

The Labor Rights and Interests Security of Workers Under the New Forms of Employment Taking Labor Relations of Takeaway Deliverers as an Example

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ABSTRACT

Along with the development of scientific and technical revolution, various online employment platforms rely on the Internet economy to integrate resources and provide Internet services, while offering employment positions. In this way, an employment form that distinguishes itself from traditional labor relations, i.e., a new employment form, has emerged. As a typical group under the new pattern of online employment, the labor rights and interests of takeaway deliverers are not protected by relevant legal policies because such group's labor-capital relationship doesn't belong to the labor relation in the traditional sense. Starting from the perspective of labor relations, this paper sorts out the changes in the development of the takeaway deliverer industry and discusses the transformation of labor relations and existing problems of the takeaway deliverer group.

Keywords: *New employment form, Platform economy, Takeaway deliverer, Labor rights and interests.*

1. INTRODUCTION

In recent years, with the advancement of technology, globalization and the innovation of enterprise organization, the pattern with the traditional way of employing workers and their inherent labor legal system has been formed. With economic development, new employment forms have developed into one of the new driving forces of China's economic growth, promoting the generation of multiple flexible employment models. Among them, with the expanding size of new employment form flexible employment groups such as online car-hailing drivers, takeaway food deliverers, express service workers and network anchors, it has advanced the change of China's existing employment structure. However, while increasing employment opportunities, this also brings new challenges to the formulation of China's labor security policies and laws, the regulation of the labor market, and the implementation of government supervision and management responsibilities. "Labor relation", as the basis of

labor law recognition, is a common issue under the current national legal system of the rapidly developing Internet economy.

As a typical group under the new pattern of online employment, the labor rights and interests of takeaway deliverers are different from the traditional labor relations, and are not protected by relevant legal policies because such group's labor-capital relationship doesn't belong to the labor relation in the traditional sense. [1] In the same context, industries have industry differences, and the labor rights and interests protection system for takeaway deliverers as the main body needs to be analyzed combining the context of the specific practical situation of the industry.

In this paper, it takes takeaway deliverers as the research object, starts from the perspective of labor-capital relationship to sort out the changes in the development of labor rights and interests protection of the takeaway deliverer group under the new employment form, and discusses the importance of improving the principles of prior labor relations in

China and constructing a harmonious labor relations system to supplement the theoretical research. It also analyzes the background of the development of the new employment form and the problems in the existing labor protection system by analyzing the characteristics of the occupation itself. This is not only important for the protection of basic rights and interests of practitioners in the context of the industry, but also has implications for macroeconomic development and policy coordination under the prospect of the development of the new employment form through the study of judicial practice.

2. ANALYSIS BASED ON REALISTIC MATERIALS

This paper selects two typical cases of labor disputes that have important reference value for the trial of labor disputes in the new employment form, both of which are labor dispute cases, but have two opposite results of constituting labor relations and not constituting labor relations in two places. The reason for the different verdicts is not only that different provinces and cities determine labor relations differently, but also that the typical cases reflect the difficulties in judicial practice in protecting the labor rights and interests of takeaway deliverers at present.

2.1 *Identification of Labor Relations Between Takeaway Platforms and Deliverers*

- Case 1: Labor dispute between deliverer Li and X Catering Company

Li and E Technology Company signed a Labor Contracting Agreement on August 3, 2017 for a period of 12 months, in which the Company provided Li with catering delivery work. The compensation included no base salary and was paid based on commission per order. Li provided his own transport to deliver food. In November, Li fell and got injured while delivering food, and was sued by arbitration to confirm the existence of labor relations between the two. Li claimed that he worked every day using the cell phone software of E Technology Company, and punched in and out of work every day like traditional labor, and his main labor "delivery" was also operated through the software. In June 2017, E Company signed a Cooperation Agreement with X Catering Company, allowing X Catering Company to operate E Company's delivery business, and the deliverers of

X Catering Company didn't have any labor or service relations with E Company. The deliverers' salary was paid by E. The court finally ruled that "Li's claim for the existence of labor relations with X Catering Company is not justified by law" and believed that no labor relations existed.

It was generally held that Li belonged to X Catering Company in his work and used E Company's software to work and carry out delivery business for it. However, in judicial practice, the Labor Contracting Agreement is an important contract to determine that the two don't belong to the labor relation in a consensual manner. In the labor relations, the salary paid by the employer shall not be lower than the minimum wage standard of its location, otherwise it is not recognized as economic subordination. Li had no basic salary, so it was not an economic subordination relationship. In traditional labor, there is a fixed place and working hours and the employer provides facilities and equipment for the workers. But here, Li provided his own transport, which didn't meet the organizational subordination. Because of his free working hours, there was no clear labor management connection, and it was also not a personality subordination identification.

- Case 2: Labor dispute between deliverer Yu and J Company

During the period from March 27, 2018 to May 8, 2019, Yu worked as a full-time deliverer at a site of J Company. The two parties didn't sign a written labor contract, and J Company didn't pay for social security for Yu who received monthly wages from an off-case third party. On May 8, 2019, the two parties had a dispute over social security, and J Company stopped Yu's delivery APP account. On June 20, Yu applied for arbitration to the Arbitration Commission who ruled that J Company should pay Yu another double of the double wages without a written labor contract for more than 30,000 yuan, and make a supplementary payment for Yu's social security during his working period. Yu sued for confirmation of labor relations.

The court held that, "Based on a comprehensive analysis of the evidence, including the statements of the parties, the salary payment and the WeChat chatting content of the relevant personnel, the existence of a de facto labor relation between Yu and J Company can be confirmed". In this verdict, the controversy was whether the worker had a de facto labor relation or an employment relation with the company. Although the deliverer's work was performed through a cell phone app, the actual

manager of the labor and the person to whom the fruits of the labor were attributed was the agency site affiliated with J Company.

The two cases belong to the same labor dispute case between the worker and the platform and the agency company, but the verdict is opposite. The interpretation of the court's verdict shows that the determination of labor relations of new employment form practitioners has great particularity and complexity. [2] Deliverers work through the takeaway platform, and their labor relations with the outsourcing company that subcontracts the business to the takeaway platform is not obvious. In judicial practice, it is most common for takeaway deliverers to be recognized as individual business owners due to the signing of the Labor Contracting Agreement. The Hangzhou Intermediate People's Court in Zhejiang Province gives the judgment idea: The first is to determine whether it is a legal relation, and then, it is to examine whether it is a labor relation. [3] If there is no labor relation, one can examine whether there is a weak subordination. Because the labor relation is essentially a relation between the labor force of the worker and the means of production of the employer, it also belongs to a personal relation.

2.2 Development of Takeaway Platforms and Changes in Their Labor Relations With Deliverers

Labor relations, namely, under the condition that a labor contract is signed, the employer has the basic obligation to comply with the labor law; according to the contract signed and the job content, the worker has the obligation to perform the labor content and enjoy the basic labor rights and interests, such as the provision of minimum wage, maximum working hours, social insurance benefits, etc. After sorting out the development vein of the delivery industry, it can explore the different patterns of labor relations between deliverers and companies with the development of capital.

- Pattern 1: Restaurants directly employ deliverers

Takeaway deliverers were initially laborers directly employed by restaurants, i.e., self-employed by restaurants. A direct labor relation is formed between the two, such as takeaway services like KFC Home Delivery.

- Pattern 2: Takeaway platforms directly employ deliverers

In 2008, third-party delivery platforms began to emerge. During the expansion and development phase, the platforms recruited takeaway deliverers, released information in cooperation with restaurants, and provided delivery services to customers on behalf of restaurants. After 2012, the takeaway delivery industry developed rapidly and entered the earlier stage of large-scale market. In order to capture market share and save capacity pools, platforms attract labor with generous treatment and directly employ deliverers to form delivery teams.

- Pattern 3: Platforms hire deliverers through labor dispatching

In the early stage of the development of the takeaway industry, another labor dispatching method was used for employment. The labor relation between the deliverer and the platform can't be determined under this pattern. The labor dispatching company is the one that has a direct labor relation with the deliverer. The takeaway platform has an indirect employment relation with the deliverer through a labor dispatching agreement with the labor dispatching company.

- Pattern 4: Crowdsourcing deliverers recruited by platforms

In 2015, the two monopolies "Eleme" and "Meituan" launched the "crowdsourcing" model in succession, in which the platform directly recruited crowdsourcing deliverers and signed cooperation agreements. Nanjing Municipal Human Resources and Social Security Bureau's explanation of crowdsourcing deliverers is: "It is a 'deliverer' who is outsourced by the platform on a free and voluntary basis to a non-specific natural person and is onboarded by the natural person after registering the app on his cell phone and obtaining recognition". The crowdsourcing pattern can help companies optimize their capacity pool structure and make up for the lack of dedicated delivery capacity. Under the crowdsourcing pattern, a labor dispatching contract is signed between the deliverer and the outsourcing company, which is a labor dispatching relation and is not subject to legal labor protection.

- Pattern 5: Platforms recruit crowdsourcing deliverers through crowdsourcing companies

In the subsequent development, in order to reduce labor management costs and legal risks, takeaway platforms cooperate with crowdsourcing

service companies who sign agreements with deliverers and pay them and purchase insurance through third parties. Takeaway deliverers sign up for the crowdsourcing company's app and sign the Freelance Service Agreement. In most judicial practices, the deliverer is considered to be an individual businessman and has a cooperative relation with the outsourcing company rather than a labor relation, so the platform and the agent company are not burdened with the obligations required by labor law.

- Pattern 6: Platforms recruit exclusive deliverers

Along with the emergence of the crowdsourcing pattern, platforms have begun to adjust the self-employed deliverers in Pattern 2 and the labor dispatching deliverers in Pattern 3, outsourcing the delivery business to delivery vendors and having the outsourcing companies recruit and manage exclusive deliverers. Takeaway platforms and delivery vendors further strip the labor essence of deliverers from platforms and delivery vendors by signing a cooperation agreement to assign the work.

- Pattern 7: Layer-by-layer outsourcing

Starting in 2018, takeaway platforms shifted to using outsourcing services. Outsourcing companies act as intermediaries who bear the costs and legal risks of labor relations instead of upstream platforms and manage millions of deliverers downstream. As the actual profit is less, outsourcing companies choose to subcontract or subpackage the business to other companies again in order to earn more profit. This results in a cooperative control of the labor process of exclusive deliverers by the takeaway platform and multiple delivery vendors.

3. DISCUSSION

The new employment form is a non-standard labor relation, and the existing norms of recognition in labor law are problematic under this labor pattern. For the new employment form, different departments in different regions have issued corresponding system policies for their respective jurisdictions. However, with the development of the casual labor pattern, the new employment form has become more and more abundant, and different new employment form practitioners need their own regulation policies, and a certain temporary provision doesn't apply. The narrow scope of legislation is one of the reasons for the low reliability of legal application in judicial practice.

[4] The labor law makes clear requirements for minimum wage, social insurance and other workers' rights and interests in standard labor relations, and the nature of the work of takeaway deliverers requires social insurance and work injury insurance for social security. However, workers who are unable to identify their labor relations can't enjoy protection and lack applicable legal protection. With the development of the industry, labor-capital relations have a more absolute right to determine the labor relation capital for workers. In particular, multiple employment methods are currently not clearly regulated by law, which makes employing units separate the nature and form of employment relations by subcontracting business and avoid the responsibility and obligation of the platform. [5] The nonstandard employment model gives companies an improper advantage in capital. The crowdsourcing pattern breaks the traditional boundaries of labor-capital relations and enhances labor management in the crowdsourcing pattern through incentive algorithms and operational strategies. When a company in the takeaway delivery industry adopts a more labor cost-saving form of employment, others will follow suit in order to maintain profitability, eventually creating an effect of bad money driving out good money in the market. In addition to contradictions between labor and capital, news of deliverers seeking to survive between the cracks of customers and platforms in the face of platform fines and customer complaints are frequently reported in the press. The reason for this is that the deliverer position itself is characterized by low barriers to entry and a variety of educational levels. The lack of social recognition of the deliverer community, the need for deliverers to achieve self-worth and self-development, and the deliverers' sense of self-worth's directly "affecting mental health are important factors affecting occupational stability". The protection of the physical and mental health of workers in the new employment form and the concern for sustainable career development are also issues that deserve attention.

New employment forms have become a new trend in employment development. From a macro perspective, government bodies can play an institutional role in regulating new employment forms and protecting the employed. In judicial practice, there are judicial channels such as arbitration and litigation. However, in recent years, in cases of labor disputes between takeaway deliverers and platforms, workers often lose lawsuits due to insufficient evidence. In the face of

this situation, the mechanism of labor inspection can be expanded. [6] The nonstandard employment model of the takeaway industry and the blurring of labor relations due to subcontracting layer by layer are important factors that damage the rights and interests of deliverers. The platform has the obligation to perform supervision and the duty to protect the rights and interests of hired laborers. In other industries, there are clear regulations on the subcontracting of business by contractors, for example, the Construction Law of the People's Republic of China in the construction industry prohibits subcontracting or dismemberment of business to others. Platforms have been playing a dominant role in the change of employment forms. Under the new employment form model, platforms, as economic beneficiary subjects, should be more clear about the principle of unity of rights, responsibilities and benefits, pay attention to the protection of workers' rights and interests while making rules, reduce occupational risks, pay attention to the psychological health of workers, establish a benign human resource reserve system, and set up a fair dispute resolution mechanism and unblock the way for employees' opinions to be fed back. At the micro level, as the main body of labor rights and interests protection, besides weaving a "protection net" outside, takeaway deliverers also need to build up the awareness and basic legal knowledge to protect their own rights and interests from inside.

4. CONCLUSION

The new employment form is a product of the development of the times and the takeaway industry has been developing rapidly with the rise of the Internet economy. The labor relations between takeaway deliverers and platforms can be mainly divided into labor relations under the exclusive delivery pattern, labor dispatching relations under the labor dispatching pattern, labor relations or contractual relations under the outsourcing crowdsourcing pattern and contracting relations. It must be noted that among the above types of relations, except for the labor relations which are in line with the traditional labor relation recognition in Chinese labor law, workers in other labor relations can't enjoy the protection of labor obligations under labor law.

The labor provided by takeaway deliverers has certain particularity. Although crowdsourcing deliverers usually don't qualify for traditional labor relation recognition, there is some degree of

management of them by the takeaway platform in both the crowdsourcing and outsourcing patterns. In particular, for crowdsourcing deliverers who work full-time, on the one hand, they need to follow the work rules set by the takeaway platform; on the other hand, due to the ambiguous status of legal subjects and the lack of legal protection for labor relations, they don't have bargaining rights and can only work long hours in exchange for compensation.

The protection of the rights and interests of such workers needs to be further explored, and the impact of the rapid development of the new employment form should be viewed dialectically. The rapid development of new employment forms has the advantage of promoting social and industrial restructuring, but also has institutional obstacles. The original labor laws and regulations are somewhat inadequate for the protection of workers in new employment forms. At present, workers can defend their rights and interests through judicial litigation and labor arbitration, but the cost of defending their rights is high. No matter which remedy is lacking, it is also a loss of social resources.

Therefore, in the face of the development of the times and social needs, the government should realize the inevitability of the development of new employment forms, pay more attention, and set up relevant policies in the form of legislation to regulate the protection of labor rights and interests. On the one hand, it's needed to improve the policies according to the existing legal framework, and on the other hand, it's necessary to support innovation and rely on the development of the Internet industry to systematically innovate to promote the benign and green development of the industry, protect the fundamental rights and interests of the employed, and ultimately achieve a win-win situation for all parties under the new employment form.

AUTHORS' CONTRIBUTIONS

Yan Cao wrote the manuscript, and contributed to revising. Yifan Liu wrote the manuscript. Jiangning Luo wrote the manuscript. Haoyu Wang wrote the manuscript, and contributed to revising and editing.

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