

Research on Countermeasures to Improve the Employment Quality of Flexible Employment Groups in New Industries from the Perspective of Labor Rights Protection

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Abstract: In recent years, with the rapid development of “Internet+”, “big data”, “artificial intelligence” and other new digital intelligence industries, it has greatly promoted technological innovation and social progress. New industries, represented by the platform economy and sharing economy, are flourishing and have made outstanding contributions to China's economic growth. While boosting economic development, new industries have also greatly changed traditional labor practices and created a large number of employees in new industries. While the employees in the new industry achieve full employment, there are still many weaknesses and gaps in the protection of their labor rights and interests, which need urgent attention. At present, the protection of the rights and interests of new industry employees is faced with imperfect social security system, unsound laws and regulations, vague definition of labor relations and lack of awareness of employees' rights. To face the above dilemma, it is necessary to urgently increase the coverage of social security mechanism, establish and improve the laws and regulations for the protection of rights and interests of new industry practitioners, clearly define the labor relations between the platform and the practitioners, and improve the legal awareness of new industry practitioners to protect their rights, so as to solve the painful and difficult points faced in the process of employment, better protect the labor rights and interests of new industry practitioners, create a good employment environment, and promote the vigorous development of new industry. The purpose is to better protect the labor rights and interests of new industry workers, create a good employment environment, and promote the vigorous development of new industries.

Keywords: Labor Rights, New Industry, New Industry Practitioners, Social Security.

1. Introduction

The The Fifth Plenary Session of the 19th CPC Central Committee gave a clear interpretation and explanation of the layout of China's economic and social development and socialist modernization during the 14th Five-Year Plan period, which states that China's economy and society have entered a new stage of development and must fully implement the new development concept and focus on building a new development pattern. Emerging business economies such as platform economy and sharing economy, which rely on information technology industries such as “Internet”, “big data” and “cloud computing”, have sprung up like mushrooms after rain. A large number of new employment workers represented by outbound riders, online car drivers and Courier boys have emerged, playing an important role in our daily life. Their appearance has changed the previous social employment environment, the traditional way of labor presents new characteristics. While achieving full employment, employees in new forms of employment pay little attention to the protection of their own rights and interests. How to regulate the employment environment and job market of new forms of employment and how to effectively safeguard the labor security rights and interests of workers in new forms of employment are important issues worth examining.

2. New Business and Practitioners Profile

2.1 New industries concept explanation

The concept of “new industries forms” first appeared in the Communique of the Fifth Plenary Session of the 18th Central Committee of the Communist Party of China (CPC) issued in 2015. “Innovation must be placed at the core of the country's overall development, and new technologies, industries and forms of business must be promoted to flourish,” the document stressed. In addition, this circular covers the field of employment, also interpreted the “new employment patterns”, the circular points out, “adhere to the employment priority strategy, the implementation of a more active employment policy, strengthen support for flexible employment, new employment patterns.[1]”

In the subsequent promulgation of various government documents and regulations and policies, “new industries” and “new employment patterns” are frequently mentioned, but there is not a specific and precise interpretation of the concept.

In recent years, all kinds of scholars have also made an understanding of the hot word “new industries form”: From the perspective of employment, Wang Min[2]believes that “the new industry is an employment pattern that is different from the traditional employment pattern based on industrialization and modern factory system, mainly including the employer-oriented employment pattern that emerges along with the advancement of Internet technology and the upgrading of mass consumption and the flexible

employment pattern that is upgraded by information technology.” Zhang Lifan[3]pointed out from the field of organizational relations, “The so-called new industries forms refer to the internal industrial upgrading and cross-border integration of the external industry based on the Internet, big data, ‘cloud computing’ and other network information technologies, or a series of new organizations, new businesses and new industries created by them.” Lv Ruting, Ma Dong and others[4]interpreted the “new industries form” as “based on the digital economy and supported by digital technology innovation, the new business form reconstructs and integrates industrial elements, makes collaborative use of digital technology innovation results, sublimates data value, and forms a diversified, diversified, personalized and digital-oriented new industrial form.” Wen Caixia, Wang Wenqing and others[5]explain from the perspective of social production that “the new industry refers to the organization of new enterprises, businesses and even industries based on the combination of different industries, the differentiation and integration of internal value chains and external industrial chains, the cross-border integration of industries and the grafting of information and Internet technologies.”

In summary, scholars from all walks of life have analyzed and outlined the “new industry” from different academic perspectives, and the definition of the basic connotation of the “new industry” is relatively unified. Broadly speaking, the new industry is a new industrial form supported by the Internet, cloud computing and other digital information platforms, through the intersection of collaboration between different industries, interconnection and interoperability, with the characteristics of information, diversification and digitalization. New industry workers are those who work in new industry sectors, such as chauffeurs, couriers, and delivery riders, who rely on digital information technology platforms to obtain labor compensation.

2.2 Labor work characteristics of practitioners in the context of the new industry

As a new industry, the labor characteristics of the employees in the new industry also have new employment characteristics. The working hours of new industry employees no longer adhere to the traditional sense of going to work and leaving work on time, the workplace can be changed at any time and even does not need a stable working environment, and the labor-employment relationship between the employees and the platform is not stable. With the continuous development and progress of the new industry, the work characteristics of new industry employees are becoming clearer and clearer.

2.2.1 Low barriers to entry for employment in the industry

Relying on the development of the digital economy, the operation and service mode of the new industry is mostly based on platform interaction, and the education level of the “non-skilled” employees is generally not high, so they do not need to master complex business skills, nor do they need to go through similar assessment mechanisms such as entry exams, and the threshold of qualification and employment access is low. The only thing you need to do is to be physically fit and skilled in the corresponding labor business skills, and then you can go to work. Take takeaway riders for example, as long as they can skillfully apply their smartphones and are familiar with the workflow of the business software, they can

drive the riding transport to complete the corresponding tasks of receiving orders, taking meals and delivering meals, so they can complete a single work business. Similarly, for online car drivers and chauffeurs and other staff, familiar with the traffic routes of a certain place, according to the law to obtain the appropriate driver’s license while being able to drive the appropriate motor vehicle can rely on the platform to take orders to work and get paid for their labor.

2.2.2 More flexible labor working style

The new industry employees are more mobile and more autonomous in their employment, and they can choose their own working hours, workplaces and working methods, and there is no fixed working environment to restrict them. The more liberal and free working mode also attracts a large number of young people, and new industry practitioners such as chauffeurs and online taxi drivers can decide whether to take orders and complete the platform business according to their actual situation. Their working conditions can be part-time or full-time, and there are no strict restrictions, and the labor work style is more flexible and autonomous.

2.2.3 Digitalization of performance incentives

The work style of the new industry practitioners is generally based on the platform’s assignment of orders, and their wages and labor income are not stable. Their income can be calculated according to the number of business and the amount of orders received each day, and they are paid through the completion of orders, and they will receive the corresponding commission paid by the platform for each completed order, which can be received on a weekly or monthly basis. In addition, the work performance incentive mechanism of the platform also adopts a digital approach. The platform rewards the employees with outstanding performance based on the corresponding algorithm and the number of completed orders, and the performance, bonus and incentive are presented in a digital carrier, lacking realistic reward forms.

3. Brief Description of The Current Situation of New Industry Practitioners

Along with the continuous development and growth of new industries, the quality of employment and protection of rights and interests of their employees are getting more and more attention. With the support of information technology such as big data and cloud computing, the employment platform of new industries can achieve more detailed management and supervision of employees; at the same time, based on the development of new industries and new modes, the labor security system and social security system for employees face a series of new problems and challenges.

According to data from the China Sharing Economy Development Report (2022) issued by the China National Information Center in February 2022: China’s sharing economy improved steadily in 2021, with an annual sharing economy market transaction size of about 368.8 billion yuan in 2021, up about 9.2% year-on-year; direct financing size of about 213.7 billion yuan, up about 80.3% year-on-year. Online take-out in 2021 Revenue accounted for about 21.4% of the national catering revenue, up 4.5 percentage points year-on-year; the share of online cab passenger traffic in total cab passenger traffic was about 31.9%, and the share of shared accommodation revenue in room revenue of China’s accommodation industry was about 5.9%.[6] A series of laws

and regulations and related policies to protect the rights and interests of workers in new industries have been promulgated and implemented, and the protection of the rights and interests of employment groups in new industries has been continuously improved.

General Secretary Xi Jinping stressed, “Although the new industry is a latecomer, but the regulation of the law should not come late.” The state pays urgent attention to the

protection of the rights and interests of new industry practitioners. The article compares a series of major initiatives introduced at the national level to protect the legitimate rights and interests of employees in new industries, and effectively protects the labor rights and interests of employees in new industries by regulating the labor employment methods of platforms and improving the corresponding social security system.

Table 1. Major initiatives to protect the rights and interests of new industry practitioners in China

Times	Documentation/meetings	Major initiatives
September 2020	Opinions on the accelerated development of new consumption led by new business models	Encourage the development of new forms of employment, support flexible employment, and accelerate the improvement of the relevant labour security system. Promote the participation of employees in new forms of employment in social insurance and increase the participation rate.
July 2021	Standing meeting of the State Council	A series of policies and measures to strengthen the protection of workers' rights and interests in new employment patterns have been clarified: these include piloting the protection of occupational injuries for flexibly employed workers with a focus on industries such as travel, take-away and instant delivery, and requiring enterprises not to set assessment indicators that compromise workers' safety and health.
July 2021	Guidance on safeguarding the labour security rights of workers in new employment patterns	To support and regulate the development of new forms of employment, effectively safeguard the labour security rights and interests of workers in new forms of employment, promote the standardized, healthy and sustainable development of the platform economy, urge enterprises to implement their responsibilities for safeguarding the rights and interests of workers in new forms of employment, strengthen the governance of outstanding issues such as defaulted labour remuneration and illegal overtime work, and safeguard the rights and interests of workers in accordance with the law.
July 2021	Opinions on the protection of the legitimate rights and interests of the courier community	Focus on the protection of reasonable labor compensation, improve social security, enhance social identity, compact the main responsibility of courier enterprises, strengthen government supervision and services in four areas, to help solve the courier income instability, protection is not complete, the problem of professional identity is not high.
July 2021	Guidance on the implementation of the responsibility of online catering platforms to effectively safeguard the rights and interests of take-away food delivery workers	For take-away food delivery workers labor income, labor safety, food safety, social security, practice environment, organization construction, conflict disposal 7 aspects of requirements to protect the legitimate rights and interests of take-away food delivery workers.
November 2021	Views on strengthening the protection of the rights and interests of people working in new modes of transport	Efforts will be made to regulate the business conduct of new transport enterprises, maintain fair competition in the market order, improve and perfect the system for safeguarding the rights and interests of employees, create a good environment for employment, and make every effort to safeguard the legitimate rights and interests of employees.
January 2022	Circular on the 14th Five-Year Plan for the Development of the Digital Economy	To further clarify the main responsibilities and obligations of platform enterprises, promote the construction of industry service standards and industry self-regulation, and protect the legitimate rights and interests of platform practitioners and consumers.

By reading and analyzing Table 1, we can see that the notices and opinions issued at the national level as well as the executive meetings held have all paid attention to the protection of labor rights and interests of employees in new industries. The relevant policy documents create a good environment for employment in new industries by regulating labor platforms, regulating the work mechanism of employees and clarifying the main responsibilities to effectively protect the legitimate rights and interests of employees in new industries.

4. The Dilemma Facing the Protection of Labor Rights and Interests and The Improvement of Employment Quality of New Industry Workers

Due to the rapid development of new industries, coupled with the increasing number of workers engaged in new

industries, the protection of their rights and interests in the process of employment and labor has also revealed corresponding problems and contradictions, and there are still many imperfections, such as imperfect social security system, unsound laws and regulations, and vague definition of labor relations and other difficulties. Although the state has promulgated a series of protection measures, it is still worth improving and discussing the details of some specific implementation.

4.1 Inadequate social security system

The previous social security system and related labor security system are based on specific period, specific environment and specific labor employment mode. As a newly-derived industrial form, the labor rights and interests protection regulations for the employees of new industries are not perfect. The traditional labor rights and interests protection mechanism is not applicable to the employees of

new industries. Most of the employees of new industries have not signed legal labor contracts with the employers, but more often signed electronic labor agreements with the platforms, and some signed labor dispatch contracts and part-time cooperation contracts. Most of the similar contracts are in electronic form, and there is no actual paper contract, and the employees do not enjoy the same labor protection treatment as traditional laborers. At the same time, the relevant employment platform does not inform the employees of the corresponding labor regulations in advance, and only restricts the employees by the platform employment agreement of whether to check the option of “agree” or not, and if they do not agree, they cannot work. Most of the employees did not read the terms and conditions carefully and checked “agree” in just a few seconds to start the day’s work.

In addition, due to the flexible working hours, high mobility and frequent change of business sectors, the new industry workers cannot meet the corresponding qualifications and requirements needed to pay social insurance. The workers themselves rarely pay pension insurance and work injury insurance, so when traffic accidents and special events occur, their labor rights and interests are difficult to be protected.

4.2 Inadequate laws and regulations

China’s current labor law was enacted in 1994, which was revised and improved in 2009 and 2018, but the relevant legal provisions for the new industry sector have not been covered, and the problem of labor rights and interests of workers in this field still cannot be effectively solved. Besides, the current laws and regulations still adopt the “dichotomy” method to classify labor relations into independent labor and subordinate labor, with the former being regulated by civil law and the latter being restricted by labor law. As the new industry is a new industrial form, the traditional labor laws and regulations are not updated in time and cannot adapt to the development requirements of the new industry in the new era, and cannot effectively solve the labor disputes and conflicts in the new industry.

At the same time, the development of new industries has led to changes in the traditional way of employing labor, and the employment concept and employment expectation of new industry employees have new characteristics. Some employees work part-time or full-time, while others prefer to work overtime in order to get more orders and more labor remuneration. The existing laws and regulations cannot provide corresponding interpretations for the above situations, and there are certain practical difficulties to protect the rights and interests of the employees.

4.3 Vague definition of labor relations

How to define the characteristics of labor relations of new industry employees has also become a difficult problem for new industry employees nowadays. The labor relations of new industry employees are different from the traditional labor relations, and the standards of labor relations definition and responsibility determination are more ambiguous. In the past, the definition of labor relations between employers and workers was mainly based on the Notice on Matters Relating to the Establishment of Labor Relations (Ministry of Labor and Social Affairs [2005] No. 12), but the labor relations in the new industry present new characteristics, and the traditional laws and regulations are no longer applicable. According to the current relevant legal policies, it is difficult

to judge the labor relations in the new industry field by the subordination standard, and there is still ambiguity in determining the labor relations of the new industry practitioners.

In addition, under the new industry, the employees may have both labor relations and labor relations, plus the Internet platform is complicated and diverse, the employees may serve multiple business platforms at the same time, and the platform and other employment entities do not sign legal and effective labor contracts with the employees, and the relationship between the new industry employees, employment platforms and platform consumers is not clear, resulting in a blurred labor relationship, and the protection of labor rights and interests of the employees is more fragile.

4.4 Practitioners lack of awareness of rights, the ability to defend their rights is weak

The employees of take-away riders and couriers, for example, have a low threshold of employment entry, are generally not highly educated, lack knowledge of relevant labor laws, and have little awareness of their own rights, and are not clear about how their legal labor rights and interests are effectively protected. Practitioners also do not pay the corresponding social insurance, the awareness of insurance is not high. At the same time, many new industry practitioners believe that it is normal to suffer in the workplace and give up measures to strengthen the protection of their rights and interests from the field of ideology.

In addition, the employment platform does not sign a legal labor contract with the employees, or the signed contract does not make detailed provisions on the rights and obligations of the employees and occupational injuries, which leads to the employees’ labor rights being damaged without the corresponding legal weapons to defend their rights, or they have legal basis but do not know what ways and means to protect their rights and interests. When their rights and interests are damaged, more often they choose to negotiate with the platform, and the ways and channels to defend their rights are relatively single. Some practitioners will consider hiring a lawyer to defend their rights, but it takes a lot of time, money, energy, etc., and will give up such ideas after comprehensive consideration. In this way, practitioners need to urgently improve their own rights and interests to protect their rights in a reasonable and legal way.

5. Suggestions for Measures to Protect Labor Rights and Interests and Improve Employment Quality of Workers in New Industries

In view of the many difficulties faced by new industry employees in the process of their employment, there is an urgent need for the state, government and society to protect the labor rights and interests of new industry employees, and to put forward relevant measures to effectively protect the labor rights and interests of employees, enhance the quality of employment, improve the environment for new industry employees and promote the healthy development of new industry based on the comprehensive consideration of the problems exposed by the current protection of the rights and interests of new industry employees.

5.1 Improve the social security system and promote the renewal of the social security system

As a safety net for people's livelihood, the social security system should effectively play its role of protecting the bottom. As a new type of industry, the traditional social security system is unable to provide comprehensive protection for the labor rights and interests of new industry employees in terms of medical insurance and compensation for work-related injuries. With the rapid development of the Internet and big data information industry, the labor employment methods in new industries also present new characteristics, and the social security system needs to be constantly updated to improve the data algorithm of the platform and effectively protect the rest rights, labor income rights and safety rights of the employees.

Secondly, in response to the dilemma that employees under the new industry sector are not willing to participate in insurance and the participation ratio is low, we should implement relevant system policies as soon as possible to strengthen occupational injury protection. According to the characteristics of new industry practitioners' mobility and flexible working style, explore the establishment of a unified social insurance payment and compensation platform, encourage them to actively participate in insurance, determine a reasonable contribution ratio, and expand social security coverage. At the same time, occupational injury insurance will also be included, so that employees have a minimum level of protection. A better social security system will make the employees reap a better sense of access and happiness, greatly increase their labor motivation, optimize the labor structure, and promote the good and fast development of the new industry.

5.2 Establish and improve the laws and regulations related to the new industry

There are no rules to make a circle. The development of any new industrial form requires corresponding laws and regulations to restrict it, and the same is true for new industries. The existing labor laws and regulations only interpret and protect the previous traditional labor relations, which are born from the traditional factory-type labor mode and target specific working environment, workplace and working hours, etc. At present, there are still few laws and regulations concerning labor relations in new industries.

At the same time, as a newly derived industrial form, the labor relations of the employees in the new industry can't be defined by the traditional relevant laws and regulations. It is urgent to speed up the formulation and improvement of laws and regulations applicable to the protection of labor rights and interests of employees in new industries. In addition, the original labor relations laws should be revised and improved, and the labor rights and obligations of employees in new industries should be adjusted and regulated in a timely manner, so that the labor relations in new industries can be incorporated into the scope of legal protection, and the labor rights and interests of employees in new industries can be guaranteed by law and regulations, so that the labor rights and interests of employees in new industries can be guaranteed by the mandatory law, and the encouragement and support of the state for new industries can be fully reflected.

5.3 Reasonable definition of employment relationship between labor parties

Most of the employees in the new industry have not signed legal labor relations contracts with the platform, but more often labor service contracts, dispatch contracts, cooperation agreements, etc. The employment and cooperation relationship between workers and the platform is also relatively vague. The labor relations in the new industry can no longer be determined by the traditional "employer-employee" relationship, and it is necessary to refine the new labor relations according to the new characteristics of the new industry. The traditional labor relations mainly based on the "factory system" should be changed in a timely manner, and it is necessary to update and adapt to the development of new industries such as the Internet and the platform economy, to reconstruct a labor law system that can adapt to the labor relations of new industries and fully cover the employees in new employment forms, to give a clear interpretation and explanation of the labor and employment relations between each other, and to clarify the rights, responsibilities and obligations of each party. The legal system should be clearly interpreted and explained, and the rights, responsibilities and obligations of each party should be clarified.

In addition, it is necessary to continuously strengthen the supervision of employment platforms and employing enterprises, regulate their labor standards, and effectively protect the legitimate rights and interests of new industry practitioners. At the same time, taking the cases of labor relations disputes as reference, delineate the labor relations between practitioners and platforms from the actual problems of disputes, formulate diversified identification standards, moderately promote the clarification of labor relations according to the results of the definition of cases, and issue guidelines on new labor relations by taking cases as examples to put the protection of labor rights and interests of practitioners into practice.

5.4 Enhance the awareness of new industry practitioners to protect their rights

Practitioners of new industries are generally not highly educated and have little legal awareness, so they do not know when their rights and interests are damaged or what ways to defend their rights. New industry employees should continuously learn relevant labor knowledge, enhance their awareness of rights protection, understand the labor policies in the new industry under the digital economy, have a deep understanding of their rights and obligations, and be able to use legal weapons to defend themselves in time when their labor rights are infringed, and seek justice for their rights and interests.

At the same time, the government, human resources departments and social organizations actively carry out lectures or training sessions on labor rights and interests to attract more employees to participate in them, issue relevant knowledge manuals, broaden the horizons of employees and enable them to grasp the way to obtain relevant legal knowledge, establish a correct awareness of rights protection for employees, enhance the concept of the rule of law and cultivate rule of law thinking. In view of the characteristics of the new industry, the relevant departments can establish a unified labor rights and interests complaint platform to broaden the complaint channels for new industry practitioners and encourage them to protect their labor rights and interests

through reasonable and legal means.

6. Conclusion

The rapid development of the digital economy has led to the growth of new industries and new employment models. New industry workers have now become an important part of China's employment group and have made important contributions to promoting employment and economic development. At the same time, we should also see that there are still many difficulties in the protection of labor rights and interests of new industry workers, and the relevant laws and regulations and supporting facilities are not perfect. It is necessary to change the employment status of new industry employees, pay more attention to the protection of labor rights and interests of employees, and protect their legitimate interests. Only in this way can we better promote the healthy development of new industries, make the society more harmonious and stable, and contribute new momentum to the economic and social development.

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