

Deficiencies in China's Fiscal Law Legislation and Countermeasures for Improvement

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Abstract: As the saying goes, "Finance is the mother of common government", the level of finance reflects the level of governance of a country, and a sound and solid financial foundation is the main driving force to support government administration and promote economic and social development and social stability. The 18th Party Congress proposed that "finance is the foundation and important pillar of national governance", which is a turning milestone in the theory that national finance has evolved from a macro-control tool to the foundation and pillar of national governance, and its function has changed from management to governance. In practice, finance is related to the key areas and the whole point of the national governance system, and has a crucial role in comprehensively promoting the modernization level of China's governance system and governance capacity. To assume this major historical role, the fiscal system needs to be further improved and stabilized. China is a country under the rule of law, and the rule of law is the basic way to govern the country, so the starting point to improve China's fiscal system is to improve China's fiscal legislation so that there is a law to follow, and a scientific and perfect fiscal legislation system is the institutional guarantee to achieve the long-term stability of the country. However, the current fiscal legislation in China is at a low level, and there are gaps in some aspects of the legislation, unclear powers and responsibilities, and other defects, so this paper analyzes the defects of fiscal legislation from the perspective of the legal system of fiscal law, and through the study and summary of foreign fiscal legislation, and combined with the actual situation of the country, put forward relevant suggestions for improvement.

Keywords: Fiscal legislation, Fiscal law system, Legislative improvement.

1. Overview of China's Labor Contract Cancellation System

1.1. Concept of employment contract cancellation

The cancellation of an employment contract is a legal act that terminates the labor relationship in advance when the conditions for cancellation are met, after the labor contract has been validly established, and before it has been fully performed. The labor contract cancellation is divided into agreement cancellation, i.e. when the subjective and objective circumstances change, the employer or the worker is in the initiative rather than forced, the labor contract is canceled by the consensus of both parties and unilateral cancellation, i.e. the party who enjoys the right to unilaterally cancel the labor contract by unilateral intention. Unilateral termination includes unilateral termination by the employer and unilateral termination by the worker.

1.2. Characteristics and Significance of labor contract termination system

The terminated labor contract has the following four characteristics: a valid labor contract established by law; the act must be performed after the terminated labor contract is legally concluded and effective and before it is fully performed; both the employer and the worker have the right to request the termination of the labor contract by the law; the termination of the labor contract by mutual agreement between the employer and the worker may not be subject to the termination conditions agreed in the labor contract.

Labor contract cancellation is of great significance in practice, which can promote balance and fairness between

workers and employers; help protect the basic rights of labor freedom, i.e., the freedom to work or not to work and the freedom to choose labor; contribute to the reasonable flow and optimal allocation of human resources; can promote labor resources to be able to be adjusted autonomously and actively within the scope permitted by law, and employers can get more advantageous labor resources and enhance the profitability of enterprises through the transformation of labor force, thus protecting the relevant rights and interests of employers; promoting the fulfillment of labor contracts and maintaining stable labor relations.

2. Current Status and Main Problems of Legislation on The Labor Contract Termination System in China

2.1. Status of Legislation on labor contract termination system

The main contents of Articles 31 and 32 of China's Labor Law and Article 37 of the Labor Contract Law are that the worker shall give the employer thirty days' written notice to terminate the labor contract, three days' notice to the employer during the probationary period, the employer forces the worker to work using violence, threat or illegal restriction of personal freedom or the employer fails to pay labor remuneration as agreed in the labor contract. If the employer's rules and regulations violate the laws and regulations and harm the rights and interests of the workers, or if the laws and administrative regulations stipulate that the workers can terminate the labor contract, the workers can notify the employer to terminate the labor contract at any time.

There are mainly voluntary resignations and forced resignations. Voluntary resignation, at this time, requires advance notice, at this time there is no financial compensation; forced resignation, at this time the employer has a major fault, and the worker can be promptly released, at this time there is financial compensation, the employer to pay compensation, the 2 can be used at the same time.

The unilateral termination of a contract by the employer is mainly divided into three cases: the worker is at fault, the worker is not at fault, and the economic redundant. When the worker is at fault, the employer can promptly terminate the contract, and the union needs to be informed of the reason for termination without financial compensation. If the union is not notified beforehand, the employer should pay compensation, but the employer can make up for it before prosecution. This situation is mainly stipulated in Article 25 of the Labor Law and Article 39 of the Labor Contract Law as well as relevant judicial interpretations. When the laborer is not at fault, the Labor Contract Law stipulates in Article 26 and Article 40 that the laborer is unable to perform the original job or other arranged job after the expiration of the prescribed medical treatment period due to illness or injury not due to work; the laborer is unable to perform the job; or there is a significant change in the objective circumstances on which the labor contract was concluded, these three situations require 30 days written notice to the laborer or additional payment of If there is a labor union, the labor union needs to be informed of the reasons for termination. In case of economic layoff, Article 41 of the Labor Contract Law stipulates that layoffs can be made under four circumstances, namely, reorganization by the provisions of the Enterprise Bankruptcy Law; serious difficulties in production and operation; change of production, major technical innovation or adjustment of business mode of the enterprise, and after changing the labor contract, there is still a need to reduce the number of employees; and other circumstances in which the labor contract cannot be fulfilled due to significant changes in the objective economic conditions on which the labor contract was concluded. If the labor contract cannot be fulfilled. It should be noted that if the employer reduces the number of employees under the first paragraph of this article and recruits new employees within six months, it shall notify the reduced employees and give priority to the reduced employees under the same conditions.

The termination of the employment contract by mutual agreement is a way to terminate the employment contract when the employer or the worker is in the initiative rather than forced to do so when the subjective and objective circumstances have changed.

In addition, the labor contract termination system also has other legal provisions, mainly including the prohibition and the expiration of the operating period. Article 42 stipulates in a reverse way, by way of enumeration, several situations in which the employer is prohibited from terminating the labor contract, i.e. workers who are engaged in occupational disease hazard operations without pre-departure occupational health checkups or suspected occupational disease patients during diagnosis or medical observation; workers who suffer from occupational diseases or work-related injuries in the unit and are confirmed to have lost or partially lost their working capacity; workers who become ill during the prescribed medical There are illnesses or non-work-related injuries within the prescribed medical period; there are female workers during pregnancy, maternity, breastfeeding; there are

15 years of continuous service in the unit, and less than five years before the statutory retirement age; and other circumstances stipulated by laws and administrative regulations; the expiration of the business term, the employer is not in continued operation, resulting in the labor contract is not continued to perform, the labor contract is terminated, the workers are given economic compensation.

2.2. The main problems of China regarding the system of labor contract termination

The main problems concerning the labor contract termination system in China mainly involve five aspects: unilateral termination of labor contracts by workers, the problems of unilateral termination of labor contracts by employers, the legal consequences of illegal dismissal without differentiated treatment, the problems of economic layoff system and the problems of negotiated termination of labor contracts.

The unilateral termination of labor contracts by workers is summarized in three main aspects, namely, the absence of clearly defined degree boundaries and the lack of operable enforcement standards. There are no clear boundaries for the extent of a worker's unilateral and immediate termination of the contract, and there are no operable enforcement standards. In practice, if the employer commits an illegal act, regardless of whether the illegal act is due to fault, the worker will choose to terminate the employment contract, which is to a certain extent not conducive to solving the contradiction between labor and management; the duration of the trial period is too single. Firstly, the probationary period in China ranges from 1 to 6 months, but the advance notice period for the probationary period is only 3 days, which is too short for the employer to prepare. Secondly, the 30-day advance notice period in the long-term employment contract is not reasonable, because different industries, different positions, and different labor skills are of different importance to the employer, and it is difficult to prepare for the work handover within 30 days. From the legal provisions, it can be seen that a worker can terminate the labor contract by giving a written notice to the employer within 30 days, which is very free compared with the unilateral right of termination by the employer, but it is difficult for the employer to find the corresponding personnel within a short period after the departure of the worker who is engaged in important work, and it is difficult to measure the damage caused by money. In many cases, it is difficult to accurately measure the economic loss to a specific figure, because in practice, it often happens that workers do not exercise the right of termination following the regulations, thus causing economic loss to the employer.

The problems of unilateral termination of employment contracts by the employer are mainly summarized in two aspects: first, the unreasonable provisions of advance notice and "payment in lieu". The labor law does not differentiate between types of workers in terms of the advance notice period, which is 30 days' written notice, ignoring the differences between individual workers. In addition, the payment of one month's salary instead of the 30-day advance notice period as stipulated in Article 40 of the Labor Contract Law may lead to the abuse of the employer's advance notice obligation and the right to dismiss. The second is the rigidity of the closed list of grounds for summary dismissal and the lack of specific criteria for defining the concept. Second, the use of "serious" and "significant" is not a clear definition of the relevant circumstances.

The legal consequences of unlawful dismissal are not differentiated, which means that in practice, there are various situations of unlawful dismissal, some of which are subjectively malicious and socially dangerous, such as discriminatory or retaliatory dismissal, while others are unlawful dismissals caused by minor procedural defects. However, the law does not distinguish the subjective maliciousness and social danger of the employer's illegal dismissal, but provides the same legal liability in a broad-brush manner, which is likely to make the employer bear unreasonably low or high compensation liability, and it is also difficult to form an effective deterrent and deterrent to the anti-social dismissal with greater subjective maliciousness and serious social danger. It is also difficult to create an effective deterrent and disincentive for antisocial dismissals with greater subjective evil and socially harmful consequences.

The problems of the economic layoff system are mainly summarized in the following four points, one of which is the imperfect regulations on the number of layoffs. The law stipulates that the size of layoffs should be more than 20 people or 10% of layoffs, but according to the law, once the size of the enterprise is less than 20 people, laying off 2 people will constitute economic layoffs, which will greatly increase the dismissal costs of small and micro enterprises. China's law does not specify the period of layoffs, which also leaves room for employers to exploit legal loopholes. When the employer wants to lay off more than 20 employees, it can avoid being bound by the law and being punished by terminating the employment contract with the workers in batches. Third, the layoff procedure is not effective. Firstly, the role of labor unions is not obvious, as the employer only listens to and seeks the opinion of the labor union in the layoff process, and the opinion of the labor union does not prevent the employer from proceeding to the next step. Secondly, the role of the labor administration department is not obvious, if the union or the staff assembly's opinion does not produce any resistance to layoffs, the layoff procedure also exists in name only.

The issue of negotiated termination of labor contracts mainly includes 2 aspects: substantive norms and legal procedural norms. The main problem with the substantive regulations is that the regulations on the termination of labor contracts by negotiation are general, without detailed definition and refinement of the negotiation, without setting the preconditions, and in some cases, the termination of labor contracts may be unreasonable, for example, the termination of labor contracts may harm the interests of the state and the public, and there is no provision for the advance notice period; the problem with the legal procedural regulations is that there is no regulation on the form of termination of labor contracts. As a result, the parties to labor relations abuse the system of termination of labor contracts by mutual consent, and the interests of both parties in labor relations are not protected. Also, the scope of compensation for unlawful termination of labor contracts by agreement does not include other interested parties, and there is no provision for relief and compensation for the interested parties.

3. The Provisions of Foreign Laws on The System of Labor Contract Cancellation and Reference

3.1. Extraterritorial Regulations on the System of labor contract termination

In this paper, the regulations on extraterritorial labor contract termination systems are investigated and analyzed from three countries: the United States, Germany, and Japan.

The U.S. has a "freedom of employment" policy, and any contract that has not been agreed upon is indefinite, and both parties have the right to terminate the employment contract at any time. However, when the employer dismisses a worker for an unreasonable reason, or in violation of public policy or implied contract, the termination of the employment contract is not legally valid. Meanwhile, the payment of economic compensation in the country is determined by whether the employer's dismissal is justified or not.

Germany has a system of protection against dismissal, which provides that the employer must have just cause to exercise the right to terminate the employment contract and that when there is an employer's committee in the employer's office, it must be informed and its opinion must be taken into account, and if it is skipped, it has no legal effect. In Germany, the length of employment is determined by the number of years the worker has worked at the employer, usually 6 weeks for employees and at least 2 weeks for workers. The number of dismissals is limited by the size of the employer and, in addition to the basic rules, the layoff plan and compensation plan must be submitted to the employer's committee, which must reach a consensus before the layoff can be exercised, and the layoff report and compensation plan must be submitted to the labor department 30 days in advance, and the opinions of the employer's committee must be compiled and submitted to the labor department. In terms of financial compensation, Germany mainly calculates it based on the time worked and is concerned with the quid pro quo relationship. The labor courts in Germany are specialized in resolving labor disputes. The labor courts at different levels are responsible for different labor cases, and each court exists independently to resolve labor disputes. To unify labor justice Germany also has a Federal Court of Justice, which is the only judicial body in the country that has the authority to deal with litigation cases related to the lower courts and state courts.

However, if the employer is the party at fault, and the cause of dismissal is not by the facts of the contract or is not clearly explained, or if the worker is injured in the line of duty, the worker may have the right to unilaterally terminate the contract, except when the employer has provided financial compensation to the employee or when the employer has provided financial compensation to the employee for reasons that cannot be avoided. When it is difficult for the unit to continue production and operation. In Japan, the employer may exercise the right to dismiss without notice if the employee has been employed for less than two months or has been employed for less than four months during the probationary period of seasonal work.

3.2. The experience of the extraterritorial labor contract termination system

The United States, Germany, and Japan focus on the freedom of contract in the termination of labor contracts, and the rules are usually divided into two levels of restrictions and

protection, with the freedom of contract tilted to protect the workers' side, while the main purpose of our legislation and institutional settings are tilted to the workers. In foreign legislation, the public authorities are very cautious in taking measures to interfere with private labor relations, and only when necessary to protect workers, and even then, they will respect the labor agreement between workers and employers to the maximum extent, which is worth learning from China.

4. Suggestions for Improving the System of Labor Contract Termination in China

4.1. Unilateral termination of employment contract by the employer is recommended

In this paper, we propose to improve the unilateral termination of employment contract by the employer in three aspects: open enumeration of grounds for immediate dismissal, rational design of the advance notice system in a hierarchical manner, and changing the subject of the option of "payment in lieu" to the worker. Firstly, the grounds for summary dismissal should be openly listed. It is recommended that the grounds for summary dismissal should be openly listed with the guiding principle of reasonableness and legitimacy, and the bottom clause should be added, such as the termination of the employment contract if the worker has committed other serious violations of labor obligations or accompanying obligations, to give the employer a reasonable exit for dismissal; secondly, the system of advance notice period should be reasonably designed hierarchically. Under the study and reference of foreign systems, the system is improved based on the national conditions. In Germany and France, the advance notice period is set to distinguish the length of service of workers, but this paper proposes to set a minimum advance notice period in the case of termination of employment contract by the employer and to cascade the advance notice period to distinguish the types of workers, and to give both parties the right to negotiate the advance notice period. Thirdly, the subject of the option of "payment instead of wages" should be changed to the workers. The juxtaposition of the two options of "payment in place of notice" and "30 days' notice" has led to the abuse of the right of dismissal, but there is a need for the existence of "payment instead of notice". I believe that the law should give workers the right to choose the payment instead of notice, rather than passively accepting the employer's choice.

4.2. Perfection of Workers' unilateral termination of labor contracts

In this paper, the suggestions for improving the unilateral termination of labor contracts include clarifying the connotation of the legal provisions on the termination of labor contracts, stipulating a diversified period of unilateral advance notice of termination, and clarifying the legal responsibilities of workers who fail to exercise their unilateral termination rights as stipulated. The main reason for clarifying the connotation of the legal provisions on the termination of a labor contract is that in practice, regardless of whether the employer's illegal acts are due to fault, the workers may terminate the labor contract, so it is particularly crucial to clarify the connotation of the legal provisions on the termination of the labor contract. For example, in the case of failure of the employer to provide labor protection, it is

necessary to clarify the extent of the failure to provide labor protection, and to distinguish whether the employer is intentional or negligent; the reason for providing a diverse period of unilateral advance notice of termination is that if the relevant legislation does not distinguish between different situations of workers, then the legislative protection is only formal on the surface, not substantive. The reason is that if the relevant legislation does not distinguish between different situations of workers, then this legislative protection will be only superficial and formal, not substantive. Clarifying the legal liability of workers who fail to exercise their unilateral termination rights as stipulated means The specific legal liability of workers who fail to exercise their unilateral termination rights as stipulated can be added to the relevant provisions of China's Labor Contract Law, which can be refined to the calculation of the amount of compensation and the calculation of the remaining term of the labor contract, to better urge workers to continuously fulfill their labor contracts.

4.3. Perfection of the termination of the employment contract by mutual agreement

The termination of labor contracts by mutual agreement is to be improved from the legal entity norms and legal procedural norms. On the one hand, to improve the legal entity norms on the consensual termination of labor contracts mainly include the following points: first, for the preconditions for the termination of the contract, it is recommended to emphasize that the termination of the contract must not be contrary to social conventions, not to harm the state, the public, and other tripartite interests under the premise that both parties to the contract can negotiate a settlement; second, to develop a response time limit, requiring the employer needs to respond to the claims filed by the labor side promptly; third. It is recommended to strengthen the supervision and restraint on the power and obligation of the laborer, and the laborer should be given certain penalties and restrictions for violating the contractual agreement; fourthly, I suggest that the terms of the contract between the employer and the laborer should be stipulated to be sent for review by the relevant human resources market supervisory bodies. On the other hand, regarding the improvement of the legal procedures for the consensual cancellation of labor contracts, the main points are as follows: once the contract cancellation procedure is entered, negotiation and mediation should be the main focus; secondly, when one of the parties to the contract violates the responsibilities and obligations stipulated in the contract terms or infringes on the rights of the parties protected by the contract provisions, it is possible to apply for the execution of the cancellation of the contract, at which time it is suggested that our law enforcement agencies give the infringed person In this case, it is recommended that our law enforcement agencies give the aggrieved party more rights to appeal and defend their rights, and the aggrieved party has the right to directly contact our judicial hearing institutions.

4.4. Improvement of economic redundancy system

The economic layoff system is improved in three aspects, namely, clarifying the size of enterprises to which economic layoffs apply, increasing the time limit for economic layoffs to apply, and strictly regulating the legal procedures for economic layoffs. First of all, we should clarify the scale of

enterprises to which economic layoffs apply. The scale of economic layoff enterprises should be closely related to the number and proportion of layoffs. Some scholars believe that some small and micro enterprises should not be applied to economic layoff procedures, and according to the implication of the legal provisions, the lower limit of the size of economic layoff enterprises should be 20 people. Secondly, the time limit for economic redundancy should be increased. Germany stipulates that the number of layoffs within 30 days will reach the legal limit. Increasing the time limit for economic layoffs can effectively regulate the layoffs of enterprises in a piecemeal manner, while local legislation can be formulated according to local conditions. Finally, the legal procedures for economic layoffs should be strictly regulated. On the one hand, the role of trade unions should be strengthened, and their "right of proposal" should be established to help workers in weak positions fight against strong employers. On the other hand, we should improve the participation mechanism of labor administration departments, specifically, labor administration departments should have the right to supervise and the obligation to mediate, to supervise whether the layoff behavior of employers is legal, to urge employers to fulfill the procedures of economic layoff, and to mediate in labor-management disputes in the process of economic layoff to ensure the smooth implementation of labor-management negotiation in the process of layoff.

5. Conclusion

The labor contract cancellation system is closely related to people's interests, and both employers and workers need the protection and limitation of the system. In the context of the rapid and diversified development of modern society, labor contract cancellation has become a very common phenomenon. With the maturity of various aspects, the system should keep pace with the times and make timely improvements and refinements according to the real situation, and the proposals for the institutional reconstruction of the labor contract cancellation system try to coordinate the interests between workers and employers to promote the full realization of the value of the labor contract cancellation system, to better To maintain the economic environment and protect the legal rights and interests of employers and

employees.

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