

Study on the Protection of the Labor Rights and Interests of Re-employed Retirees in China

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Abstract

China is gradually becoming a population ageing society, and many retirees will return to work. However, China has not promulgated clear and systematic laws and regulations on legal issues such as protecting the labor rights and interests of re-employed retirees. Therefore, studying the protection of the labor rights and interests of re-employed retirees is essential. The legal provisions of the United States, Japan, and the United Kingdom on the protection of the labor rights and interests of re-employed retirees provide us with a good reference. In terms of the legal relationship, the re-employed retirees and employers are a special labor relationship; In terms of labor standards, the law stipulates the minimum wage rate, but the wage rate of re-employed retirees shall also be determined according to the market, and they shall have the rights of the working hour leave and labor protection; The work-related injury insurance shall be applicable to re-employed retirees; Re-employed retirees shall be treated differently in terms of their entitlement to pension insurance. Therefore, China should establish a special institution for managing retirees and databases to better protect the labor rights and interests of re-employed retirees.

Keywords: re-employment after retirement, worker, the protection of the labor rights and interests, legal protection

1. Introduction

The number of re-employed retirees is increasing year by year. However, China has not promulgated a whole system of laws and regulations on legal issues such as the legal relationship between re-employed retirees and employers, labor standards, work-related injury insurance, and pension insurance. When the labor rights and interests of re-employed retirees are infringed, it would be difficult to seek legal help. Article 7 of the *Interpretation (III) of the Supreme People's Court of Several Issues on the Application of Law in the Trial of Labor Dispute Cases* promulgated by the Supreme People's Court stipulates the handling measure. Although this article has great practical significance, such handling measures cannot protect the rights and interests of re-employed retirees. Many developed countries, such as Japan, have entered the aging society earlier than us and started to improve the laws and regulations on re-employed retirees earlier. They have formulated many policies and measures to protect the labor rights and interests of retirees in re-employment and reduce the adverse effects in the implementation process. Therefore, we should clarify the legal relationship between the re-employed retirees and employers, not arbitrarily excluding re-employed retirees from the scope of labor law but flexibly applying it to the labor law according to the particularity of the re-employed retirees. Thus, their labor rights and interests can be better protected while they are re-employed (Wang Quanxing, 2008). If the research is objective and reasonable, it can not only solve the current difficulties of social pension, but also have important practical significance for social development.

2. Overview of the Protection of the Labor Rights and Interests of Re-employed Retirees

2.1 Definition of Re-employment After Retirement

At present, the academic circles in China have not formed a clear and unified consensus on the concept of re-employment after retirement, but combined with the provisions of the current Labor Law and the current situation of society, this paper will summarize and define the two parts of retirement and re-employment, which is more conducive to protecting the labor rights and interests of re-employed retirees.

2.1.1 Concept of Retirement

Many scholars in China have their own criteria for “retirement”. Professor Wang Quanxing believes that “One of the basic forms of pension insurance for workers in China is retirement, which is a system for workers to receive certain material assistance when they withdraw from production or work and rest due to total incapacity to work, such as old age, illness or disability.” Professor Feng Yanjun believes “Retirement refers to the withdrawal of workers from the labor field for rest and recuperation when they reach the legal retirement age or meet the legal conditions due to loss of capacity to work.” Professor Xia Linzheng believes “Retirement is a social security policy for workers who are too old to receive labor compensation through labor.”

From the above views, it can be seen that although the views and emphasis of the scholars are different, they all have common points, which are shown as follows: First, the subject must be a professional worker; Second, the subject can live through a pension because he/she is over the legal retirement age or has lost the capacity to work due to illness or disability. Therefore, the author believes that retirement is a social security system in which workers who have exceeded the legal retirement age or lost their capacity to work due to illness or disability, can stop working but still receive a living wage according to the labor laws and regulations (Feng Yanjun, 1999).

2.1.2 Concept of Re-employment

Re-employment means that a job is available again, while employment means that working age workers engage in activities for compensation. It can be concluded that if workers want to be re-employed, they need to (1) have the capacity to work and voluntarily engage in labor activities; (2) engage in social work; (3) get the corresponding compensation and benefits through labor activities, not free labor.

To sum up, the definition of re-employed retirees is: workers who are over the legal retirement age but still have a certain work ability and choose to work again on a voluntary basis to receive labor compensation and benefits through labor.

2.2 Necessity of Re-employment After Retirement and its Protection of the Labor Rights and Interests

According to the changes in China’s natural population growth rate, we know that China may have a severe labor shortage in a few years. To eliminate this hidden danger, measures should be taken in two aspects: First, implement a delayed retirement policy. At present, *the progressively raising the retirement age schedule* has not been officially implemented, but China will strictly take small steps to raise the retirement age. It will also implement its flexibility, tailor policies for different groups, consider all factors, and make overall plans. Second, improve the re-employment after retirement mechanism and encourage re-employment. However, there are few provisions on retirees in China’s current labor law and relevant laws and regulations. Therefore, it is urgent to study the protection of the labor rights and interests of re-employed retirees.

Regarding society, China currently implements a three-child policy rather than family planning. This is due to the fact that China is aging more and more each year, and with it, the young labor. But the reality is that there are many retirees who need to get pension and medical insurance benefits, which is not conducive to social development, but will significantly increase the pension pressure on young people and society, making the phenomenon of population aging more serious. Therefore, the re-employed retirees can, to a certain extent, reduce the family burden of young people and reduce the social burden. In addition, re-employed retirees are one of the new forms of employment in China, which will also become more and more common (Shang Qinsheng, 2019). However, due to the lack of labor law legislation, the re-employed retirees cannot get good labor protection, which is not conducive to society’s stable development and harmony.

For individuals, the resources and work experience accumulated by retirees during their working life are incomparable to those of young people. Suppose the labor rights and interests of retirees can be well protected. In that case, it will dispel their worries about re-employment, stimulate their enthusiasm to devote themselves to social work again, meet the needs of employers, reduce the burden of the population ageing society, and realize their own value.

3. Problems in the Protection of the Labor Rights and Interests of Re-employed Retirees in China

3.1 Labor Standards

According to the provisions of the judicial interpretation, the relationship between employers and re-employed retirees who have already got pension insurance benefits in China is a labor relationship. Re-employed retirees

will not be protected by the labor law and labor standards in the process of labor, which is very unfavorable for them. However, if they are in a special labor relationship, it is reasonable for re-employed retirees to be protected by the labor law and labor standards, and the relevant provisions of the labor standards can be applied. Since re-employed retirees have special characteristics compared with ordinary workers, the standard of labor standards shall also have special characteristics.

Equal pay for equal work is mainly to ensure that workers are not discriminated against by employers and ordinary workers. Some people think that re-employed retirees should not have the right, but it is their legal right to be paid for their work, just like ordinary workers. Most re-employed retirees think they are in a disadvantaged position and older and should not have the same compensation as ordinary workers. Employers will also take this reason to reduce the compensation of re-employed retirees and squeeze their labor, thus reducing their employment costs.

3.2 Pension Insurance

Many people think that retirees should not have the new pension insurance under the premise that the original employer had already issued pension insurance, which actually deprives retirees of their lawful rights and interests. Many regulations now also indicate that there is a contradiction between pension insurance benefits and re-employed retirees, and employers are unwilling to protect the pension rights and interests of re-employed retirees.

According to Article 45 of the *Constitution of the People's Republic of China*, the existence of endowment insurance security is to provide basic living security for people with low working capacity, which can be seen as social security. Labor rights and interests also pay for their labor, belong to the subordinate relationship with the employer, and are not compulsory labor or get something for nothing. Therefore, pension insurance is essential protection for their labor rights and interests when the conditions are met (Ma Bingran, 2020).

3.3 Work-related Injury Insurance

First, because re-employed retirees are affected by their age, they will be more likely to incur work-related injuries, and the need for work-related injury insurance is more urgent. As a result, when the courts in various places try cases of work-related injuries, because there are no explicit legislative provisions, the legal quality of judges varies, and to a certain extent, it will be based on subjective judgment, which may lead to different judgment results in similar cases.

Second, according to the laws and regulations in China, whether he/she is an ordinary worker or a re-employed retiree, the process between a worker incurring a work-related injury and obtaining the work-related injury compensation is very complicated. The process, from the determination of work-related injuries, acceptance, labor arbitration, identification, and compensation litigation to implementation, requires much effort. This is unfriendly to most older re-employed retirees, and it is easy for them to retreat from difficulties and give up defending their rights and interests.

Finally, due to the lack and ambiguities of existing laws, most of the re-employed retirees protect their rights and interests in work-related injuries by civil means. However, civil law mainly seeks to be fair. It is unfair for workers to put both in the same position. One is that civil law advocates the principle of "who advocated that who presents evidence". When re-employed retirees are injured at work, the burden of proof falls on them. Even ordinary workers have great difficulties presenting evidence, let alone workers of higher age, so it is difficult to defend their lawful rights and interests. The other is that if the worker presents evidence successful, but the employer refuses to perform in the implementation process, or the employer is willing to perform but is unable to do so, the adverse consequences will still be borne by the injured re-employed retirees, then such Civil Remedy will be contrary to the original intention and greatly reduced.

4. Legislative Proposals to Improve the Protection of the Labor Rights and Interests of Re-employed Retirees in China

In China, the protection of the labor rights and interests of re-employed retirees is very vague in legislation, which should be improved in the following aspects.

4.1 Regulate the Labor Standards of Re-employed Retirees

It has vague provisions on the labor standards of re-employed retirees in the *Labor Law of the People's Republic of China*, and it is not feasible in practice.

First, re-employed retirees have longer working hours and work experience than younger people, making their job skills and status higher than those of ordinary workers. In terms of compensation, factors such as skill level, knowledge, and cultural level should be considered. Therefore, the wage rate for re-employed retirees should be in accordance with the general labor law on the one hand but should be adjusted appropriately considering their special status.

Second, it is reasonable that each enterprise plays a different role in the market economy, and different working regions, the enterprise and types of work can also lead to inconsistent wage. The economic development level of each province in China is inconsistent, so the wage level varies from the region, the punishment degree for violating the minimum wage is entirely different, and the number and standard of workers employed in the labor market are entirely different (Xia Linzheng, 2010).

The author believes that establishing the minimum wage rate is of great significance in protecting workers' remuneration rights, and re-employed retirees should be included in the protection of the minimum wage rate. Therefore, for different regions, when setting the minimum wage, the different backgrounds and living conditions of re-employed retirees can be taken into account, and the wage level can be adjusted according to the actual economic situation of the region within the stipulation of the law. At the same time, it is necessary to strictly stipulate the applicable standards of equal pay for equal work to ensure feasibility. It is confirmed that when the enterprise and types of work are the same or similar, then the same wage rate will be adopted; when the workers all achieve the same results, the wage rate should also be the same.

4.2 Protect the Pension Insurance Rights and Interests of Re-employed Retirees

One type of pension insurance is for those who have reached the legal retirement age but are not yet entitled. The other type is for those who are entitled but have chosen to re-employment. The first case is easier to solve, because the previous article identifies the re-employed retirees as labor relations. If the employer does not pay pension insurance for the retirees, they can defend their lawful rights and interests.

However, there is a controversy as to whether a person who is already entitled to pension benefits can also be entitled to a pension and receive compensation simultaneously. According to the *Social Insurance Law of the People's Republic of China*, the author believes that if retirees continue to pay pension insurance when they are re-employed, this is possible to implement and conducive to reducing the burden of social pension. On the other hand, some scholars believe that the population ageing society is becoming increasingly serious, and the burden on families and social pensions is also increasing. Re-employed retirees with labor entitle to both labor compensation and social insurance treatment, which is a duplication of protection. It is unfair and easy to confuse. The voice of delayed retirement has arisen in recent years due to the increasing pressure on pensions.

Regardless of which doctrine is adopted, we should at least clarify that it is workers' lawful rights and interests to entitled pension insurance benefits. Re-employed retirees have been identified as workers, so labor compensation and pension insurance are two completely different kinds of living security, and there is no conflict between them. Those entitled to retirement benefits can not be forced to participate in pension insurance, and the re-employed retirees can make their own choices. In this way, for retirees, they have more freedom to make their own choices and reduce the burden on society. However, it should be clear that workers reaching retirement age are entitled to pension benefits, and do not lose their qualifications as workers. If employers withhold the "double compensation" of retirees for this reason, it has constituted infringement.

4.3 Protect the Rights and Interests of Re-employed Retirees in Work-related Injury Insurances

Re-employed retirees are entitled to work-related injury insurance benefits, but they are also at higher risk of injury at work than ordinary workers because of their age and health. If the work-related injury rate consistent with that of working age workers is adopted, it will increase the burden of work-related injury insurance institutions and will be unfair to ordinary workers. Meanwhile, it will increase the employment costs of enterprises, so that they won't choose to hire retirees (Li Sujiao, 2018).

Therefore, China should consider the situation of employers in different industries and regions concerning the payment of work injury insurance. The particularity of re-employed retirees is one of the conditions to be considered in the payment of work-related injury insurance. This requires the state to invest funds, understand the nature and intensity of different jobs and the probability of work-related injuries, and formulate scientific work-related injury insurance rates for re-employed retirees. At the same time, for some high-risk jobs, whether the re-employed retirees are suitable for this job is determined according to their risk degree, and some elderly workers are limited to engage in some high-risk jobs.

5. Conclusion

The discussion of re-employment after retirement is tricky and involves many aspects that are not easy to articulate. However, the author hopes that the analysis in this article will bring more public attention to the issue of how to protect the lawful rights and interests of re-employed retirees as a vulnerable group, which requires public participation and understanding. As the economic market becomes sounder, the relevant labor legal system will also be gradually improved in China. The author believes that we can also better protect the labor rights and interests of re-employed retirees.

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