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Research on the Identification of Work-related Injuries of labourers under the new form of Employment in China

-- Taking home and office workers as an example

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Abstract: With the in-depth development of digital technology and the emergence of new forms of employment, the telecommuting mode of home-based work has been brought into the job market, which has been widely promoted after the outbreak of COVID-19. It may become the norm of people's work in the future. Home office, as a typical example of high integration and intersection of work and living space, can indeed save commuting time from the point of view of workers, but on the other hand, the personal subordinate attribute of home office workers is weak. when they are injured at work, according to the traditional identification standard of industrial injury, it is difficult to bring this new type of workers into the scope of industrial injury insurance. It is also difficult to provide occupational injury protection, let alone to achieve the goal of harmonious labor relations. Therefore, through the discrimination of the examples of the identification of work-related injuries in home work, this paper expounds the problems existing in the identification of work-related injuries and analyzes the causes. Finally, it puts forward some suggestions on the"three work"standards and the"48 hours"clause in the industrial injury as well as the distribution system of the burden of proof, hoping to strengthen the legal norms of long-distance labor and realize the harmonious labor relations under the new employment form.

Keywords: Work From Home, Telecommuting, New Form of Employment, Identification of Industrial Injury.

1. Introduction

The Internet and digital technology have changed the economic form and the nature of work, and a large number of posts with telecommuting potential have emerged as the times require. According to the 2022 China telecommuting Development report, Ninety-five percent of respondents want to telecommute at least one day a week, and 28 percent want to telecommute at least two or three days a week. On the occasion of the two sessions of the National people's Congress in 2022, deputies to the National people's Congress proposed to expand the "3+2" mixed office model, allowing workers to telecommute one or two days a week. The Digital economy Development Plan of the 14th five-year Plan issued by the State Council in January 2022 highlights the application prospect of this kind of remote work. However, the wide application of telecommuting has brought challenges to China's labor security system, especially in the identification of work-related injuries.

Although the minutes of the Professional meeting of the Administrative judges of the Supreme people's Court (7) made it clear that the sudden illness and death of the staff and workers during the overtime work at home belongs to"on the working hours and on the job". And the staff and workers engaged in their own work for the benefit of the unit as the main point of judging "working time and position". However, because of the particularity of the home-work mode, the industrial injury identification rules stipulated in Article 14 and Article 15 (1) of the regulations on Industrial injury Insurance in China are difficult to be directly applied to the industrial injury identification under the home-office mode.

Therefore, based on the background of new business type, under the background of the rising practical demand of home office, this paper finds the deficiency of the theory of industrial injury identification of home office from the judicial cases, and puts forward countermeasures to solve the applicable problems in practice.

2. The Present Situation of the Determination of Work-Related Injuries of Home Office Workers in China

2.1. Sample Case Analysis

2.1.1. Case overview

This paper takes "working from home", "telecommuting", "telework" and "work-related injury" as key words, and limits the type of documents to judgments and searches them on the China referee Writing Network. As of June 20, 2024, 197 judgments have been retrieved. After careful study and screening, excluding coincidence and similar cases, this paper selects 17 sample cases related to the identification of work-related injuries at home and work for analysis.

Table 1. An overview of the identification of work-related injuries at home and office

Srial number	Year	Trial level	The cause of death of labourers	Results of determination in administrative organs	The result of the court decision of first instance	Court of second instance	Retrial law court
1	2021.4.30	The second instance	Sudden illness and death	not be recognized	Identification	Identification	
2	2021.5.17	The second instance	Death within 48 hours of emergency treatment	not be recognized	Identification	Identification	
3	2021.5.8	The second instance	Death within 48 hours of emergency treatment	not be recognized	Identification	Identification	
4	2020.12.30	The second instance	Sudden illness and death	not be recognized	Identification	Identification	
5	2020.11.17	The second instance	Sudden illness and death	not be recognized	Identification	Identification	
6	2020.07.07	The second instance	Death within 48 hours of emergency treatment	not be recognized	not be recognized	Identification	
7	2020.7.14	The second instance	Death within 48 hours of emergency treatment	not be recognized	not be recognized	not be recognized	
8	2017.11.30	The second instance	Sudden illness and death	not be recognized	Identification	Identification	
9	2024.4.15	The second instance	Sudden illness and death	not be recognized	not be recognized	not be recognized	
10	2021.1.11	The first instance	Sudden illness and death	not be recognized	not be recognized		
11	2020.12.10	The first instance	Sudden illness and death	not be recognized	not be recognized		
12	2020.11.16	The first instance	Sudden illness and death	not be recognized	not be recognized		
13	2017.11.14	The first instance	Sudden illness and death	not be recognized	Identification		
14	2023.7.11	The first instance	Sudden illness and death	not be recognized	not be recognized		
15	2021.2.28	The first instance	Sudden illness and death	not be recognized	Identification		
16	2021.3.26	The first instance	Sudden illness and death	not be recognized	not be recognized		
17	2021.4.15	review	Sudden illness and death	not be recognized	not be recognized	Identification	not be recognized

As can be seen from the above table, the incidence of work-related injuries at home and work has been relatively high in the past three years, including 7 cases of first instance, 9 cases of second instance and 1 case of retrial. From the perspective of the causes of death of workers, it mainly involves sudden disease death and invalid death within 48 hours of emergency treatment. Judging from the results of the referee, 9 cases were finally identified as work-related injuries, and 8 cases were not identified as work-related injuries. In the above sample cases, the administrative organs have made a decision not to identify work-related injuries. Of the above eight cases of second instance, seven cases were not recognized by the court of first instance and the court of second instance by the administrative organ, and the court of second instance changed the judgment in one case. In one retrial case, the court of second instance did not recognize the decision of the court of first instance and the administrative organ and changed the judgment, but the retrial court recognized the result of the work injury determination of the court of first instance and the administrative organ.

2.1.2. The controversial points of the case and the gist of the referee

Table 2. The focus of disputes in the determination of work-related injuries at home and office and the gist of the court decision

Case number	Focus of controversy	The gist of the referee
(2021) No.37 at the end of Jin 08	The identification of "three work"	Working hours and reasons are the key
(2021) No. 57 at the end of E 06	Identification of working hours and jobs	Working time and position are the key
(2021) 26 at the end of Yu 15	The cognizance of "48 hours" clause	By virtue of medical equipment to maintain the vital signs of workers who have no possibility of survival, work-related injuries can be identified
(2020) Yu 17 Line end 232	Recognition of working hours and workplace	Working hours: non-discretionary hours
(2020) the end of 29 lines on the 11th	Identification of working hours and jobs	Not in the working hours, the workplace, but due to work reasons to perform work duties, can be recognized as work-related injuries
(2020) No.40 at the end of Jing 01	Identification of working hours, working positions and "48 hours" clause	The cause of work is not regarded as the identification standard of work-related injury
(2019) Yu 13 end No. 326	Identification of working hours and jobs	There is no evidence to prove that there is a correlation between workers' sudden disease death and work
(2017) No.27 at the end of Xiang 08	Identification of sudden disease and death	The work reason is the core element; the workplace and working hours reinforce the work cause
(2024) Bing 08 end No.3	Identification of working hours and jobs	For the benefit of the unit is a consideration but not a decisive factor in the identification of work-related injuries
(2020) Gan 0602 Xingchu No.14	Identification of work reason and workplace	Is the laborer at work when he is injured
(2019) Xingchu No.502, Qian 0102	Identification of sudden disease and death	1.The reason and purpose of leaving the work place 2.The necessity of working overtime at home 3.Jobs should not be overextended
(2019) No.2138 at the beginning of Yue 7101	Identification of working hours and jobs	The reason for work is the key
(2017) Xiang 0802 Xingchu No.13	Identification of working hours and jobs	1.Whether working from home is the norm and mode of work 2.Does the employer have any objection to this mode of work
(2023) No.485 at the beginning of Shanghai 0106	Identification of working hours and jobs	There is no evidence to prove that there is a causal relationship between workers' sudden disease death and work
(2020) 147Xingchu, Anhui 0122	Identification of working hours and jobs	Is it for the benefit of the unit 2.Consider factors such as the amount of work, the difficulty of the work
(2020) Yu 7101 Xingchu No.511	Identification of sudden disease and death	There is no evidence to prove that employees work from home to work in agreement with the company
(2021) Hunan Xingzai No.5	Identification of working hours and jobs	There is no evidence can prove that workers are in the state of working overtime and performing their work duties when they die of sudden illness

At present, the focus of controversy in the identification of work-related injuries at home work in China is mainly focused on: 1. The application of the traditional "three work" rule in home and office; 2. It is regarded as the identification of sudden diseases, working hours and jobs in work-related injuries. Judging from the main points of the referee, the criteria for determining work-related injuries at home and work are as follows: 1. Working time, working position; 2. Working hours and working reasons; 3. Job reasons; 4. The reason for work is not the core criterion for the identification of work-related injuries at home and office. In the identification of working hours and jobs in sudden illness and death, individual courts considered the reason and purpose for workers to leave the unit and the necessity of working overtime at home. At the same time, most courts will judge whether workers work at home for the benefit of the unit in the light of whether the employer allows workers to work from home, and some courts even regard it as the core factor in determining industrial injuries. In determining the cause of work, the court usually locks whether there is a causal relationship between workers' sudden illness, death and work, and some courts also explicitly include "work-related preparatory work" into the consideration of work reasons. However, for the way and specific indicators to judge causality, local courts do not have unified adjudication rules, nor do they give specific reference factors.

From the perspective of court judgment, although some courts have suggested that Article 15 of the regulations on Industrial injury Insurance be strictly applied, in practice, the judicial standards for the determination of industrial injuries are more flexible than administrative standards, and it is precisely because courts at all levels have greater discretion over such cases, which leads to changes in judgments by higher and lower courts due to differences of views in judicial practice. In addition, the identification of work-at-home injury cases are also difficult to prove, many cases because there is no definite evidence, the court finally made a decision not to identify work-related injuries because of lack of evidence.

2.2. Summary

Through the analysis of the sample cases, it can be found that the judicial judgment obviously has the color of protecting workers, but why is there the absence of labourers' compensation? It is because administrative organs and judicial organs have different views on whether the facts of the case are in line with the provisions of the legal text. When judging a certain work-related injury, the court will often

combine the background of the case and the causes of the work-at-home mode of work in combination with the spirit of legislation to make a new understanding or expanded interpretation of the industrial injury regulations; in the case of complex cases or lack of evidence to prove related matters, they tend to protect the interests of workers in a vulnerable position and make a presumption that the facts of the case are beneficial to the parties. Administrative organs will strictly apply the regulations when determining the work-related injuries of workers who work at home or work overtime at home. This difference in applicable standards leads to a very high rate of reversion of decisions made by the court to the administrative organs. As the relevant laws of our country do not have a clear standard for the identification of work-related injuries at home and work, the applicable standards of the“three work”in the determination of work-related injuries in different localities are also different.

Because the relevant evidence is difficult to obtain, home workers may not be able to identify work-related injuries because of the lack of evidence to prove that they are at work or at work. Some courts will affirmatively promote the facts of the case from the spirit of legislation, but this also leads to differences in the determination of administrative organs, judicial organs and judicial organs, and there are different judgments in the same case. Especially when workers work overtime at home. Overtime, working status, causal relationship between work and other factors are difficult to prove directly through the evidence, labourers usually go through a difficult and long road to safeguard their rights, and it is difficult to protect their labor rights in time.

3. Problems and Causes in the Identification of Work-related Injuries in Home Work in China

3.1. Existing Problems

3.1.1. The standard for determining working hours is not uniform

As the working hours of workers are more fragmented, units may focus on the acceptance of work results rather than on the time process of creating labor value, causing confusion in judging whether they belong to working hours at the time of an accident, making it difficult to distinguish between working hours and non-working hours. Article 4 of the examination and approval measures of the Ministry of Labor and Social Affairs on the implementation of irregular working system and Comprehensive calculation working system in Enterprises limits the scope of application of irregular working hours to a small number of posts, for the vast majority of home office workers, their posts are not suitable for special working hours, which makes the standard working hour system the most widely used choice in the field of home and office work in our country. However, it is not reasonable to judge whether the accident belongs to working hours only according to whether the accident occurred within the standard working hours. In practice, the court has gradually broken through the limit of standard working hours when hearing work-at-home work injury cases, but it does not clearly define the boundary of working hours. Some courts interpret the working hours as the period when the laborer is not at his or her disposal and the employer can exercise the power of command at any time, In the case of Huang Jia'e v. Baokang County people's and Social Affairs Bureau, the court held that the labourers in this case were in a state of self-control and not under the control of the employer when they went to the toilet and other life behaviors.

In addition, how to identify overtime is also a controversial point in this kind of cases. Administrative organs often have strict control and it is difficult for the parties to provide proof. For example, in the case of Zhao Yandi and Gao Xiaohan v. Yun City people's and Social Affairs Bureau, the administrative machine believes that overtime time should be strictly controlled to avoid implementation deviation. The court of first instance and second instance of the case revoked the industrial injury decision of the administrative organ and held that the Yuncheng people's and Social Affairs Bureau did not ascertain the overtime time. In short, it is not clear whether workers can be identified as working hours between administrative agencies and courts when they work from home to work remotely, such as the period of preparation and finishing work, the time of standby and the time of overtime work during rest time.

3.1.2. Jobs are difficult to define

Article 15 of the regulations complements the original statutory work-related injury according to the same situation, and interprets the expansion of “workplace” as “work post”, and some scholars interpret it as the on-duty status of workers. However, the law does not fix the job with a clear concept, the understanding of the job is quite different in practice. In the home-office mode, the vagueness of behavior purpose and work status increases the difficulty of judging “work position”, which leads to a heated debate on whether sudden diseases are regarded as work-related injuries. Although the Supreme people's Court made clear the main points of judging jobs, in practice, administrative organs still hold that workers do not belong to work posts when they work at home or work overtime at home, and do not recognize work-related injuries. Such as “He Lianbin case” The administrative organ and the court of first instance held that when he so-and-so died, his work task had been completed and did not belong to the case of sudden illness at work. The court of second instance held that he returned home with a sudden illness after taking the data, which belonged to the case of sudden illness at work. However, the retrial Law Court believes that when he has a sudden illness, he does not belong to overtime and is not in the state of performing his work duties, and will not be recognized as a work-related injury in the end. In addition, if the laborer voluntarily works at home without consultation with the employer, can he be considered to be on the job? different courts have different views on this. Thus it can be seen that simple precedent can not become the basis for the determination of industrial injury, and the concept of work post must be fixed by law.

3.1.3. It is difficult to figure out whether it is for the reason of work

Causality, that is, the cause of work is the key to the identification of work-related injuries. Judging the causal relationship between work and accidents by the rule of thumb requires that there is a certain causal relationship between the injuries suffered by workers and their work, and the injuries caused by personal affairs are excluded. Because the boundaries between personal life and work life of workers in home and office situations are blurred, occasional email exchanges, Wechat chats or online meetings are not enough to distinguish between personal affairs and work tasks. It is impossible to determine whether the criteria to prove the reason for work are met. Although Article 15, paragraph 1, of the regulations on Industrial injury Insurance does not require

diseases to be work-related, however, Article 4 of the Supreme people's Court's interpretation [2014] No. 9 on several issues concerning the trial of Industrial injury Insurance cases, regards work reasons as the core of the identification of industrial injuries. In practice, most of the first paragraph of Article 15 does not require diseases to be work-related, and the regulation on the cause conditions of "sudden illness and death of labourers" has been softened. However, Article 4 of the Supreme people's Court's interpretation [2014] No. 9 on several issues concerning the trial of Industrial injury Insurance cases regards work reasons as the core of the identification of industrial injuries. But, practice shows that there are drawbacks in the identification of work-related injuries by taking work reasons as the key to work at home and office. For example, in the case of Wang Guoying v. Wuwei people's and Social Bureau, the court held that there was no causal relationship between the accident and work in this case, and it was not recognized as work-related injury. However In the case of Li Jinyu v. Haidian District people's Insurance Bureau, The second instance changed the judgment that the cause of work was not regarded as the identification standard of industrial injury. The working condition of the worker in this case is relatively special, and whether he is in a working state should be determined comprehensively according to the actual situation.

In fact, the reason is the malpractice of the application of the law of causality. When workers are in a closed and private family environment, how to accurately judge whether it significantly increases the possibility of accident risk? For example, although workers work at home and work during working hours and the workplace is relatively fixed, there is a deviation in their behavior, such as when they are too focused on their work, they feel thirsty without drinking water for a long time, so the behavior of boiling water and drinking is seriously scalded. Can it be considered reasonable? Whether it conforms to the logic of causality? In particular, the existing causality identification rules can not adapt to the changes of this new form of employment.

3.1.4. The start and end time of “48 hours”in work-related injury is unknown

The “48-hour” clause is originally designed to form a more reasonable direct relationship between workers' sudden illness and death and work, and to prove that death is caused by work. However, in practice, the time limit is unreasonable and does not meet the expectations of the system design. Firstly, In the traditional identification of industrial injury, the starting time of 48 hours is the onset time of the worker. In the case of home and office, due to the fragmentation of working time, the judgment of the time of onset has lost the reference standard. Although Article 3 of the former Ministry of Labor and Social Security "opinions on the implementation of lt; Industrial injury Insurance regulations & gt;" stipulates that the starting time of “48 hours” is the time for the first diagnosis of medical institutions, and most courts also regard this as the starting time of the “48 hours” clause, how should it be determined when the same disease has been diagnosed for many times and the interval before and after diagnosis is very close?

In addition, using brain death as the criterion for determining the time of death in this clause is generally indisputable, but the difficulty lies in how to prove the time of death. For example, in the case of Fei Guixian et al. V. Zhaotong people's and Social Bureau, the court thought that the time of death of the laborer could not be determined, the laborer's application for retrial of work-related injury was rejected. But the court did not explain to the parties the extent to which it should be proved.

3.2. Analysis of the Reasons

3.2.1. Absence of legislation

Legislative technology determines the implementation effect and quality of the legal text of industrial injury identification. The identification standard of industrial injury in telecommuting is controversial in practice, and the design defect and lag of the traditional legal system of industrial injury identification are to blame. The emergence of home-office mode weakens the subordinate attribute between labourers and employers under the traditional labor relationship, the confusion of workplace and living place, and the intersection of work and life behavior lead to the dilemma of the identification of work-at-work injury. The reason is that the industrial injury identification system stipulated in the relevant laws and regulations does not cover the new thing of home and office, the relevant concepts are not clearly defined, and the special provisions for industrial injury identification are not set up. The regulations on Industrial injury Insurance stipulate the typical cases that should be identified as industrial injury, regarded as industrial injury and excluding industrial injury in the way of extension enumeration. it is indeed concise and clear, and there is no need for too much complex deductive reasoning, only appropriate analogies. a conclusion can be drawn by linking various injuries or diseases in practice with typical industrial accidents. However, the identification of industrial injury is not a work with terms and conditions. There are dozens of situations identified or regarded as the same in the regulations, and the variable factors of each case are different. As a result, the identification of industrial injury must be a process of stripping cocoons and identifying cause and effect. In reality, the situation of work-related injuries is far more complicated than that prescribed by law, and enumerated work-related injuries cannot cover all types in practice.

Since there is no relatively unified and specific reference standard for the current system design, the connotation of industrial injury is not involved in the regulations, which will inevitably lead to insufficient supply of typical cases in the identification of industrial injury, leaving behind difficulties in the application of law. it gives rise to differences in the results of individual cases. In addition, some of the legal provisions formulated are not problematic in terms of language norms and logic, but they are seriously divorced from the reality of the identification of industrial injuries, and it is difficult to land because of the lack of operational conditions.

3.2.2. Adaptive deviation

Another important reason why there are many difficulties in work-at-home injury cases is the conflict between the identification of work-related injuries and judicial investigation. Due to the different rules and systems of judicial and administrative organs, the two sides have different legal documents and positions in the process of determining industrial injury, resulting in different standards of industrial injury identification and judicial review, resulting in the situation of reconsideration and litigation cycle. In the case of industrial injury identification, administrative organs should not only protect the legitimate rights and interests of workers and employers, but also protect the healthy operation of industrial injury insurance funds. In

the process of identification, they should strictly follow the provisions of the law and strictly control the threshold of examination. In the case of administrative confirmation of industrial injury, the judicial machine pursues the protection of the substantive rights and interests of the case in order to reduce the occurrence of social contradictions, giving priority to the rights and interests of workers at the same time more tend to workers in a weak position, and may expand or limit the interpretation of the relevant provisions of the regulations.

In addition, administrative organs and courts implement different standards for the identification of industrial injuries. In recent years, the Supreme Law guides the identification of industrial injury by issuing guidance cases and judicial interpretation documents. In practice, the emergence of a new type of labor relations leads to a continuous increase in the number of industrial injury identification cases, and the court has a large number of references in adjudication. Administrative organs mainly rely on administrative documents or laws and regulations formulated by local administrative departments, which on the one hand reflects the insufficient connection between industrial injury cognizance institutions and courts. It also fundamentally reflects the difference between the administrative standard and the judicial standard in the identification of industrial injury, which results in the cognitive deviation between the two organs.

4. The Optimization Path of the Rules for the Identification of Work-related Injuries in Home Office in China

4.1. Revise the Rules for Determining Causality in Work Causes

Under the employment pattern of "alienation" of time and space, the examination value of working time and workplace is gradually weakening, and the relatively stable work reason has become the focus of the court's adjudication of work-related injury cases. On the point of how to prove whether there is a causal relationship between work and accident, our country needs to jump out of the rut of considerable causality in traditional tort law and determine whether there is a relationship between accident and work. Abandon the theory of considerable causality as the support, clarify the nature of telecommuting and work from home, and comprehensively identify it in combination with general social experience. Specifically, we should first determine the degree of connection between the work and the damage results, that is, to what extent or what conditions are met as a causal relationship between the two. For example, in the case of Zeng Jian v. people's and Social Bureau of Pudong New area, the court did not recognize work-related injuries on the grounds that there was no evidence to prove that workers worked at home for the interests of the unit. That is, whether the laborer is for the benefit of the unit can be regarded as one of the elements to determine the "relevance between work and accident". In the case of Liu Suzhen v. people's and Social Affairs Bureau of Yicheng District, the court held that the laborer in this case was injured accidentally by receiving instructions from the unit to work remotely, which met the requirements of the practical requirements, in which the spatial element was the extension of the "workplace".

Combined with the viewpoint of judicial adjudication and the academic discussion on causality and business practice, this paper proposes to soften the elements of causality, combined with the theory of "dynamic system" in European tort liability. after balancing the total amount of factors such as the purpose of the behavior, the professional characteristics of the labourers, the interests of the unit, the duration of the accident and the interval between the work and the work. Adopt the "rationality standard" to determine whether to meet the causality in the cause of work. This standard absorbs the German theory of identification of work-related injuries and the American principle of personal comfort. The implication behind it is that when it is impossible to directly judge whether it is related to work, it is necessary to examine the reasonable legitimacy of the nature of workers' behavior. whether it can be accommodated and accepted by the minimum of the job. Work gap to meet reasonable personal needs only briefly deviate from the main line of work, can not be bluntly considered to have nothing to do with normal work. In short, some work-related injuries can be identified as work-related injuries if they are vaguely related to work but have reasonable reasons to explain them as work-related injuries. Both long-distance labor and traditional labor forms should meet the purposeful requirements of industrial injury identification.

4.2. Replace the “48 hours” Clause as a Work-related Injury for Work Reasons

The "48 hours" clause was originally designed to form a more reasonable and direct link between death and the completion of work tasks. However, if the examination of causality is replaced by time limit, there are some disadvantages in judicial practice, such as unclear starting time and breeding moral problems. If only death and rescue time are taken as the judgment criteria of industrial injury, it is inevitable that it is unfair to adopt a strict attitude in determining industrial injuries that should be brought into the scope of legal protection. This paper holds that it is easy to question that it is unfair to distinguish work-related injuries according to the time limit, and there are many cases in judicial practice in which more than 48 hours are identified as work-related injuries, and the starting and ending time of the "48-hour" clause in work-related injuries is also a major difficulty in the identification of work-related injuries. Therefore, in the original standard for the identification of work-related injuries, replacing the 48-hour standard with work reasons may better avoid the above disadvantages and balance the interests of both employers and employees. As long as the occurrence of the disease or the occurrence of the injury result is caused by work, regardless of whether the time between the final injury result and the initial outbreak of the disease exceeds 48 hours or other time limit, it should be recognized as a work-related injury. The identification rules of causality in work reasons are mainly based on the "standard of rationality". In this way, the obstacles caused by the elements of "48 hours" to the identification of work-at-home work injuries can be eliminated, and the practical development of home work and other flexible employers can be adapted. From the perspective of causal force, in the identification of industrial injuries caused by a variety of factors, it is necessary to further determine a rough proportion of the work reasons in order to accurately grasp the judicial machine.

4.3. Refine the Rules for the Distribution of the Burden of Proof

According to Article 19, paragraph 2, of the Industrial injury Insurance Ordinance and Article 14 of the Supreme Law on certain provisions on evidence in Civil procedure, home workers can only provide evidence related to themselves, but it is difficult to obtain other background data, and the burden of proof still belongs to the unit. Different from the traditional office mode, in telecommuting, the employer's control over the labor process is weak, and the ability of proof is greatly weakened, which objectively requires labourers to cooperate with the proof.

The workplace in the home-office mode is transformed into the home of workers with actual control, and employers are easy to be in a disadvantageous position when applying the traditional no-fault principle of burden of proof, so the burden of proof should be weakened and labourers' burden of proof should be strengthened to meet the elements of "three work". If a home office worker suffers from illness or injury as a result of work, he shall prove the causal relationship between the disease and the implementation of work behavior. For the proof of working hours, workers should first follow the working hours in the work agreement signed with the employer, and use electronic evidence such as information system punching in and communication dialogue records to prove their working and overtime time. Of course, compared with the employer, the laborer is still in a weak position, and the employer needs to bear the burden of proof for the evidence that the employer can not easily obtain.

5. Conclusion

Every dispute case of industrial injury is an opportunity to improve the system. Through the analysis of the sample cases, it is found that when the current industrial injury identification standard is applicable to work at home, it is difficult to identify the working time, workplace and work reason, and it is regarded as the obstacle to the application of the "48 hours" clause in the industrial injury. the causes of the above problems include the absence of legislation and the deviation of applicable law. In order to better protect the legitimate rights and interests of remote workers, this paper suggests that the identification system of industrial injury in our country should be adjusted timely within the framework of the existing system. starting from the following three aspects: the work reason instead of the "48-hour time limit" clause, the revision of the causality identification rules in the work cause, and the detailed rules for the distribution of the burden of proof, to respond to the employment trends and problems in the digital economy era.

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