

# On the Legal Nature and Liability of Shared Employment

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**Abstract:** Against the background of the digital economy driving the diversified transformation of employment forms, this paper focuses on the identification of the legal nature and liability undertaking of shared employment. Combined with three practical models, it deeply differentiates the similarities and differences between shared employment and other employment forms such as labor dispatch, employee secondment and labor outsourcing, and clarifies its unique legal attributes. The paper focuses on sorting out the tripartite legal relationship structure of shared employment, and points out many problems caused by the lag of current legal norms, including the absence of definition of the legal nature of shared employment, inconsistent judicial adjudication standards, ambiguous identification of labor relations and disputes over liability undertaking. On this basis, this paper further explores the liability undertaking mechanism of shared employment, and proposes paths such as improving institutional design, strengthening administration supervision and consolidating corporate social responsibility to clarify the boundaries of rights and obligations of all parties. The research aims to regulate shared employment, protect the legitimate rights and interests of workers, promote the healthy and orderly development of the flexible employment market, and safeguard the unity and authority of the labor legal system.

**Keywords:** Shared Employment; Flexible Employment; Legal Nature; Liability Undertaking; Protection of Labor Rights and Interests

## 1. Introduction

Statistics show that among the 100 most labor-shortage occupations in China's human resources market, 36 belong to the service industry and 36 to the manufacturing industry. The development of the digital economy and fluctuations in market demand have driven the

transformation of China's labor employment forms from the traditional standard single legal relationship to diversification and flexibility, making shared employment, a new form of flexible employment, rise rapidly.

Shared employment refers to an employment model in which enterprises allocate idle human resources within a certain period to enterprises with demand gaps on the premise of respecting employees' wishes, reaching consensus through multi-party consultation and not for profit-making purposes, so as to reduce the labor costs of employers, improve the production capacity of user enterprises, ensure that furloughed employees receive remuneration, and realize cross-border sharing of human resources.[1] To guide the standardized development of this new employment model, relevant Chinese authorities have issued the Notice on Doing a Good Job in the Guidance and Services of Shared Employment, which defines shared employment as a legitimate way to adjust the surplus and shortage of labor between enterprises, encourages the development of this new flexible employment model, and emphasizes protecting the legitimate rights and interests of workers during shared employment. In the post-pandemic era, shared employment has gradually changed from an emergency employment measure to a normalized employment method, showing strong vitality especially in the technology, service and innovative industries. It has become an important means for enterprises to reduce employment costs and flexibly respond to market changes, helping solve the problem of "labor shortage" in some industries, and has become an important part of China's flexible employment system.[2]

However, compared with the rapid development and wide application of shared employment in practice, China's current Labor Law, Labor Contract Law and other departmental laws have not made special and systematic provisions on shared employment. Relevant regulations are only scattered in normative documents and local judicial guiding opinions. The lag of legal norms

directly leads to the absence of definition of the legal nature of shared employment, and the boundaries of rights and obligations between shared employees, employers and user enterprises are also ambiguous. The existence of these legal problems has further caused differences in the identification of liability in disputes related to shared employment in judicial practice, making it difficult to unify adjudication standards, damaging the legitimate labor rights and interests of workers, and becoming an obstacle restricting the healthy and orderly development of the shared employment model.

At the same time, there are many differences in the identification of the legal nature of shared employment in theoretical and practical circles. Various views such as the "secondment theory"[3] and "labor dispatch theory"[4] coexist, and no unified cognition has been formed, making shared employment unable to be incorporated into the current legal regulatory framework. Some enterprises even take the opportunity to unilaterally arrange shared employment, arbitrarily change the content of labor contracts, or refuse to perform obligations such as wage payment and social insurance contribution by not signing written agreements, further exacerbating legal chaos in the field of shared employment. All these are not conducive to the standardized development of shared employment by enterprises, nor can they form a stable labor market order, let alone provide a solid legal guarantee for workers' labor rights and interests.

In summary, clarifying the legal nature of shared employment, defining the legal relationship between employers, user enterprises and shared employees, and establishing a reasonable liability undertaking mechanism are inevitable requirements to regulate the development of shared employment, maintain market order and protect the legitimate rights and interests of workers.

By sorting out the practical models of shared employment and comparing its similarities and differences with labor dispatch, secondment and labor outsourcing, this paper defines the legal nature and tripartite legal relationship of shared employment in a typified way. Based on judicial differences, it analyzes the liability distribution rules in shared employment, and then puts forward specific suggestions for improving the legal regulation and judicial application of shared employment, enriching the theoretical

research on flexible employment. It aims to provide references for judicial adjudication and guidance for corporate compliance, so as to promote the healthy and orderly development of the shared employment model.

## **2. Practical Models of Shared Employment**

The practical models of shared employment are diversified due to different participating subjects and operation modes. Combined with judicial practice, they can be divided into three models: direct enterprise dispatch, platform intermediary service, and dual labor relations.

### **2.1 Direct Enterprise Dispatch Model**

The direct enterprise dispatch model is the basic form of shared employment. It refers to an employment method in which the employer and the user enterprise sign a shared employment cooperation agreement directly based on consensus, dispatch employees to the user enterprise temporarily for work after obtaining the employees' consent, and the employees return to the employer after the expiration of the working period. In this model, no third party is involved. The employer and the user enterprise directly negotiate and determine the working period, work content, wage payment, liability undertaking and other matters of shared employment. The user enterprise carries out labor management and pays corresponding labor remuneration, while the employer still maintains the labor relationship with the employees, such as the employee sharing model between Hema Fresh and Cloud Sea Restaurant. Direct dispatch by employers can solve the dilemma of no income for furloughed employees and alleviate the rigid employment demand of user enterprises. The direct enterprise dispatch model is simple and efficient, suitable for cooperation between enterprises with close regions and high matching degree between employment demand and employees' skills, but it also inevitably has the risk of rights and liability disputes caused by non-standard agreement clauses.

### **2.2 Platform Intermediary Service Model**

The platform intermediary service model is a new shared employment model empowered by the digital economy, which is seen in various sharing economy platforms. This model breaks the employment barriers between enterprises and regions, realizes the accurate cross-regional matching of labor resources, and is applicable to

scenarios where employers have a large number of scattered furloughed employees and user enterprises have fragmented employment demand. Furloughed employees of employers directly establish labor relations with various platforms in their own names, or employers uniformly register employees for temporary "career transfer" on platforms, such as the "Lan Hai" Employment Sharing Platform launched by Alibaba. The platform integrates temporary employment demand in retail, logistics, customer service and other industries. Employers can register furloughed employees in batches, and employees can quickly match suitable temporary jobs through the platform for employment. Platform joining broadens income channels for furloughed employees and provides flexible and efficient employment solutions for various enterprises. This model has high matching efficiency and wide coverage, but some platforms package labor relations as "flexible employment" to avoid employment liability, which is very likely to cause disputes over the protection of employees' rights and interests.

### **2.3 Dual Labor Relations Model**

The core difference between this type of shared employment and the direct dispatch model is that employees establish a short-term legal labor relationship with the user enterprise, and the old and new labor relations coexist, taking into account employment flexibility and employee rights protection. It is mostly applicable to scenarios where employers have a long shutdown period and user enterprises have relatively stable employment demand. The employer communicates with the user enterprise, or furloughed employees directly communicate with the user enterprise. The user enterprise signs short-term labor contracts with furloughed employees, pays labor remuneration, and undertakes employment liabilities in accordance with the law. Employees accept comprehensive labor management by the user enterprise during their work, and can independently choose to return to their original posts in the employer, renew contracts with the user enterprise or terminate the short-term labor relationship after the expiration. Taking the sharing model launched by Chaoshifa Supermarket as an example, the supermarket opens short-term employment posts to furloughed employees in various industries to meet the demand during

peak employment periods such as holidays and promotion seasons. Furloughed employees can directly sign short-term labor contracts with Chaoshifa Supermarket to engage in cargo sorting, cashiering, shopping guide and other work. On the premise of not affecting the employees' original labor relations, it guarantees the short-term labor income of employees and solves the phased employment gap of Chaoshifa Supermarket. In this model, employees can enjoy dual employment protection, and user enterprises can also obtain stable labor with matching skills. In comparison, however, the two enterprises need to further clarify legal issues such as social insurance contribution liability and work-related injury identification subject under dual labor relations to avoid employment disputes.

### **2.4 Common Characteristics of Practical Models of Shared Employment**

As early as 2020, China recognized that "shared employment does not change the labor relationship between the original employer and the worker. The original employer shall protect the workers' rights and interests such as wages and social insurance, urge the seconded enterprise to provide necessary labor protection, reasonably arrange the workers' working hours and tasks, and safeguard the workers' physical and mental health. Cooperative enterprises may clarify their rights and obligations by signing civil agreements." Combined with the above practical models, several common characteristics of "shared employment" can be summarized: first, shared employment starts from the perspective of enterprise human resource management and aims to adjust the redistribution of human resources; second, the labor relationship between shared employees and the original employer remains unchanged, but they provide labor in user enterprises, which enjoy actual labor management rights; third, it is consensual, and the development of shared employment requires the consensus of the employer, user enterprise and shared employees, especially the consent of employees, which is the legal premise for the realization of shared employment; fourth, it is temporary, and the period of shared employment is usually medium and short-term to cope with the temporary employment demand of enterprises. Workers return to the original employer after the expiration of shared employment.

### 3. Analysis on the Legal Nature of Shared Employment

The definition of the legal nature of shared employment is the basis for discussing the liability undertaking of this employment model. The disputes over its legal nature in theoretical and practical circles mainly stem from its similarity with traditional employment forms such as labor dispatch, secondment and labor outsourcing. This section combines the above three practical models, compares the similarities and differences between shared employment and existing flexible employment forms, combines China's current normative documents and judicial adjudication opinions, defines the legal nature of shared employment under different models through typified analysis, and clarifies the legal relationship of the three parties.

#### 3.1 Similarities and Differences between Shared Employment and Labor Dispatch, Secondment, Labor Outsourcing

##### 3.1.1 Similarities and differences between shared employment and labor dispatch

Labor dispatch, also known as labor dispatching or workforce dispatch, refers to an employment form in which the dispatching unit recruits workers in accordance with the needs of user enterprises or the labor market, signs labor contracts with them, and dispatches workers to user enterprises for work in accordance with the labor dispatch agreement signed with user enterprises, with the labor process managed by user enterprises. The current Labor Contract Law clearly stipulates the tripartite labor relations in labor dispatch, which is a typical non-standard labor relationship in legal composition.

Combined with the three models of shared employment, the similarities and differences between the two are as follows:

(1) Direct enterprise dispatch model: The similarity with labor dispatch is that there are three parties: employer, employee and user enterprise. Employees maintain labor relations with the original unit, and user enterprises actually manage employees. The difference is that in this model, the original employer does not aim at profit-making, but only to digest idle labor, and there are no legal restrictions on dispatch ratio or contract term. Employee sharing is temporary and emergency, with short term and no profit sharing; in labor dispatch, the

dispatching unit takes dispatch as its core business, needs to have administrative license qualification, and is subject to legal constraints such as 10% dispatch ratio and fixed-term labor contract of more than 2 years.

(2) Platform intermediary service model: The similarity is that labor allocation is realized through a third-party carrier. The difference is that the platform is only an intermediary subject, undertaking the function of intermediary matching. Employees do not form a labor relationship with the platform, and there is no direct dispatch agreement between the employer and the user enterprise. The platform does not undertake employment liabilities such as wage payment and social insurance contribution; in labor dispatch, the dispatching unit is the legal employer, shall undertake legal employment liabilities, and has a direct dispatch agreement with the user enterprise. In addition, in this model, most employees establish labor relations with the platform in their own names, there is no process of recruiting and dispatching employees by the dispatching unit in labor dispatch, and there is no profit-making dispatch behavior.

(3) Dual labor relations model: The similarity is that employees need to accept the actual management of user enterprises. The difference is that in this model, shared employees establish a short-term legal labor relationship with user enterprises, forming a dual form of labor relations between the original unit and the user enterprise; in labor dispatch, dispatched employees only have an employment relationship with user enterprises, not a labor relationship, and the dispatching unit shall bear the legal liability of the employer throughout the process. Similarly, the employer in this model does not aim at profit-making, and there is no commercial operation attribute of labor dispatch.

##### 3.1.2 Similarities and differences between shared employment and secondment

Article 7 of the Opinions on the Implementation of the Labor Law of the People's Republic of China clearly defines the attribute of labor contract relations under "secondment", that is, "the employer shall sign labor contracts with personnel seconded to other units for a long time, personnel studying with pay, and other personnel who are not on duty but still maintain labor relations." In the field of labor legal relations, there are various types of "secondment", which can be distinguished by purpose: business cooperation, technical

guidance, poverty alleviation and construction, talent training, business internship, flexible employment adjustment, dismissal avoidance, etc.

In essence, both "shared employment" and "secondment" send employees hired by themselves to a third-party user enterprise for a certain period of work during the labor contract period, and the employees return to the original unit after the work. Combined with practical models, the similarities and differences between the two are as follows:

(1) Direct enterprise dispatch model: It has the highest compatibility with secondment. Both maintain the labor relationship between employees and employers, user enterprises actually use labor, and are mostly carried out based on consensus between enterprises, agreeing on the working period and return conditions of employees. The difference is that the purpose of secondment includes technical guidance, talent training, etc. The personnel are mostly managers (even senior executives) and professional and technical personnel with certain professional quality and ability, with a small scale, and secondment is allowed between subsidiaries, branches and directly affiliated enterprises of the employer; while the shared employment of direct enterprise dispatch is mainly to solve idle labor and temporary employment gaps, employees are mainly ordinary skilled workers, and group dispatch may occur. The application scenarios focus more on emergency employment supplement, such as catering enterprises dispatching employees to e-commerce enterprises in batches during the pandemic, but generally not between affiliated enterprises.

(2) Platform intermediary service model: The similarity with secondment is that there is cross-unit flow of labor, and employees finally return to the original unit. The difference is that secondment is mostly based on direct cooperation between enterprises without third-party intervention, and liability undertaking is directly agreed by the employer and user enterprise; while this model realizes cross-regional and cross-industry matching through the platform, the employer and user enterprise may not be directly affiliated, the scale of employee dispatch is more scattered, and employment demand is more fragmented, which is different from the centralized and affiliated characteristics of secondment.

(3) Dual labor relations model: The similarity is that both involve employees' short-term work in third-party units. The difference is that in the case of secondment, employees do not form a labor relationship with user enterprises, but only provide labor based on the secondment agreement; in the dual labor relations model of shared employment, shared employees establish a legal labor relationship with user enterprises, which shall undertake liabilities such as wage payment and labor protection at the labor law level, while maintaining the basic labor relationship with the employer. Employees can choose to renew or terminate the contract with the user enterprise after the expiration, with high flexibility.

### 3.1.3 Similarities and differences between shared employment and labor outsourcing

Labor outsourcing refers to that the contract-issuing party contracts its specific business projects to the contractor, who recruits workers to complete the contracted projects. Here, the relationship between the contract-issuing party and the contractor is a labor service relationship, the relationship between the contractor and the worker is a labor relationship, and the labor process of the worker is managed by the contractor.

Combined with the three models of shared employment, the similarities and differences between the two are as follows:

(1) Direct enterprise dispatch model: The similarity is that both break the pattern of a single employer and realize the flexible allocation of labor. The difference is that employees directly dispatched by enterprises are existing idle labor of the employer, not newly recruited personnel of the user enterprise (contract-issuing party) or the employer (contractor), and the user enterprise directly participates in labor management and liability undertaking; in labor outsourcing, workers are recruited and managed by the contractor themselves, the contract-issuing party does not intervene in the labor process, and the contractor is the legal employer of the workers, undertaking all employment liabilities.[5]

(2) Platform intermediary service model: Both labor outsourcing and platform intermediary service model realize resource docking through a third party, and employment is temporary. The difference is that labor outsourcing is "business project contracting", and the contractor needs to complete specific business results; while the

platform provides "labor matching", which does not involve the division of business sectors and does not undertake project delivery liability. In addition, in shared employment, shared employees still have a labor relationship with the employer, while in labor outsourcing, workers have no legal relationship with the contract-issuing party, but only form a labor relationship with the contractor.

(3) Dual labor relations model: Consistent with labor outsourcing, both provide short-term labor support for user enterprises. The difference is that in labor outsourcing, user enterprises (contract-issuing parties) have no direct management relationship with workers, but only accept the project results of the contractor; in shared employment, user enterprises directly manage employees, who need to abide by their rules and regulations, and form a labor relationship with user enterprises, undertaking rights and obligations at the labor law level. In addition, there are also differences in labor allocation: shared employees come from the idle labor of the employer, not the contractor's own employees in labor outsourcing.

### 3.2 Tripartite Legal Relationship of Shared Employment

Shared employment breaks the full-time, open-ended exclusive employment form in standard labor relations, and labor becomes a shareable resource. However, the academic and practical circles have different understandings of the nature of the shared employment model, and the definition of the legal relationship between the three parties (employer, user enterprise and shared employee) is unclear, leading to the confusion between shared employment and other employment forms in practice, and then affecting the rights and obligations of all parties in shared employment.

From the end of 2014 to the beginning of 2015, three contract dispute cases involving online driving platforms and their registered drivers accepted by the First Intermediate People's Court of Beijing were adjudicated in the second instance. It was ruled that there was no labor relationship between driving service providers and platform operators, but a legal relationship of commercial cooperation. The Notice on Matters Concerning the Establishment of Labor Relations, as the adjudication basis, played an important role. In sharp contrast, similar cases handled by the People's Court of Pudong New

Area of Shanghai in the same period defined this new employment model as an employment relationship and confirmed the existence of labor relations accordingly. It is worth noting that different regional judicial organs made completely opposite legal judgments on driving services through the same online platform. This example profoundly reflects the differences in the understanding of the legal nature of employment relations under the background of the sharing economy in practical circles.

In summary, clearly defining the tripartite legal relationship of shared employment is an urgent problem to be solved. The core of identifying the legal relationship of shared employment lies in the attribution of labor relations and liability division. The operational differences of different practical models determine the different forms of tripartite legal relations. Combined with the typified comparison above, the specific definitions are as follows:

3.2.1. Direct enterprise dispatch model: labor relationship with employer + labor service relationship with user enterprise + civil agreement relationship between enterprises

In this model, the labor relationship between shared employees and the employer is the foundation, and only the performance mode of the labor contract is changed, such as workplace and work content. Employees form a labor service relationship with user enterprises, which carry out actual management of employees and pay labor remuneration based on the shared employment agreement, but do not undertake legal liabilities of the employer such as social insurance contribution and dismissal. The employer and the user enterprise form a civil contract relationship based on the shared employment agreement, which clarifies wage payment methods, work-related injury liability distribution, employee return conditions and other contents through the agreement, regulated by the Civil Code, and the employer shall not charge fees for profit through this agreement.

3.2.2 Platform intermediary service model: labor relationship with employer + labor service relationship with user enterprise + platform intermediary relationship

In the shared employment model with platform intervention, shared employees still maintain labor relations with the employer. Led by the employer or with the consent of the employer, employees match user enterprises through the platform, but shall not harm the legitimate rights

and interests of the original unit, such as non-competition and trade secret protection. Workers and user enterprises establish a labor service relationship through platform matching. User enterprises directly manage employees and pay labor remuneration. The platform provides intermediary services, does not participate in the agreement of rights and obligations between the two parties, and does not undertake employment liabilities. There is no labor relationship between the employer and the platform or user enterprise. The platform provides intermediary services and performs information verification obligations, and neither the platform nor the employer intervenes in the labor performance between workers and user enterprises.

3.2.3 Dual Labor relations model: actual labor relationship with employer + virtual labor relationship with user enterprise + civil agreement relationship between enterprises

From the perspective of general theory, dual labor relations are specifically manifested as a worker establishing multiple labor relations with two or more employers in the same period. More accurately, it can also refer to the actual existence of two or more labor relations entities for a worker. Each relational entity must meet the basic requirements of the constituent elements of labor relations.[6] The dual labor relations of virtual-real coexistence between shared employees, employers and user enterprises means that workers maintain labor relations with the original unit but no longer provide labor for the original unit. The original unit does not actually manage workers except for paying social insurance premiums, and the user enterprise assigns work tasks and carries out actual management of workers.[7] The labor relationship between the employer and the worker is the foundation of shared employment, and the development of shared employment does not change the labor relationship between the two parties. Generally, a virtual labor relationship is formed between the user enterprise and the worker, which is based on the actual labor between the user enterprise and the shared employee. Its virtuality is reflected in that the user enterprise has labor management rights over employees based on work content, employees need to abide by the rules and regulations of the user enterprise, and the personal subordination of shared employees to the user enterprise is limited to management and control. The user enterprise does not have the

right to dismiss shared employees. Unless otherwise agreed in the shared employment agreement, shared employees do not have economic subordination to the user enterprise such as receiving labor remuneration. The employer and the user enterprise form a civil contract relationship based on the agreement, with equal legal status, and the agreement content is determined by both parties through negotiation, regulated by the Civil Code and other laws. After the expiration of the working period, employees can independently choose to return to the original unit or renew the contract with the user enterprise, and the original unit shall not restrict them without reason.

#### **4. Liability Undertaking in Shared Employment**

##### **4.1 Judicial Differences in Liability Undertaking of Shared Employment**

At present, shared employment, as an innovative form of flexible employment, is widely used, but the judicial adjudication rules for its liability undertaking have not yet been unified. Problems such as fragmented adjudication standards and chaotic liability identification are common in practical circles. In various labor disputes and work-related injury compensation cases, the original employer to which the labor relationship belongs often refuses to perform legal obligations such as wage payment and work-related injury compensation on the grounds that the daily work arrangement, attendance assessment and on-site management of workers are fully responsible by the actual user enterprise; while the actual user enterprise defends on the grounds that no labor contract is signed between the two parties and no labor relationship in the sense of labor law is formed with the worker, shifting liabilities to each other. This will directly lead to the failure of timely and effective relief and protection of workers' legitimate rights and interests such as labor remuneration and social insurance. At the same time, people's courts in different regions have different understandings and identifications of the legal nature and liability attribution of shared employment, mostly focusing on the inconsistent judicial recognition of dual labor relations in the scenario of shared employment. Different judgments for similar cases have become a typical judicial chaos in such cases, and the adjudication scale shows significant regional

differentiation and logical differences. Even if the case facts and employment models are highly similar, different courts or even the same court may make completely opposite adjudication conclusions. From the perspective of adjudication tendency, there are three main types: first, strictly adhere to the principle of single labor relationship, exclusively identify a single liability subject only based on written labor contracts, and order the original employer to independently bear all employment liabilities; second, focus on substantive employment review, identify the actual user enterprise as the subject of de facto labor relationship based on the standards of employment management, labor provision and attendance control, and make it bear employment liabilities; third, break the framework of single labor relationship, confirm that the two parties constitute affiliated or joint employment relationship based on the objective facts of joint management, labor sharing and profit sharing, and bear joint and several liability for workers' losses.

#### **4.2 Liability Undertaking Rules under Shared Employment**

According to the above analysis, during shared employment, this employment model will not lead to fundamental changes in the substantive labor relationship between the employer and shared employees. The employer still has to perform legal obligations such as paying labor remuneration and social insurance premiums for shared employees. At the same time, the trade union of the employer shall continue to be responsible for supervising and protecting the labor rights and interests of shared employees during shared employment. After the end of shared employment, shared employees return to the employer to continue actual labor.

In the implementation of shared employment, user enterprises are granted the authority to manage and control shared employees and the income from labor. The so-called "principle of tilted protection" in labor law stems from the unbalanced allocation of management and control power within labor relations. It is this unequal power that leads to the differentiation between the strong status of user enterprises and the weak status of shared employees.[8] When user enterprises enjoy the surplus value generated by the labor of shared employees, the risks they bear are not equal to the benefits they obtain. Therefore, from the perspective of

maintaining the value of justice, this unequal relationship ultimately leads to the obligation of undertaking operational risks falling on user enterprises.

#### **4.3 Suggestions on Improving Liability Undertaking of Shared Employment**

##### **4.3.1 Improve institutional design and strengthen regulation of shared employment**

China's current Labor Law and Labor Contract Law still take standard labor relations as the core for legislation and institutional design. The relevant provisions on flexible employment are scattered and fragmented, which cannot well adapt to new employment forms such as platform employment and shared employment. Therefore, combined with the implementation of shared employment, the institutional design of shared employment can be further improved, its legal definition clarified, and general behavioral norms established.

Taking the most important wage system and work-related injury insurance liability as examples, shared employment shall follow the principle of "equal pay for equal work"; at the same time, the work-related injury insurance system shall be improved at the legislative level, and commercial insurance shall be encouraged to participate.

Equal pay for equal work is the basic criterion for wage distribution under the framework of labor law. No matter how the attribution of labor relations and the actual employment subject are separated, the identity of shared employment shall not be taken as a reason for differential treatment. User enterprises shall pay equal wages and related welfare benefits to shared employees with reference to the salary standards of workers in the same post, with the same labor intensity and work performance in their own units. It is strictly prohibited to covertly reduce employment costs by depressing hourly wages, deducting performance or canceling subsidies, let alone infringe workers' right to equal remuneration and oppress workers in disguised form under the excuse of new employment models.

To reduce the application risks of shared employment, in addition to social insurance, enterprises can use commercial insurance such as employer liability insurance and group accident insurance. The government can also advocate and encourage commercial insurance institutions to design and promote corresponding

commercial insurance for "shared employment". For example, Shandong Province issued the Notice on Clarifying Issues Concerning Social Insurance Payment for "Shared Employment" and its policy interpretation in June 2020, formulating a dual payment system of work-related injury insurance: "social insurance paid by the original unit + work-related injury insurance solely paid by the user enterprise" in accordance with Article 9 of the Several Provisions on the Implementation of the Social Insurance Law of the People's Republic of China. Although whether "shared employment" conforms to the "simultaneous employment" mentioned in Article 9 remains to be discussed, this regulation balances the employment risks of employee input and output enterprises and is worthy of reference.[9]

#### 4.3.2 Strengthen government supervision and form tripartite joint force

At present, there are practical problems in the field of shared employment such as lack of supervision, unclear division of supervision subjects' responsibilities, and great difficulty in identifying illegal employment. Some enterprises carry out labor dispatch and labor outsourcing in the name of shared employment, or even illegal employment without employment subject qualification. However, the supervision department lacks unified identification standards and law enforcement basis, making it difficult to achieve effective full-process constraints. Relevant departments should take the lead in formulating identification standards for shared employment, clarify the boundaries between shared employment, labor dispatch and business outsourcing, carry out special rectification and normalized inspection on illegal acts such as evading social insurance contribution, defaulting on labor remuneration, violating the rule of equal pay for equal work, and shifting work-related injury compensation liabilities to each other, and investigate the liability of involved enterprises in accordance with the law.

At the same time, the competent department should formulate standardized and standardized model texts of tripartite shared employment agreements, clarify the core clauses such as rights and obligations, work content, salary accounting, work-related injury liability distribution, on-site management authority, employment return conditions and dispute resolution channels of employee output enterprises, input enterprises and workers, for

market subjects to refer to and use for free, so as to reduce liability disputes caused by vague agreement terms from the source.

In addition, it is necessary to promote information sharing and joint law enforcement by judicial and administrative departments, smooth workers' rights protection channels such as complaints and reports, labor arbitration and judicial litigation, support public welfare legal aid services, guide workers to actively protect their own rights and interests, form a tripartite joint force of government supervision, enterprise performance and workers' rational rights protection, and realize the standardized operation of the shared employment model.

#### 4.3.3 Enterprises take the initiative to undertake social responsibilities and protect workers' legitimate rights and interests

At this stage, some enterprises participate in shared employment with the original intention of reducing employment costs and evading legal employment liabilities, ignoring the protection of workers' basic rights and interests, deviating from the original intention of mutual assistance and adjustment of shared employment and stable employment, and violating the social responsibilities that enterprises should undertake. As a flexible employment model with both market and social attributes, shared employment requires participating enterprises to abandon utilitarian and short-sighted employment thinking, place the protection of workers' rights and interests in an important position of business development and mutual assistance and cooperation, and take the initiative to perform the dual obligations of compliant employment and workers' rights protection.

Employers shall adhere to the main responsibility of labor relations, sign written labor contracts with workers in accordance with the law, truthfully inform the work scenario, liability division, salary and treatment of shared employment, pay social insurance in full and on time, not arbitrarily rescind or terminate labor relations, and take the initiative to negotiate with user enterprises and workers in the event of labor disputes. User enterprises shall strictly abide by legal obligations such as equal pay for equal work and labor safety and health protection, provide shared employees with the same working conditions, labor protection articles and rest and vacation guarantees as formal employees of their own units, standardize attendance, performance and salary payment

processes, do not implement identity discrimination and differential treatment, perform on-site safety management responsibilities, and prevent work-related injury accidents. Enterprises shall perform shared employment agreements in accordance with the principle of good faith, take the initiative to negotiate and share liabilities in the event of disputes such as salary arrears and work-related injury compensation, and put an end to acts that damage workers' rights and interests due to mutual shifting of liabilities. While realizing economic value, shared employment should give full play to its social value of stabilizing employment and ensuring people's livelihood.

## 5. Conclusion

In summary, starting from the practical development of shared employment, this paper puts forward basic views on the typification of practical models, definition of legal nature, construction of tripartite legal relations and liability undertaking rules of shared employment: as a new flexible employment form under the background of digital economy, shared employment can be divided into three practical models: direct enterprise dispatch, platform intermediary service and dual labor relations. Its legal nature should be defined from the perspective of "dual labor relations" — shared employees maintain basic labor relations with the original employer, form a virtual labor relationship with user enterprises centered on actual labor management, and the employer and user enterprises form an equal civil contract relationship; in terms of liability undertaking, the employer shall bear primary liability, the user enterprise shall bear supplementary liability, and both parties may clarify liability through agreement.

Behind the popularity of the shared employment model, systems and laws are still needed to build a solid "rights protection fence" for shared employees. To make the model develop steadily and far, continuous exploration and attempts are still needed. Regulating the legal nature and liability undertaking of shared employment is essentially to balance the relationship between flexible employment innovation and labor rights protection, and consolidate the institutional foundation of labor rule of law in the digital economy era. This process requires not only legislative bodies to improve relevant systems and clarify the boundaries of rights and

obligations, but also government departments to strengthen supervision coordination and build a comprehensive governance system; judicial organs to play a leading role in adjudication and stick to the bottom line of the rule of law; and enterprises to take the initiative to perform social responsibilities and form a joint force of co-governance. Only in this way can we effectively resolve legal disputes in the field of shared employment, curb illegal employment and liability shifting, safeguard the unity and authority of the labor legal system, lay a solid foundation for the healthy development of the flexible employment market, and provide a solid institutional guarantee for stabilizing employment and promoting development. With the continuous advancement of the construction of the rule of law, shared employment will surely realize the transformation from emergency exploration to normalized standardization, and achieve organic unity among optimizing human resource allocation, protecting workers' rights and interests, and promoting high-quality economic and social development.

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## References

- [1] Cui Can, Wang Ke. Legal Disputes, Focuses and Choices for the Protection of Labor Rights and Interests in Shared Employment. *Journal of Beijing Vocational College of Labour and Social Security*, 2024, 18(03):28-35.
- [2] Lei Jieqi. Identification of Dual Labor Relations in Shared Employment. *Journal of Shandong Normal University (Social Sciences Edition)*, 2025, 70(05):123-134. DOI:10.16456/j.cnki.1001-5973.2025.05.011.
- [3] Tian Silu. Shared Employment: The Tripartite Contract Structure in "Narrowly Defined Secondment". *Law Science*, 2022(01):143-158.
- [4] Zhu Yanqiu. Informality of Employment: Practical Defects and Regulatory Approaches of "Shared Employees". *Human Resources Development of China*, 2020, 37(12):70-80. DOI:10.16471/j.cnki.11-

- 2822/c.2020.12.006.
- [5] Qin Pingshan, Guo Hua. Dilemmas and Approaches for the Protection of Workers' Rights and Interests under the Shared Employment Model. *Journal of Hebei University of Economics and Business (Comprehensive Edition)*, 2025, 25(02):39-48. DOI:10.14178/j.cnki.issn1673-1573.2025.02.004.
- [6] Cao Yanchun. Affirmative Theory on the Establishment of Dual Labor Relations by the Labor Contract Law. *Journal of Political Science and Law*, 2006(02):66-70.
- [7] Zhao Hongmei, Jia Jie. Analysis on the Nature and Legal Relationship of Shared Employment and the Construction and Improvement of Legal System. *Journal of China University of Labor Relations*, 2021, 35(06):62-77.
- [8] Mu Suixin. The Principle of Tilted Protection in China's Labor Law: Identification, Connotation and Theoretical Basis. *Academics*, 2012(12):95-102+285.
- [9] Lin Yanqin, Lin Zhenyu. Nature Identification and Legal Regulation of Shared Employment. *China Labor*, 2020(06):53-67. DOI:10.19390/j.cnki.chinalabor.2020.06.004.