

Study on the Application of Economic Compensation for Over-aged Workers

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Abstract: As the population ages and policies promoting delayed retirement are implemented, the number of over-aged workers is increasing, and disputes between these workers and their employers are on the rise. Current laws do not clearly define labor relationships involving over-aged workers, leading to significant inconsistencies in judicial rulings for similar cases and a lack of uniform standards for economic compensation. Over-aged workers are only entitled to protections such as economic compensation and workers' economic compensation if their employment relationship is recognized as a labor relationship; the core disputes center on the characterization of the employment relationship and the application of the economic compensation system. Through literature review and case analysis, this paper explores the applicable rules for economic compensation for over-aged workers and offers corresponding recommendations.

Keywords: Over-aged Workers; Labor Relationship; Economic Compensation; Application of Law

1. Introduction

By the end of 2024, the national population aged 60 and older reached 310.31 million, accounting for 22.0% of the total population; the dependency ratio for those aged 65 and older stood at 22.8%, and life expectancy rose to 79 years. As the population continues to age, the number of over-aged workers is steadily increasing, and disputes with employers are on the rise, with disputes over the confirmation of employment relationships being particularly prominent. Currently, in judicial practice, the employment relationships of most over-aged workers are not classified as labor relationships, resulting in their inability to receive economic compensation and making it difficult to

safeguard their legitimate rights and interests. The Interim Provisions on the Protection of Basic Rights and Interests of Over-age Workers which took effect on September 1, 2025, has strengthened protections for this group to some extent, but the issue of economic compensation upon resignation remains unaddressed. Existing research has largely focused on areas such as the determination of labor relationships and work-related injury insurance, with limited discussion on economic compensation for over-aged workers. Therefore, this paper will examine the application of economic compensation for over-aged workers by interpreting recent adjustments to the legal framework and analyzing relevant case law.

1.1 Current State of Domestic Research

Analysis of judicial data shows that the number of compensation claims filed by over-aged workers is on the rise, but there are significant disparities in the outcomes of these cases. The primary reasons for this include inconsistencies in the determination of legal relationships, factors related to pension benefits, and companies exploiting loopholes in the regulations to evade their compensation obligations[1]. There is a disconnect between the current Labor Contract Law and retirement policies, and the transition period for delayed retirement has led to widespread confusion in case determinations. Consideration should be given to whether appropriate economic compensation or other safeguards should be provided, taking into account the actual needs of over-aged workers[2]. In terms of institutional application, local labor inspection agencies primarily rely on administrative mediation and social insurance compensation mechanisms to handle disputes involving the employment of over-aged workers, and there is a relative lack of dedicated enforcement pathways for economic compensation[3]. Case analyses indicate that the compensation provisions of Article 47 of the

Labor Contract Law have been excluded from application to situations involving incomplete labor relationships in a large number of judicial documents. Most scholars advocate for the establishment of a flexible protection system based on “factual labor relationships”[4]. There is divergence within the academic community on this issue: those who have already received pension benefits should not be entitled to economic compensation[5]; while those who have not received basic pension insurance should be granted separate compensation in accordance with the principle of social equity[6]. Regional disparities are particularly pronounced: courts in the eastern coastal regions often rely on “social governance coordination mechanisms” for resolution, while courts in central and western regions tend to adopt substantive criteria for determining statutory labor relationships. These differences reflect the influence of local economic structures on the application of the system[7]. Regarding issues and countermeasures, the inconsistent definition of “over-aged workers” in judicial practice leads to unstable reasoning in rulings, thereby undermining the normative function of the compensation system[8]; since economic compensation possesses social security attributes, standards should be established through unified legislation[9]; an independent re-employment agreement system should be established to balance contractual freedom with the protection of vulnerable groups; and the amount of economic compensation for over-aged workers should be comprehensively determined based on whether they are eligible for basic old-age pension benefits and the degree of fault on the part of the employer[10]. Overall, domestic research has shifted from merely discussing the application of the law to taking into account both judicial techniques and institutional functions, and an empirical foundation for legislative improvement and the evaluation of regional practices is gradually taking shape.

1.2 Current State of Research Abroad

When employees reaching retirement age are laid off due to a corporate acquisition, economic compensation and retirement benefits should be calculated based on the employee’s monthly salary and benefits[11]. Further research has found that when employment is terminated due to reaching retirement age, employers are legally required to pay pensions that include economic

compensation, bonuses, and compensation for statutory entitlements[12]. Studies indicate that regardless of whether older employees voluntarily resign or are dismissed by the company, they are eligible to receive economic compensation as early retirement benefits[13]. A study of ten European countries found that generous pension systems and strong unions increase the likelihood of older employees receiving economic compensation, as companies are more willing to offer severance to induce early retirement and promote a younger workforce; conversely, pension systems with high implicit tax burdens encourage companies to resort to direct dismissal, as they do not need to use economic compensation to persuade older employees to retire[14].

2. Challenges Faced by Over-age Workers

In September 2024, the Standing Committee of the National People’s Congress adopted the “Decision on the Implementation of a Gradual Increase in the Statutory Retirement Age,” which will gradually raise the retirement age for men to 63 and for women to 55 and 58, respectively. Consequently, the number of over-aged workers will continue to grow. However, current laws still lack a clear definition of employment relationships involving over-aged workers, leading to frequent disputes in judicial practice. This dilemma is essentially the result of legal norms lagging behind the practical needs of society.

2.1 Ambiguity and Fragmentation of Legal Bases

Article 44, Item 2 of the Labor Contract Law stipulates that “receiving basic old-age insurance benefits” is a condition for terminating a labor contract, while Article 21 of the Regulations on the Implementation of the Labor Contract Law specifies “reaching the statutory retirement age” as a ground for termination. This creates a dual standard of determination where “benefits” and “age” coexist. Article 21 of the Judicial Interpretation (II) on Labor Dispute Cases which took effect on September 1, 2025, repealed the provision in the original Judicial Interpretation I stating that “those who have already received pension benefits shall be treated as having a labor relationship.” However, it remains to be clarified whether the new interpretation implies that the determination of legal relationships is no longer influenced by the factor of pension

benefits. The determination of an labor relationship is a prerequisite for labor arbitration and directly determines whether a worker is eligible for statutory rights such as work-related injury insurance and economic compensation[15]. Due to the lack of clear legal definitions regarding the status of over-age workers, most of them are unable to obtain their rightful entitlements, such as economic compensation, in practice.

2.2 Doubts Regarding the Legal Standing of Over-age Workers

China's labor laws do not explicitly recognize the legal standing of over-aged workers. In judicial cases, more than half of the courts have held that over-aged workers lack legal standing and should not be recognized as having an labor relationship. In academic circles, there are two main theories regarding the criteria for determining a worker's legal standing: the labor relationship theory and the capacity for labor theory. The majority of scholars support the latter.

3. Current Status in Judicial Adjudication

Currently, there are still different judgment standards for this type of issue in judicial practice. In similar cases, depending on the application of the law, completely different results will be obtained. Using "over-aged workers" and "economic compensation" as keywords, search in "PKULAW" database and "Wolters Kluwer" database. The year of conclusion of the trial is 2025, and the trial procedure is limited to the second instance. In the end, there are 31 valid judgment documents that meet the research content of this article. It is mainly divided into two levels, one is the identification of employment relationship, and the other is the trial of whether over-age workers should pay economic compensation when they leave their jobs. As shown in Table 1 and Table 2.

Table 1. Employment Relationship

Viewpoint	Count	Percentage
Labor Relationship	13	42%
Labor Service Relationship	18	58%

Table 2. Judgment on Economic Compensation

Viewpoint	Count	Percentage
Support Economic Compensation	5	16%
Deny Economic Compensation	26	84%

When it comes to determining the nature of an

employment relationship, most courts tend to classify it as a labor service relationship. Regarding rulings on whether to award economic compensation, the majority of cases deny such compensation. Reasons for this include the fact that the Labor Contract Law does not apply to labor service relationships, and that over-aged workers are ineligible for pension insurance due to personal circumstances.

4. Convergence on the Application of Economic Compensation Under the Labor Contract Law

The economic compensation system, which is premised on an employment relationship, faces structural failure in the reality of employing over-aged workers: due to disputes over their legal status, over-aged workers are not classified as having a labor relationship, and thus lose their right to claim compensation even if their work process is no different from that of working-age workers. economic compensation serves a dual purpose: it provides cumulative recognition of a worker's past contributions and ensures basic livelihood support during the transition to unemployment. If an employer consistently accepts the subordinate labor of over-aged workers but then exempts itself from compensation liability upon termination by citing their legal status, it is essentially appropriating the security-related consideration inherent in those labor contributions without compensation. Therefore, a compensation mechanism should be established that functions similarly to the economic compensation provisions of the Labor Contract Law but is legally independent. The core of this mechanism lies in not making an employment relationship a prerequisite for compensation, but rather using the substantive nature of the work performed by the over-aged workers and the fact of involuntary termination as the conditions triggering legal effect.

Convergence compensation replaces the prerequisites for the labor relationship with substantive subordinate labor and withdrawal not due to the individual's will, replacing the prerequisites for the labor relationship. Substantive subordinate labor refers to the worker's working time, content, location, and method being directed and managed by the employer, economically dependent on regular remuneration from the employer, with labor results belonging to the employer, and labor

supply that is continuous and routine. When the employment facts meet the subordinate characteristics, the compensation review process can proceed. If the withdrawal is not due to the employee's own will, it includes unilateral termination of employment by the employer, dismissal without fault, failure to continue employment due to economic reasons, and situations where the employer fails to pay social insurance according to law and other faults that force the employee to terminate the employment relationship. This mechanism must not mechanically copy Articles 46 and 47 of the Labor Contract Law. In terms of applicable circumstances, if the employer unilaterally terminates the employment agreement, it may apply to terminate the labor contract or dismiss without fault in the same manner as the employer; If the employee is forced to quit due to unpaid social insurance, forced labor, etc., the termination may be treated as if the worker is forced to leave; Termination of employment due to business difficulties may be handled by analogy with the legal principles of economic layoffs, etc.

5. The Improvement Path of Economic Compensation Rights for Over-age Workers

The only difference between over-aged workers and working-age workers is that their age exceeds the legal retirement standard and their pension insurance benefits are different. There is no difference in the form of labor supply between the two. From the perspective of personality, organization and economic affiliation, over-age workers behave exactly the same as working-age workers. Therefore, their employment relationship is essentially a labor relationship, and there are particularities in social insurance rules and retirement-related provisions[16]. Therefore, this article believes that the overage employment relationship should be uniformly characterized as a "special labor relationship." This characterization recognizes the substantial similarity between overage employment and standard labor relationship, while taking into account the particularities of this group.

5.1 The Binary Structure of Applicability Requirements: Positive Conditions and Negative Exceptions

Based on the legal rationale of the "special labor relationship," a review standard independent of

Article 46 of the Labor Contract Law should be established, adopting a binary framework of "positive conditions-negative exceptions."

5.1.1 Positive requirements

The right to claim compensation must satisfy two conditions: First, the labor process must exhibit substantial subordination. The review should disregard formal labels such as the name of the agreement and revert to the criteria for determining subordination established in the "Notice on Matters Concerning the Establishment of Labor Relations"; Second, the termination of employment for over-aged workers must not be due to their own volition, including situations such as unilateral termination by the employer, dismissal without fault, and cases where they are forced to terminate the employment relationship due to the employer's failure to pay social insurance contributions in accordance with the law. Where an employer's failure to pay social insurance contributions directly results in a worker's inability to receive pension benefits, Article 38 of the Labor Contract Law may be invoked to grant them the right to terminate the employment relationship proactively and claim compensation.

5.1.2 Negative exemptions

Under specific circumstances, an employer's obligation to provide compensation may be exempted. First, cases of adequate pension coverage: Employees who have already received basic old-age insurance benefits for urban employees, and whose benefit level is no less than 60% of the average wage of employees in non-private urban units during the same period, are no longer entitled to economic compensation; however, those receiving only urban and rural residents' old-age insurance benefits should not be considered exempt, as the coverage level is far insufficient to sustain a basic standard of living. Second, cases of high-compensation substitution based on genuine mutual consent: If an employer substitutes social security benefits with remuneration significantly higher than market levels, clearly informs the employee of the legal consequences of the non-application of the economic compensation provisions under the Labor Contract Law, and the employee explicitly accepts this arrangement, the obligation to provide compensation may be waived. Such waivers are subject to strict judicial review, with a focus on verifying the fulfillment of the duty to provide clear notice and the authenticity of the employee's expression of intent.

5.2 Quantification Rules: A Declining-Rate Compensation Calculation Model

The compensation base may be determined in accordance with Article 47 of the Labor Contract Law, using the average wage for the twelve months prior to leaving employment as the benchmark, with a cap set at no more than three times the local average monthly wage for employees in the previous year. Regarding the compensation period, considering that over-aged workers typically have a shorter re-employment cycle, a declining-rate mechanism should be established: for those less than one year away from the delayed retirement age, 100% of the full compensation standard shall be paid; 80% for periods of less than two years; 60% for periods of less than three years; 40% for periods of less than four years; 20% for periods of less than five years; and no payment for periods exceeding five years, except in cases of malicious infringement by the employer. Furthermore, a clear distinction should be made between the functional boundaries of compensation and punishment. Except in cases of malicious infringement, discriminatory dismissal, and similar circumstances, the rule regarding double compensation under Article 87 of the Labor Contract Law should not be applied.

6. Conclusion

This study is limited by the small number of cases and the absence of first-instance and arbitration materials. This paper argues that the key challenge in providing economic compensation to over-aged workers lies in the uncertainty of the employment relationship and the structural failure of the compensation system under the Labor Contract Law. The proposed solution is to define the employment of over-aged workers as a “special labor relationship” and to establish a compensation mechanism that functionally aligns with the economic compensation provisions of labor law and is applicable to such workers. This mechanism is triggered by two conditions: “substantive subordinate labor” and “termination not due to the employee’s own volition.” It also introduces a “positive conditions-negative exemptions” review framework and establishes a compensation calculation model based on a decreasing percentage scale. This institutional design provides a reference for addressing the

protection gap regarding subordinate labor for over-aged workers and responds to the dual needs of rewarding labor contributions and ensuring livelihood security in an aging society.

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