

Analysis of the Institutional Background and Potential Problems of Labor Contract Law

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Abstract: The efficient allocation of labor is of great significance to high-quality economic development. However, due to the influence of traditional thinking during the transformation of the market mechanism, some enterprises and workers have insufficient or incorrect understanding of labor relations, which has increased the labor risks of enterprises and affected the development of the market economy. Therefore, from an objective perspective, this article analyzes the institutional background of China's Labor Contract Law, as well as the potential problems and risks that may easily arise during the implementation of the Labor Contract Law. We hope to provide some guidance and suggestions to business operators and workers to build harmonious and stable labor relations, so as to achieve long-term and stable development of enterprises.

Keywords: Institutional Background; Potential Problem; Labor Contract Law

1. Introduction

With the continuous development of human capital and stakeholder theory, related research on corporate governance has gradually shifted from focusing on agency costs among key actors to exploring labor protection and participation [1-6]. Some researchers believe that labor should be recognized as one of the three core actors in corporate governance [3, 4, 7]. Governments of all countries should also pay attention to labor issues and strengthen and improve labor legislation and labor protection [8]. Although the current labor legal system is gradually improving, and legal provisions have detailed provisions on labor contracts, in actual operations, legal issues and risks related to enterprise labor and employment are also increasing. This is mainly because some companies improperly use or misunderstand legal provisions, and the

corresponding rules and regulations may still have some flaws [9]. Therefore, in order to avoid these risks and problems as much as possible, labor law has extended a branch, namely labor contract law. The Labor Contract Law mainly stipulates the conclusion, performance, modification, cancellation and termination of labor contracts, as well as special provisions on collective contracts, labor dispatch, part-time employment, etc. Its content mainly revolves around labor contracts.

Compared with the Labor Law, the protection of the legitimate rights and interests of workers has been significantly strengthened in the Labor Contract Law, mainly reflected in the signing of labor contracts, labor contract duration, employee participation in management, employee remuneration, etc. [10]. After long-term institutional supervision, the effectiveness of labor protection has gradually become apparent, which provides suitable conditions for us to explore related research and issues on labor protection [11]. Most of the previous studies focused on the impact of labor contract law on enterprises in the short term, such as financial risks, operating flexibility, enterprise costs, investments, etc., or focused on key figures in enterprise operations (such as chairman, shareholders, executives, etc.) [12-15]. This article focuses on the implementation and potential risks of China's Labor Contract Law since its promulgation, in order to provide more evidence from China and provide reference for research on labor protection in China.

The rest of this article is organized as follows: Section 2 introduces the institutional background of the current Labor Contract Law; Section 3 reports on the potential problems existing in the current implementation of the Labor Contract Law; Section 4 summarizes this article.

2. Institutional Background of Labor Contract Law

In order to bring the labor contract system into the legal track, in 1994 China promulgated the "Chinese Labor Law of the People's Republic of China" and was officially implemented on January 1, 1995. However, with the marketization of my country's economic and legal system, the forms of employment have become diversified, such as labor workers, farmer workers, hourly workers, migrant workers, etc. These new forms of employment present a relatively chaotic market situation due to the lack of corresponding laws and regulations. For this chaotic situation, the current labor law cannot be fully applied, and the rights and interests of workers cannot be properly protected. In order to make up for the shortcomings of labor laws, further protect the legitimate rights and interests of workers, adjust labor relations, establish and maintain a labor system that adapts to the collectivist market economy, and promote economic development and social progress, there is an urgent need to formulate professional laws to regulate the labor cooperation system. Therefore, China's Labor Contract Law was officially implemented on January 1, 2008 [8]. Compared with the labor law, the Labor Contract Law has significantly strengthened the protection of enterprise employees by enterprises [10]. Specifically, it is mainly reflected in the following aspects: employee benefits, labor contracts and labor representation rights.

3. Potential Problems Existing in the Labor Contract Law

At present, the problems of my country's labor contract law mainly include defects in unfix-term labor contracts, imperfect labor dispatch systems, and unclear time for unilateral termination rights.

3.1 Legal Risks of Labor Contract Termination

Due to the mismatch between workers and labor market demand, many workers cannot meet the actual needs of employers, and companies often face problems such as dismissal or termination of labor contracts. At the same time, various problems often arise when terminating labor contracts with employees [9].

3.1.1 No termination agreement signed

During the process of signing a labor contract, after the company and the employee negotiate and reach a consensus agreement, there may be situations where part of the agreement is not reflected in the labor contract or the agreement is not formally signed. Faced with this situation, workers may not take the initiative to ask the company to supplement or modify the labor contract, and the company sometimes forgets to sign the supplement in time. When both parties need to terminate the labor contract, they often only proceed with wage settlement and work handover. At this time, any mistake will cause varying degrees of losses to the company or individual.

3.1.2 Contents of labor termination contract

Generally speaking, any contract related to a labor termination agreement is authoritative, that is, once signed, neither the company nor the employee can violate the contract provisions. If the relevant agreement has been violated, the other party can file a lawsuit through legal channels, so the agreement during the termination of the labor contract is very important. However, when a termination agreement is drawn up, there may be situations where the content of the agreement is incomplete. If one party files a malicious lawsuit against the other party after the agreement is signed, the other party will certainly be affected. In addition, the termination agreement should be formulated within the scope permitted by law. If the law does not allow it, the termination agreement will be invalid. If the agreement causes losses to the workers, the company should also compensate the workers in accordance with the law and provide benefits to the company. Operational management causes losses.

3.1.3 (Non) negligent termination of labor contract

Generally speaking, in the process of signing a labor contract, workers are a vulnerable group, and labor contracts are closely related to the employment and survival of workers. Therefore, there are many regulations in the law for employers to unilaterally terminate labor contracts, so as to Strictly restrict the termination of labor contracts by employers.

During the probationary assessment period, the enterprise finds that the employee does not meet the needs of the enterprise and dismisses

the employee. During this process, if the enterprise does not stipulate the qualification conditions in the contract, or does not stipulate the probation period when signing the contract with the employee, or the probation period exceeds national regulations. In these cases, there are legal risks when the employer unilaterally terminates the labor contract. If the employee seeks legal help on this ground, the company must compensate accordingly. In addition, some workers have dual labor relationships or engage in fraud and coercion during the process of signing contracts, which seriously affects the development of the enterprise. In this case, the termination of the labor contract will also encounter legal risks.

The reason why the employer executes the non-fault termination of the labor contract is mainly caused by objective circumstances, and the employee has not committed any fault. Therefore, the method of non-fault termination is also called notice of termination. During this process, the employer shall comply with the law. Follow the procedures to terminate the labor contract. If the company fails to carefully interpret the regulations, or if the non-fault termination method is not complete enough, the behavior will not be recognized by the law.

3.1.4 Layoffs

Economic layoffs usually occur in some companies that are not operating well. For their own survival, companies have to lay off employees to maintain corporate profits. However, in the process of company layoffs, if the judgment of the company's situation conflicts with the provisions of the law, or if the due procedures in terminating the labor contract are ignored, or even malicious defrauding of employees occurs, a series of legal problems will arise. And need to bear corresponding responsibilities [9].

3.2 Enforcement and Defects of Labor Contract Law

3.2.1 Labor relationship confirmation

The rapid development of the platform economy has created a large number of job opportunities. The number of workers in new employment forms such as online delivery persons, online ride-hailing drivers, truck drivers, and Internet marketers who rely on Internet platforms for employment has increased significantly. In the trial of cases where workers in new employment forms

request confirmation of labor relations, based on the employment facts and the degree of labor management, comprehensive consideration must be given to the degree to which workers independently decide on working hours and workload, the degree to which the labor process is subject to management control, and whether the workers need to Compliance with relevant work rules, labor disciplines, rewards and punishments, the continuity of labor work, and the ability of workers to determine and change transaction prices should be carefully determined. Specifically, we need to pay attention to the following issues: First, determine whether workers in the new employment form have labor exclusivity when providing labor for the employer. The second is to determine whether there is personal affiliation between workers in the new employment form and the employer. The third is to determine whether the workers in the new employment form provide pure labor force to the employer as a factor of production. The fourth is to consider factors such as whether the platform or merchant pays wages to workers regularly, whether wages and remuneration are stable, and whether business risks are borne by the employer.

3.2.2 Lack understanding of the law

From an enterprise perspective, some enterprises are circumventing the Labor Contract Law. Some companies with non-standard management have always equated illegal costs such as social insurance that were not fully implemented with the company's new production costs. They believe that the Labor Contract Law has increased the corporate costs, so they are passive and negative about the implementation of the law. For example, some companies have strong reactions to indefinite-term contracts; even if some companies sign labor contracts with their employees, they are not standardized enough. The contract terms are relatively simple and empty, and there are no issues involving the vital interests of employees such as working hours, overtime wages, welfare benefits, etc. The inclusion or presentation is not specific enough.

From the perspective of workers, some workers have a relatively indifferent attitude towards the Labor Contract Law. It is generally believed that the Labor Contract Law attempts to achieve stable labor relations

by protecting workers. However, its implementation did not bring about a positive response from some workers. Some workers are unwilling to sign labor contracts, believing that signing labor contracts will affect free movement. In particular, some middle and high-level managers and high-tech personnel believe that signing labor contracts (especially long-term contracts) will affect their development to a higher level and is not conducive to free choice of employment.

3.2.3 Labor contract fulfillment rate

Many small and medium-sized enterprises do not have institutions and personnel specialized in labor and employment management, and lack labor rules and regulations. Some enterprises produce while building, and workers are highly mobile, making it difficult to sign and perform labor contracts. In some special industries and special groups, such as agents and promoters, part-time employment, multiple labor relationships and other forms of employment coexist, resulting in unclear employment entities and unclear relationships, which also affects the signing of labor contracts.

4. Conclusions

The labor contract legal system is the core of the entire labor legal system. Compared with the original labor law, the labor contract law is more substantial than the original provisions, broadens the scope of application of labor law, and strengthens the protection of workers' legitimate rights and interests. However, in actual practice, there are many problems in the labor contract law that are unreasonable, unscientific, and unoperable. Therefore, during the implementation process of the Labor Contract Law, constantly discovering and reflecting on the shortcomings of the law is of great significance for continuing to improve China's labor contract legal system

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