", which subjects are not allowed the "right to go offline," and which subjects are entitled to the "right to go offline" on a case-by-case basis to avoid a one-dimensional and one-sided formulation of the law.

2.3. Lack of clear boundaries between working hours and non-working hours

The criteria for determining working hours in China's current Labour Law can no longer be fully applied to the actual needs of the present time, especially the needs of the operating hours of workers in the context of the information age. Article 36 of China's Labour Law stipulates that the daily working hours of workers applying the standard working hours system shall not exceed 8 hours. Still, the beginning and ending intervals of the 8-hour working hours are not stipulated^[4]. In addition, the Labour Law only provides for overtime work. It does not give the corresponding compensation standards for workers who receive many work assignments that take up their rest time in the information technology era, which is not considered overtime work.

Moreover, there is no explicit provision on workers' "right to rest and peace," most workers are still required to complete their work or keep in touch with their employers during their rest time, which is not counted as overtime. While the existing laws and regulations on the right to rest are mainly for traditional workers, a new type of labor relationship has emerged in the context of the information age, i.e., the platform economy labor relationship, in which some workers rely on online platforms for their work, such as online taxi drivers, takeaway riders, and e-commerce anchors, etc., which allows them to arrange their working hours more flexibly than the traditional workers and some industries are even not subject to the working hours of the workplace. Some industries are not even subject to restrictions on working hours at workplaces, which has resulted in the lengthening of the operating hours of platform economy workers, making it impossible to distinguish between working hours and non-working hours and resulting in the phenomenon of work-life overlap.

2.4. Difficulties in remedying disputes over workers' "right to be offline" in the information age

According to the relevant provisions of China's laws, workers have the burden of proof when their right to rest is violated. The evidence that workers can prove that their right to sleep has been violated generally consists of chatting records, sending and receiving e-mails, and transmitting information on electronic devices, which are all electronic evidence. It is difficult to determine the legality and authenticity of the electronic evidence, which makes it difficult for workers to safeguard their rights. In addition, the lower cost of breach of contract is also a problem. In addition, the lower cost of breach of contract is also one of the reasons why employers frequently violate workers' right to rest^[5]. China's Labour Law, Chapter XII, "Legal Liability," provides for penalties for violations of the Labour Law by employers, and the penalties for violations of workers' right to rest by employers are as follows: "The labor administrative department shall give a warning, order rectification, and may impose a fine." Compared with the physical and psychological "destruction" caused by workers working long hours, the penalties imposed on employers are far too light, leading employers to take the infringement of workers' right to rest lightly. At present, there are no specific rules on penalties for the relief of workers' "right to be offline," and in the context of the information age, the ways of infringing on workers' right to rest have become more insidious. It has become more difficult to prove them, so the traditional function of labor supervision is limited, and the legal protection of the "right to be offline" should be combined with the legal protection of the "right to be offline" of workers. The legal protection of workers' "offline rights" should be considered in light of the realities of the information age to avoid inadequate protection.

3. Improvement of the legal protection of laborers' "offline right" in China in the information age

The "right to be offline" indicates that workers can have enough rest time, that is, the right not to be disturbed by the employer during the rest period and not to reply to the work information during the rest period. The creation of the "right to be offline" is a further safeguard of workers' rights and a forward-looking initiative to solve new types of labor disputes based on the modern network society^[6]. Therefore, improving the legal protection of workers' "offline rights" in China in the information age should be done in the following aspects.

3.1. Inclusion of workers' "right to go offline" in the Labour Code

Generally speaking, the law guarantees the smooth running of endeavors, the stability of the social

order, and the legitimate interests of the various participants. Similarly, the right of workers to be absent from work is no exception. In France, the concept of the "right to be offline" was proposed based on the protection of workers' right to leave, which makes it clear that workers have the right to be free from their work during their rest time and realize their right to rest and peace^[7]. By clarifying the definition of working and non-working hours, it is recognized that workers are not obliged to undertake work during their rest time, which is of great significance to the implementation of workers' right to rest. In light of China's actual situation, drawing on foreign experience, the boundaries between working hours and non-working hours are clearly defined, and at the same time, it is stipulated that workers have the "right to go offline" to safeguard their right to rest. As we mentioned earlier, Chapter 4 of the Labour Law of China has made principal provisions on the working hours and relaxation and leave of workers. We suggest that Chapter 4 of the Labour Law include provisions on workers' "right to be offline" and incorporate the principle provisions on rest and leave so that workers can enjoy the "right to be offline" during their off-duty hours. Workers have the "right to be offline" and can choose whether or not to reply to work-related messages during their off-duty hours, and employers cannot use this as a reason to punish or dismiss workers. Of course, the regulation of the law should not be too absolute or one-sided. Some exceptions are allowed, such as in the case of industries that rely on the Internet for their survival, and the provisions of the law should be flexible and realistic.

3.2. The legal regulation of the right of workers to leave the premises

First of all, it should be affirmed that workers with labor relations have the "off-line right". Especially in the context of the current information age, workers are easy to be "harassed" by employers during rest time, thus infringing on workers' right to rest, because workers' right to rest should be protected by legal means. Secondly, some flexible employment personnel who do not have labor relations should be entitled to the "offline right" according to the situation. With the development of the Internet, the emerging industries developed by relying on the Internet are also rising, such as takeout riders, short video anchors, etc., different from traditional industries, these industries have flexible working hours. This kind of flexible working time is easy to appear too long working time phenomenon, and only to complete the corresponding workload can obtain the corresponding income. After all, it is a "more work more get" industry, and it will lead to working hours far more than the standard working hours stipulated by the state. In this case it will depend on the situation to give workers "offline right". For some of these new special industries, they should be special treatment. The "offline right" of workers can be in violation of the law under the premise, the employer can make corresponding provisions in the relevant system, and obtain the consent of the worker, agreed on the applicable rules of the "offline right". In addition, while determining the subject of the "off-line right", relevant judicial interpretations should also be issued to restrict the exercise of the rights of some workers who enjoy the off-line right in the legal scope, so as to reduce the burden on employers.

3.3. Clarifying the boundaries between working hours and non-working hours

In order to distinguish the boundary between working time and non-working time, it is necessary to clarify the criteria for identifying relevant working time, which is also the beginning of workers' enjoyment of the "offline right". From foreign legislative experience, through negotiation and negotiation between labor and management, they determine the main scope of the exercise of "off-line right", the exercise of the right time and way, punishment measures, sometimes through the collective bargaining between the workers and the management, sometimes through the trade union and the management. Negotiation results will be in a certain industry or the whole industry to form a consistent recognition. Thus, the off-line right is established on this basis. Due to the existence of standard working hours and flexible working hours in our country, the determination of off-line time cannot be generalized, and it must be analyzed specifically for specific problems, which requires both employers and employees to negotiate to determine what time is the "off-line right" time. The establishment of off-line time through collective negotiation of both employers and employees can give full play to the autonomy of both parties and weigh the rights and interests of workers and employers, which can not only protect workers, but also prevent the unlimited application of "off-line right" and make employers bear negative consequences. If remote workers are involved, the employer and the worker need to negotiate on their own when signing the labor contract. According to statistics, the number of telecommuting workers in China is relatively huge, telecommuting working hours and locations are more flexible, workers can choose their own office location and time, the calculation of working hours is different from the traditional calculation of working hours, because telecommuting workers usually work at home, they will toss and turn between life and work, Then the calculation of working time needs new calculation rules. In terms of working hours

calculation rules, it is difficult to use a unified standard to calculate working hours because the working hours^[8] of telecommuting workers are fragmented and discontinuous. From the perspective of China's judicial practice, China is more inclined to identify the scope of working time by labor intensity, which will greatly increase the burden of workers, because they have not got rid of the restrictions of work and get a real rest, even if engaged in other work that does not conform to the content of the work stipulated in the labor contract, it will not be identified as working time, in fact, it still damages the rights and interests of workers. Therefore, combined with the reality of our country, it is clear that the working time and non-working time boundaries suitable for laborers in different industries in our country, and the working time of laborers is calculated from a more comprehensive perspective.

3.4. Establishment of a dispute redress mechanism for workers' "right to go offline"

First, as we mentioned earlier, workers have a certain burden of proof when their "off-line right" is violated, the general evidence is electronic evidence, and the identification of electronic evidence is more difficult, thus causing difficulties in proving evidence for workers, according to the provisions of Article 7 of the Provisions on Evidence in Civil Proceedings, the burden of proof should be confirmed in accordance with the principle of fairness. The worker is in a vulnerable position, so in judicial practice, the worker in arbitration or litigation activities, if the enterprise is required to claim compensation for its infringement, should take the burden of proof inverted.

Second, as we mentioned earlier, the penalties under China's Labour Law for infringement of the right to rest by employers are relatively light. So, when employers infringe on the "offline rights" of workers, an appropriate penalty mechanism should be established. The penalties for violation of the workers' "right to be offline" by employers should not be generalized but should be imposed according to the specific circumstances. Either too high or too low, a standard will be biased and should therefore be measured according to the amount of the workers' "right to be offline" infringed upon by the employer. Of course, in addition to the establishment of the penalty mechanism, there should be a corresponding monitoring mechanism in the digital office background and work-related information should be stored in the form of electronic data in the terminal equipment and servers; the labor inspectorate should set up a special internal Internet labor inspection department, specializing in the supervision of digital work enterprises employing workers^[9]. At the same time, trade unions can also establish an online reporting platform and open online reporting channels to facilitate the maintenance of workers' "offline rights."

4. Conclusions

The "off-line right" of workers, as a new kind of right sent by the rest right, is particularly important under the background of the information age. At present, after work, workers will face a variety of work information "bombardment", it seems that "work is not offline", still in the rest time to receive a lot of work tasks, resulting in people between work and life lost balance, easy to cause workers physical and mental fatigue, infringe on the legitimate rights and interests of workers. Therefore, there is an urgent need for legal protection of workers' "off-line right". However, in China's current legal system, there are no clear provisions to prohibit employers from contacting workers after work. Even if the "right to peace of life" is stipulated in the "Civil Code", it is still difficult to identify the employer to complete the work task during the rest time of workers as an infringement. The extension of working time limits makes it difficult for workers to get enough rest. Only by demarcating the boundary between work and life can this problem be effectively solved. Based on the experience of foreign workers' "off-line right" legislative protection, we examine the shortcomings of our country, and try to establish the legal protection path of workers' "off-line right" in our country according to the reality of our country. According to the existing problems, it is suggested that our country should legislate laborer's "off-line right", incorporate laborer's "off-line right" into the labor law system, and establish laborer's "off-line right" relief mechanism. We can see that the consequences of excessive "occupation" of workers' rest time are obvious. Workers have physiological and psychological double pressure, and it will lead to a decline in work efficiency, and affect the physical and mental health of workers. Therefore, laws are needed to protect the free control of workers' time after work, so as to improve workers' enthusiasm for work, better complete work tasks and improve work efficiency.

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