

The legal application of new labor relations—taking riders as an example

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Abstract: In judicial practice, the applicable standards of legal relations in such cases of civil disputes caused by takeaway riders are not uniform, and it is faced with the problem of how to evaluate such new labor relations and labor rights protection. Therefore, this paper starts with the specific judicial judgment, analyzes the legal status of the labor provider under the platform economic model through the attribute theory, and clarifies how to identify the legal relationship between the labor provider and the platform. On this basis, it further explores how to evaluate the tripartite contract relationship of the platform employment contract. According to the characteristics of labor supply under the platform economy, we should strengthen the application of blockchain in evidence, strengthen the flexibility of case identification standards, and establish a fast mode of occupational risk protection and compensation, and put forward suggestions on the protection of workers' rights and interests from three perspectives: procedural law, interpretation theory and legislative theory.

Keywords: multiple labor service delivery mode, labor service provider legal status, new labor relations

1. Introduction

With the rapid development of intelligent technology, all aspects of people's lives have been infiltrated by algorithms and big data. Under the support of the demand volume of the sharing economy, a large number of 'flexible employment' jobs have been created, and more and more practitioners of the 'gig economy' have been engaged. According to the data, 45.4% of Internet users in China have received online takeout services, and the number of online takeout users is as high as 360 million. Behind the rise of the takeaway platform is the current transformation of Chinese residents' dietary consumption patterns and the existence of the professional group of takeaway riders providing services. The atypical labor relations established by this new type of employment model have been different from the traditional labor relations and employment forms. The atypical labor relations are flexible and diverse in working time, place and way, weakening or blurring the use of subordinate relations, unclear identity of workers, unstable employment status and insufficient protection of rights and interests.

This article will take the judicial adjudication of disputes in the industry by the 'rider' group as the blueprint, and try to analyze the legal problems and solutions in the current shared basic economy.

2. The judicial application of atypical labor relations in China's judgment

In the dispute of the right confirmation relationship, the labor subjects who have disputes with the takeaway platform can be roughly divided into two categories: one is the platform special takeaway rider, and the other is the crowdsourcing rider. These two riders constitute the existing main force of takeaway platform practitioners. Dedicated riders generally belong to full-time riders, while crowdsourcing riders are often part-time riders. There are great differences between the two in the willingness to conclude labor contracts, delivery mechanisms, and salary management. Special delivery riders are usually managed by formal distribution companies, and their orders are automatically allocated by the platform. The payment settlement method is monthly. Compared with special delivery riders, crowdsourcing riders, also known as 'self-employed riders', use their leisure time for distribution, have no order quantity requirements, and their independence and autonomy are more obvious^[1]. The focus of the case dispute is whether the platform should bear the employer's responsibility, that is, whether the labor relationship is established between the platform and the labor provider. In the gist of the judgment, the court unanimously agreed that takeaway riders are a new type of employment form under the platform economy.

As a terminal practitioner of the Internet platform, takeaway distributors are different from traditional labor relations. Generally speaking, the relationship between the dedicated rider and the distribution company is closer and usually constrained by agreement. If it conforms to the legal characteristics of labor relations, labor relations can be identified. At the judicial level, the court's handling of platform employment disputes is a choice between 'dependent labor' and 'independent labor' to determine the way of responsibility, which leads to a polarized referee result: the result of identifying labor relations or handling according to labor relations is that the platform bears full responsibility, and the result of denying labor relations is that the labor provider bears full responsibility [2].

3. Prominent problems in the judicial application of atypical labor relations

Taking the case of Shao Xinyin v. Diaz (Chongqing) Logistics Co., Ltd. confirming the labor relationship dispute as an example, Shao Xinying should be a 'hungry' delivery rider. An accident occurred on the way to take out. The hospital diagnosed and identified the injury as : Grade 9 disability. The labor arbitration support confirmed his labor relationship with the company of the site. When he carried out the industrial injury identification, he received the lawsuit filed by the company of the site at the company 's registration place. The lawsuit passed two trials. The judgment of the two trials unanimously supported the plaintiff's site. The company confirmed that it had no labor relationship with the defendant Shao Xinyin, and ruled that Shao Xinyin lost the lawsuit and could not obtain compensation for industrial injury identification.

Therefore, it can be seen that how to determine the labor relationship in such civil dispute cases, the referee views in the process of judicial application are not uniform, and there may be situations that may lead to substantial unfairness in the case.

3.1 The legal status of labor providers under the special delivery mode

When the takeaway platform changes from direct operation to outsourcing, the platform is no longer a direct employment unit that has a legal relationship with the rider, and the proportion of the labor relationship between the delivery rider and the platform is significantly reduced.

Crowdsourcing riders have strong autonomy and independence. In judicial practice, it is often not controversial to identify them as ordinary labor workers. However, it is obviously difficult to identify the labor relationship of riders under the special delivery mode. From the perspective of subordination theory, special delivery riders fully possess three characteristics: personality subordination, economic subordination and organizational subordination. Personality subordination refers to the obligation of labor to provide labor services according to labor contracts. When fulfilling their obligations, they must be instructed by employers, who determine the place, time, content and intensity of labor services^[3]. Economic subordination emphasizes the economic dependence of labor on employers. Laborers must rely on the wages paid by employers to survive, and employers use their economic strength to unilaterally determine the content of labor contracts such as work and other working conditions^[4]. Organizational subordination refers to that in the modern enterprise organization, employers incorporate labor into the production organization. Labor must abide by the internal rules and procedural provisions of the state and organization, and become a part of the employer 's business management system together with other workers^[5]. If we do not affirm the legal status of the laborers in the labor service providers in this atypical labor relationship, we will only dogmatically identify the relationship between the rider and the platform according to the relevant format clause agreements that must be signed when the rider enters the platform to receive orders. This will lead to the situation that the industry practitioners can not get relief when they are infringed, affecting the healthy and orderly development of the new format.

3.2 Identification of the legal relationship between the rider and the platform

The focus of controversy in such cases is mainly how to define the legal relationship between the platform and the labor provider. Is the labor provider in the platform economy self-employed or labor? The people 's court has given the judicial referee 's point of view guidance and evaluation criteria on how to identify this case. The judge who has experienced the relevant case believes that the provisions of the 'notice on the establishment of labor relations related matters ' should be referred to. If the two parties meet the requirements of substantive labor relations, the existence of labor relations should be determined. Specifically, it should be judged from three aspects : subject qualification, subordinate attribute and business relevance^[6].

In practice, platform employment contracts often have three or more parties, so how should this type of contract be evaluated? Most of the theories on the legal composition of the tripartite contract take the traditional labor-capital dual subject structure as the theoretical premise, which cannot effectively explain the current multiple and complex labor contract relationship. Therefore, it is necessary to start from the nature of the tripartite contract, re-understand the labor relationship theory generated by the combination of labor force and means of production, the use of subordination (human subordination) theory and the employer's command and management power composition theory. In the tripartite contract relationship, shared employment, secondment and labor dispatch have different legal attributes. Shared employees only have one labor relationship with the employer, and generally do not have implied or dual labor relations with the employer. The employer's liability in shared employment is mainly borne by the employer. The employer can exercise part of the command and command power transferred by the employer, and bear certain employer's liability separately or jointly with the employer based on the partial use of subordination. The implementation of shared employment should be agreed by both employers and employees, and it is necessary to have the conditions such as the necessity of production and operation, the rationality of personnel selection and the legality of contract change, and to prevent illegal acts such as disguised shared employment by strictly implementing the labor contract change procedure and clarifying the legal responsibility and management authority between the two enterprises^[7].

4. Countermeasures to the judicial application of atypical labor relations

4.1 Strengthen the application of blockchain in evidence

When the judge determines the facts through relevant evidence, he often faces the problem of blurred corporate boundaries and hidden affiliations. In the form of outsourcing, there is a civil relationship between the employer and the contractor, the contractor establishes a labor relationship with the laborer, and the laborer provides labor under the management and supervision of the contractor. Under this outsourcing relationship, there is no use affiliation between the original laborer and the outsourcer, but in practice, there is sometimes a 'certain' use affiliation between the outsourcer and the outsourced laborer (here emphasizes 'certain', because if there is a complete affiliation, it is restored to the form of dispatch). For third-party enterprises, the right to manage workers is dispatched, and the right to manage is outsourced. In judicial practice, it is difficult to define the nature of certain (partial) management rights or management rights^[8].

Whether it is 'special delivery' or 'crowdsourcing' delivery staff, they are required to register the corresponding APP, sign the corresponding agreement on the APP and be required to obey the management through the APP before the work begins. The actual owners of these APPs are companies that directly or indirectly manage riders. Therefore, most of the relevant attendance and work records that can prove that they have a labor contract relationship with employers are recorded on the APP data. These companies can often tamper with and delete data without trace when providing relevant information and disclosing relevant data. Therefore, it should be required that the APP of the actual employment enterprise to manage the employees must adopt the recording method of blockchain technology, otherwise it will bear the adverse consequences of the failure of proof. The so-called blockchain refers to the 'distributed ledger formed by sequential addition of blocks confirmed by consensus using cryptographic links'^[9]. This method can effectively prevent data tampering, help judges obtain formal and comprehensive evidence for fact finding, and make fair judicial decisions according to the law.

4.2 Strengthen the flexibility of case identification standards

On the issue of whether the subordinate relationship between platform enterprises and online workers is enhanced or weakened, the reason for the debate is that the management and control mode of online workers by platform enterprises is quite different from the traditional mode. 'Command management' is more concealed, and 'subordinate' is easily concealed. Online contract labor is mostly concentrated in the service industry, while the service industry is different from the manufacturing industry. Its labor results are intangible, and the service delivery process is also the labor result delivery process. Therefore, the control of labor results and service quality must be accompanied by the control of labor process and service behavior.

In determining the corresponding legal relationship, the court must be adjusted according to the needs of the platform and the gig economy, rather than defining the relationship between the platform and the

workers as either a wage labor relationship or an independent contract worker^[10]. Such determinations easily classify workers in the gray area of the law, which may lead to quite serious consequences^[11]. Generally speaking, given that the platform's control over the specific situation of the employment relationship is generally greater than that of the online contract workers, the former's evidential status and evidential situation are generally better than the latter. This kind of case judgment path under the pre-presumption is a reasonable optimization of the distribution of the burden of proof, and also helps to curb the platform from the source to cover up the illegal purpose of labor relations in a legal form, thereby strengthening the protection of the legitimate rights and interests of online contract workers^[12].

4.3 Establish a quick mode of occupational risk protection compensation

The low threshold of employment makes 'online contract workers' enter various industries as full-time and part-time workers, and the lower threshold of employment means that the status of this group is relatively weak. They pay more attention to their own material interests and due rights and interests, and when the interests are damaged, they will be more fiercely maintained. The unclear and imperfect labor relations make the protection of labor rights and interests of 'online contract workers' lack of institutional basis. At the same time, the 'Internet +' enterprises in the rapid expansion period have relatively large labor risks^[13]. Once problems arise, they often touch the bottom line of labor rights. The current single employer liability insurance is actually the 'trap' of occupational injury protection in platform employment.

There is no direct relationship between the rider as the actual payer of the premium and the commercial insurance company. The employer liability insurance only 'pays' for the compensation obligations that the employer has fulfilled after the event. Therefore, in the event of an injury accident, the rider cannot cross the platform or the third party to claim against the commercial insurance company, but still needs to request a party as an insured person. Such liability insurance does not transfer risks for practitioners, but for platforms or cooperative enterprises that bear liability for compensation. This is an improper transfer of employment responsibilities by the platform, which completely transfers employment risks to rider individuals and insurance companies^[14]. If the rider is refused to pay, the rider can only request to confirm the existence of labor relations between the two parties through litigation in order to enjoy the corresponding industrial injury treatment. This is back to the traditional dispute about the nature of platform employment.

5. Conclusion

In the judicial practice of civil dispute cases in new formats, it is very important to correctly understand and evaluate the legal relationship between riders and takeaway platforms. According to the theory of subordination, the labor status of most labor providers should be affirmed and it should be determined that they establish labor relations with the platform. In practice, we should strengthen the application of blockchain in evidence, strengthen the flexibility of case identification standards and establish a quick mode of occupational risk protection compensation to protect the group rights and interests of takeaway riders, so as to avoid the situation that riders' rights cannot be protected timely and effectively when they are damaged.

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