

Legal Risks and Preventive Countermeasures of the “Shared Labor” Model

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Abstract

Shared Labor is on the rise in China since the epidemic. Due to the lack of uniform applicable standards and legal norms, under the principle of “the original labor relationship remains unchanged”, flexible innovation is carried out in combination with practical needs, and the following characteristics are presented in the short-term exploration: complicated and diversified modes of labor employment; dual subjects of labor employment; the coexistence of traditional typical and atypical labor; and sharing of platforms. The trend of on-line labor employment is prominent. Shared labor is a new type of employment pattern spawned by the new Crown Pneumonia epidemic, which faces the short board of unclear legal application, leading to legal risks and litigation hazards in practice. In practice, there are two basic legal risks, one is the risk of identifying the type of employment; the other is the risk of identifying the legal relationship. This also extends to secondary legal risks, involving work injury insurance treatment, change of labor relationship, employee return and labor contract termination, employment discrimination, administrative liability and many other issues. Therefore, this paper summarizes the three major modes of labor sharing, i.e., B2B mode, BPC mode, and B2C mode, and proposes preventive countermeasures after analyzing their legal risks.

Keywords: shared labor, legal risk, preventive countermeasures

1. Introduction

Since the outbreak of COVID-19 in 2020, stabilizing the economy and protecting people’s livelihoods have become the common orientation of the policies of various countries. China has developed “shared labor” in practice, which can respond to the imbalance of labor supply and demand in special periods, allowing employees to move temporarily between enterprises, and realizing the redistribution of human resources through the independent agreement between enterprises to transfer the surplus and shortages of employees. This practice not only helped enterprises out of their difficulties in a timely manner, but also prevented a large number of workers from becoming unemployed during the epidemic. For this new type of employment pattern, while encouraging its development, it is also necessary to study and prevent its potential legal risks in advance, which is conducive to avoiding new labor disputes. At the same time, in the promotion of shared labor, should be coordinated with the government, labor administration, grass-roots social organizations, labor and enterprises and other multi-party main body to promote common governance and sharing of social governance pattern, enhance the level of comprehensive social governance.

2. Basic Mode of Shared Employment

2.1 Origin and Policy Support of “Shared Labor”

2.1.1 “Shared Labor” Originated from the Cooperation and Self-Help Between Online E-Commerce and Offline Real Economy

The concept of “Shared Labor” originated from the COVID-19 period, when Hema and Yunhaiyao and other

enterprises cooperated to hire employees temporarily closed in catering, hotel, cinema and other industries to “Shared Labor”. Affected by the epidemic, online and offline business operations show two worlds of fire and ice, the offline physical industry is facing difficulties in resuming work and production, however, the booming development of the “Internet +” economy makes a large number of e-commerce, network platforms, a substantial increase in the demand for labor. The emergence of labor sharing has effectively adjusted the uneven employment among enterprises, which can achieve a win-win situation for employees and enterprises, and help a large number of micro-enterprises to tide over the difficulties during the epidemic.

2.1.2 Timely Policies of “Shared Labor”

The State Council has paid timely attention to the effective help of labor sharing to enterprises in resuming work and production, and has supported the development of labor sharing. First, the State Council made a decision on March 17, 2020 to “support the development of shared labor and employment security platforms” to develop new forms of employment. The second is to increase social security for flexible and platform employment, and to establish an institutionalized and regularized communication and coordination mechanism. The Implementing Opinions of the General Office of the State Council on Strengthening Measures to Stabilize Employment in Response to the Impact of the New Crown Pneumonia Epidemic proposes to “support multi-channel flexible employment. Guide platform enterprises to relax entry conditions, reduce management service fees, and establish an institutionalized, regular communication and coordination mechanism with platform employment personnel regarding labor compensation, working hours, labor protection, etc.” Third, relevant policies and regulations have been issued to provide policy support and guidance. On September 30, 2020, the General Office of the Ministry of Human Resources and Social Security issued the Circular on Improving the Guidance and Services for Shared Employment, affirming that shared employment plays a positive role in resolving the contradiction between surplus and shortage of labor, enhancing the efficiency of human resource allocation and stabilizing employment, and requiring human resources and social security departments at all levels to take into account the actual situation of their localities, and to take effective measures to strengthen the guidance and services for enterprises to carry out shared employment. It requires human resources and social security departments at all levels to take effective measures to strengthen guidance and services for enterprises to carry out labor sharing in the light of local conditions, and guide the healthy development of labor sharing.

Under the guidance of the national policy, Chinese provinces and cities have also issued policy documents, practicing the transfer of labor surplus and shortage in their own regions, and taking various measures to promote “shared labor”. For example, the Shenzhen Human Resources and Social Security Bureau has issued the “Notice on Carrying Out the Work of Transferring Labor Shortages in Enterprises”, Yiwu Municipality has issued the “Notice on Carrying Out the Work of Transferring Labor Shortages in Enterprises during the Epidemic”, and Anhui Province has issued the “Notice on Comprehensively Promoting the Work of Transferring Labor Shortages in the Area of Sharing Employees”.

2.2 The Performance of “Shared Labor” in Practice

2.2.1 Practical Modes of Promoting “Shared Employment” in Various Places

“The softening of employment, the expansion of atypical employment, and the diversification of labor supply and demand systems are common phenomena of changes in the employment system in countries around the world.” The outbreak of the 2020 New Crown Epidemic has contributed to the development of atypical employment in China. Since the promotion of shared labor, it has blossomed in various regions and industries in China. In this paper, we mainly sort out representative practical explorations and summarize the following three performance modes¹:

a. B2B Model: Employee Loan Agreement + Labor Contract Change Agreement

This type of model enters into an employee loan agreement through mutual cooperation between companies. At the same time, the original employer signs labor contract change agreements with its own employees. Typical representatives: Shenzhen City, Anhui Province, the introduction of special regulations, Yiwu City, Zhejiang Province, to carry out such practices.

b. BPC Model: Building a labor sharing platform, online labor surplus and shortage transferring

This model refers to “the government or organizations, commercial institutions in a certain region to set up a staff sharing platform, the establishment of a shared employee pool, employees to join the manpower reserve pool, the employer through the platform from the pool of independent selection of shared employees.”²

c. B2C Model: Social enterprise and enterprise-enterprise cooperation to maximize the absorption of various types of labor force

This model refers to the direct connection between borrowed enterprises and idle employees, and the realization of mutual assistance in employment and the transfer of surplus and shortage through community leadership. For

example, Dezhou City, Shandong Province, in the social enterprises, enterprises and enterprises to share employees to make a large circle of friends can be recruited within a short period of time to protect the needs of enterprises. In Dongguan City, Guangdong Province, the human resources and social services department guides enterprises to solve the problem of uneven employment during special periods through three flexible ways of employment, such as mutual aid, transfer of surplus and shortage, and part-time employment.

2.2.2 New Features of “Shared Labor” in Practice

First, the employment mode is complicated and diverse. In practice, there are three modes: B2B, BPC and B2C, which correspond to the cooperation between enterprises for secondment of labor; the construction of labor-sharing platforms between the government or enterprises to help enterprises recruit all kinds of idle workers; and the cooperation between enterprises and communities and industrial parks to recruit laborers, labor outsourcing, part-time workers and so on in a multi-pronged manner.

Secondly, it presents dual labor-using subjects. In order to stabilize jobs and enterprises and protect employees' economic income in shared employment, laborers can take short-term jobs in other enterprises while maintaining employment relationships with their original employers. In the past, full-time workers only served one employer, but shared labor breaks through the traditional employment model and presents a dual employment subject.

Thirdly, traditional typical labor and atypical labor coexist as one. Shared employment does not change the labor relationship between the original employer and the worker, and on this basis, it absorbs and accommodates all kinds of flexible forms of employment, such as platform online labor, labor outsourcing, part-time employment and so on. The coexistence of typical and atypical labor relations has been formed.

Fourthly, the trend of platform sharing and online labor employment is prominent. Local governments and enterprises have made efforts to build various types of labor-sharing platforms, and some Internet and IT industries have boldly attempted to launch online labor platforms. These platforms and online employment models provide information resource sharing and cooperation mechanisms for both employers and employees, which are conducive to integrating human resources and realizing efficient and effective redistribution of resources.

3. The Analysis of the Legal Relationship Between Different Modes of “Shared Labor”

3.1 B2B Mode

This mode is the main form of labor sharing. The legal relationship of this type of mode is manifested as follows:

1) It involves tripartite subjects, the worker, the employer (lending unit), and the employing unit (borrowing unit); 2) In the mode of borrowing, through the conclusion of a civil borrowing agreement between the employing unit and the employing unit; 3) Changes to the labor contract of the worker and the original employing unit, involving the content of the work, the working hours, the location, and the time of the borrowed time as agreed in the original labor contract, the related management authority and rights and obligations.

3.2 BPC and B2C Models

The BPC model is mainly through the government and other organizations to build a third-party platform as a medium to promote the docking of labor and management, enterprises and employees to establish a new employment relationship, and the B2C model by the direct communication between labor and management to reach an employment agreement. In these two types of employment models, there are two legal subjects, i.e., the laborer and the new employer. Meanwhile, since the original employer is not directly involved, the labor relationship between the worker and the original employer remains unchanged. Under the BPC and B2C modes, the type of legal relationship between the worker and the new employer needs to be analyzed according to the selected form of employment and the content of the employment, and there are mainly the following forms of employment and the corresponding legal relationship: first, providing labor services, which constitutes a labor relationship; second, part-time employment, which constitutes a part-time employment; third, part-time employment, which constitutes a part-time employment. First, the provision of labor services, forming a labor relationship; second, part-time employment, constituting a part-time employment relationship; third, the formation of a new de facto labor relationship.

4. Legal Risks of Different Modes of Labor Sharing

4.1 Main Risk I: The Risk of Identifying the Type of Employment

4.1.1 Confusion over the Identification of “Labor Dispatch-Like” and “Seconded Labor” in the B2B Model

The B2B model is similar to labor dispatch, but from the purpose of establishment, labor dispatch is a means of exporting human resources for profit, while “labor sharing” is a response to alleviate the pressure of enterprise operation. From the establishment conditions, labor dispatch needs to apply for administrative license according to the law, and there are requirements for registered capital. Labor sharing does not require administrative

approval or registered capital. In practice, “shared labor” is prohibited from engaging in the labor dispatch business. The Ministry of Human Resources and Social Security (MOHRSS) “Authoritative Answers to Questions on Labor Employment, Labor Relationships, Wages, Social Security Contributions and Other Issues in the Resumption of Work and Resumption of Production” clearly points out that “the original employing unit shall not lend employees for profit-making purposes, and shall not carry out unlawful labor dispatch under the name of ‘labor sharing’ to avoid the responsibility of employing employees.” The B2B model contains seconded labor. Secondment refers to “a legal relationship in which an employer second an employee to another employer for a certain period of time, and the employee accepts his/her instructions during the period of time, which is usually found in affiliated enterprises.” In the B2B model of labor sharing, two companies sign an employee loan agreement, which is essentially a loan of labor. Therefore, the B2B model tends to be more of a secondment labor relationship in practice. At present, in judicial practice, the court will generally recognize the secondment of labor as a labor relationship.³

4.1.2 BPC Mode and B2C Mode Have the Risk of Confusing Multiple Forms of Employment

BPC mode and B2C mode are inclusive of part-time employment, contracting, labor outsourcing and other forms of employment, which are easy to be confused with full-time employment that has formed a de facto labor relationship. Firstly, BPC and B2C models absorb part-time employment, which is mainly manifested as part-time employment. Secondly, these two types of models embrace forms such as contracting and labor outsourcing. Due to the complexity and variety of employment types, if the agreement between the laborer and the enterprise is unclear or even not in writing, it is easy to create the risk of determining the employment type and the potential danger of litigation.

4.2 Main Risk II: The Risk of Legal Relationship Determination

4.2.1 Legal Relationship Identification Risk of B2B Mode — Dual Employer Dispute

First, the existence of a one-fold labor relationship. That is, only the original employer and the workers constitute a labor relationship. In this regard, the following doctrines exist: First, the right to claim payment for labor is ceded. The lending unit will be their own labor claim on the laborers, through the labor loan agreement to the new employer, so the borrowing unit based on the right to direct the borrowed laborers to work, and accept the borrowed laborers of labor payment. Second, the two-tier relationship. That is, the borrowed employees and the lending unit to form a combination of the means of production, just the existence of two levels of the employing unit. This view is that the unit of labor (borrowing unit) for the employer, the unit of labor will be part of the employer’s obligations entrusted to the labor lending unit, thus forming two levels of employer responsibility. Third, the true altruism theory. The nature of borrowing employees is consistent with a true contract for the benefit of a third party. Employers will be sent to the borrower under the agreement to borrow employees, borrowed employees under the management of the borrower to pay the borrower labor, borrowing agreement is a truly altruistic labor contract.⁴⁵⁶⁷

Second, the existence of dual labor relations. First, quasi-dual labor relations. That is, this kind of mode for the superposition of double special labor relations constitute a complete labor relations, two employers to labor law obligations, and in the Chinese academy also known as quasi-dual labor relations. Second, the joint employer. This theory originates from the practice in the U.S. legislation and justice, “When two or more employers exercise ‘significant control’ over the same employees, and this indicates that the employers share or jointly determine the terms or conditions of employment, the two employers will constitute a joint employer.”

4.2.2 Risks of Identifying Legal Relationships in the BPC and B2C Models-Disputes over the Identification of Labor Relationships and Labor Service Relationships

BPC mode and B2C mode embrace a large number of atypical labor relations, and at the same time absorb contracting, labor outsourcing and other civil legal relations in the field of employment, so in the full use of multi-pronged flexible employment channels, it is easy to cause several types of employment legal relationship confusion. At present, China’s definition of the employment relationship exists in the dichotomy of labor relations and non-labor relations, for the typical labor relations, part-time labor relations, de facto labor relations are protected and adjusted by the labor law, while the outsourcing of labor services, contracting is mainly regulated and adjusted by the Civil Code. In labor outsourcing there is also a tripartite relationship, but the actual employer as the contracting unit and the receiving unit are in a contractual relationship, the contracting unit does not bear employer responsibility for the workers, and the risks of employment of the workers are borne by the receiving unit.

4.3 Sub-Risks

4.3.1 Sub-Risk I: Risk of Employer Responsibility Determination

a. Issue 1: Confusion over the determination of the unit responsible for workers’ compensation insurance. What

kind of legal relationship corresponds to the complex and diverse types of employment under the shared labor model requires accurate identification on a case-by-case basis. Currently, the liability of employees injured at work is divided into no-fault liability for workers' compensation insurance under labor relations, and joint and several liability for employers under labor relations. In the shared labor model, three types of legal relationships may be formed after the laborer enters into an employment relationship with a new employer. First, a "labor + service relationship" may be formed, such as when the contributing unit is not the same as the unit where the accident occurs, it is difficult to recognize it as a work-related injury in practice, leading to the risk of difficulty in enjoying work-related injury insurance treatment. Secondly, it is possible to form a "dual labor relationship", according to Article 3(1) of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases on Work-Related Injury Insurance, "The employee establishes a labor relationship with two or more units, and the unit for which the employee works at the time of the accident is the unit that bears the responsibility for work-related injury insurance". When a work-related accident occurs, the unit for which the employee works shall be the unit responsible for work-related injury insurance. Therefore, the new employer should take the responsibility of purchasing work-related injury insurance for the borrowed employee, or face the risk of compensation for the responsibility of work-related accidents. Thirdly, it is possible to form a "labor + secondment employment relationship", according to Article 74 of the former Ministry of Labor's "Opinions on the Implementation of Several Issues of the Labor Law of the People's Republic of China" (Ministry of Labor [1995] No. 309), which stipulates that: "Surplus workers of the enterprise, people on long leave, people on long sick leave, those on loan and those attending school with pay, their social insurance premiums shall continue to be paid by their original units and individuals in accordance with the regulations." According to Article 43(2) of the Regulations of the People's Republic of China on Work-Related Injury Insurance (Revised in 2010), "If an employee is injured in a work-related accident during the period in which he or she is seconded, the original employer shall bear the responsibility for the work-related injury insurance; however, the original employer and the seconded unit may agree on a method for compensating the employee." Therefore, if an employee is injured in a work-related accident during the period of being seconded, the original employer shall bear the responsibility of work-related injury insurance, and this type of issue mainly involves the agreement on the allocation of compensation liability for work-related accidents in the employee secondment agreement signed between two enterprises under the B2B model.

b. Issue 2: Whether the compensation for work-related injuries of shared laborers can choose the double compensation of "work-related injuries + civil". China's third-party tort compensation for work-related injuries, work-related injuries insurance benefits and civil tort compensation to take the mode of both. So in the "labor relations + labor relations" mode, when the injury occurs, can the third party borrowed unit as a third party tort, so as to bring the "tort + work injury" double compensation? Due to the current shortcomings in the application of the law, standing in the labor law focuses on the protection of workers'⁸ rights and interests of the perspective, when the sharing of labor disputes over the treatment of work-related injuries, the lending employee and the borrowing unit or the labor unit as a third party in tort as a third party in tort as a work-related injuries and torts after the occurrence of another path of redress, is conducive to preventing borrowing enterprises from evading the responsibility of the employer, but in the application of the law whether it is feasible, is still need to discuss and clarify the theoretical and judicial practice. However, whether it is feasible in the application of the law, it still needs to be clarified in the theory and judicial practice in the specific discussion.

4.3.2 Sub-Risk II: Risks of Change and Termination of Labor Contracts

a. Issue 1: Confusion over the determination of the non-uniformity of the form of change of labor contract. In practice, a large number of idle workers may not be able to return to their original units in time to work due to the epidemic, or the enterprises are in a state of suspension, resulting in a lack of realistic conditions for direct change of the labor contract between the employees and their original employers, so the following problems may arise in practice. First, the B2B model of the employee loan agreement between enterprises can be used as the basis for the change of the original labor contract. Secondly, whether the original employer's direct notification of the new labor location and job position to the employee by SMS, email, etc. can be used as the basis for the change of the original labor contract. Thirdly, whether the newly concluded employment agreement can be used as the basis for the actual occurrence of the change, and if the part-time employment has concluded an oral agreement, it will also increase the difficulty of identification in practice.

b. Issue 2: The risk of joint and several liability for recruiting employees who have not yet terminated their labor contracts, and importing the enterprise. If an employer recruits workers who have not yet terminated their labor contracts with other employers or terminated their labor contracts, and causes losses to the other employers, it shall be jointly and severally liable for compensation. In the BPC and B2C shared labor model, the importing enterprise faces the risk of newly recruited employees, who intentionally conceal the fact that they have a labor relationship with the original employer and run for short-term jobs. For the B2B model, the borrowing contract on how to agree on the compensation for joint and several liability, there is ⁹a potential legal risk for the

importing enterprise.

c. Issue 3: The dissolution of the shared labor relationship and the return of employees. Whether the lending enterprise can exercise its unilateral right to terminate the employment relationship because the lending employee has been in serious dereliction of duty at the borrowing unit and has violated the rules and regulations of the borrowing enterprise. There is a dispute over the application of the law as to whether a worker can be unilaterally terminated in accordance with this clause after the lending company has assumed joint and several liability for damages caused by the worker's gross negligence at the lending company. There are two ways to return a loaned employee. First, the direct return, in the "labor relations + labor relations", if the party providing the labor service can not complete the labor service as agreed, the labor relationship can be terminated. The second is the recall system. In the B2B model, the borrowing company cannot arbitrarily return the shared employee without a valid reason. Otherwise, according to the loan agreement arbitrarily return may constitute a risk of breach of contract.

4.3.3 Sub-Risk III: Legal Risk of Illegal Labor Dispatch in the Name of Labor Sharing

Although the Ministry of Human Resources and Social Security has clearly stated that illegal labor dispatch shall not be carried out in the name of 'labor sharing' in order to avoid the responsibility of employing workers, once it constitutes illegal labor dispatch, it will lead to the possibility that the borrowing agreement signed between the enterprises will be deemed invalid. The type of legal relationship between the worker and the new employer needs to be analyzed in light of the actual operation of the situation, whether it is labor dispatch or the formation of the labor relationship.

4.3.4 Sub-Risk IV: Discrimination in Employment

a. Issue 1: Risk of lack of legal protection for workers in areas hardest hit by the epidemic and newly cured patients facing employment discrimination. Currently, the Guiding Opinions on Several Issues Concerning the Proper Trial of Civil Cases Involving the New Crown Pneumonia Epidemic in accordance with the Law (I) clearly stipulates that "if an employer claims to terminate the labor relationship solely on the basis that the laborer is a confirmed patient of the New Crown Pneumonia, suspected patient of the New Crown Pneumonia, asymptomatic patient of the New Crown Pneumonia, asymptomatic patient of the New Crown Pneumonia, a person who has been quarantined under the law, or a laborer who comes from the region where the epidemic is relatively serious, the People's Court will not support." However, the sharing of labor is aimed at workers' second chance to choose labor in the original labor relationship, and there is a lack of legal protection as to whether or not the abovementioned workers are exempted from differential treatment due to the epidemic.

b. Issue 2: Equal labor rights for borrowed employees, including equal pay for equal work. Equal and non-discriminatory treatment in the employment process is the key to the sustainability of the labor sharing model. Borrowed employees are faced with the issue of whether there are differences in wages and salaries, working hours, education and training, rest and vacation, etc., compared to regular employees. As the judicial solution for anti-discrimination in employment is not yet perfect, there is a legal risk for workers to seek judicial remedy against employment discrimination.

5. Preventive Countermeasures for the Legal Risks of "Shared Labor"

5.1 Strengthening the Forward-Looking Guidance of Judicial Policy

Further improving the judicial policy guidance for labor dispute cases involving "labor sharing", providing forward-looking policy guidance and support, and providing a policy basis for the proper adjudication of "labor sharing" cases in accordance with the law, which is conducive to the maintenance of the social and economic order, and the maintenance of social justice. Social justice is upheld.

5.1.1 Giving Full Play to the Role of Judicial Services and Guarantees

In adjudicating labor dispute cases involving "labor sharing," courts at all levels are encouraged to give full play to the role of the judiciary in regulating social relations, actively participate in the governance of the source of litigation, and give full play to the joint mediation and one-stop diversified dispute resolution mechanism, guiding the parties to negotiate and settle the case at shared risk, and striving to nip conflicts in the bud and resolve them at the grassroots level.

5.1.2 Accurately Applying the Law and Balancing the Interests of Various Parties

In the process of hearing civil cases involving "shared employment", the law is applied accurately according to the specific circumstances of the case, and pre-litigation mediation, multi-party talks and other means are fully utilized to protect the lawful rights and interests of the parties, balance the relationship between the private law rights of autonomy of the civil subject and the public law safeguards for the protection of the rights and interests of the workers, and realize the unity of the legal effect and the social effect. The law is also being harmonized with the social effects.

5.1.3 Ensuring Uniformity in the Application of Laws and Strengthening Guidance and Supervision

As the implementation of “shared labor” has resulted in different models in different places, and even in the formation of certain local characteristics, it is necessary to ensure the uniformity of the application of the law in the trial of cases, and to prevent the emergence of new contradictions and disputes in the judicial trial activities. Higher-level people’s courts should strengthen their guidance to lower-level people’s courts through the issuance of typical cases, etc., to ensure the uniformity of adjudication standards for various modes of labor sharing. People’s courts at all levels should strengthen their guidance and supervision of civil trials of “shared labor” cases, and give full play to the role of professional judges’ conferences and trial committees. For cases that are difficult, complex, involve significant public opinion, or have a major social impact, the courts will promptly adopt supervision mechanisms such as the “four categories of cases” and supervision by the presiding judge.

5.2 Clarifying the Application of Laws and Enhancing Judicial Prevention

The potential legal shortcomings of “labor sharing” have led to many legal risks. In order to avoid disputes over the application of laws, it is recommended that the application of laws be clarified in the following aspects, so as to provide effective judicial advice for all parties to prevent the legal risks of “labor sharing”.

5.2.1 Clarify the Legal Relationship Formed by Different Types of Labor Under Various Modes

First, There are four main forms of employment under the B2B model. As the labor relationship between the worker and the original employer does not change under the B2B model, the old and new legal relationships coexist. At the same time, the B2B mode includes secondment, labor service and part-time employment, and if the worker and the new employer meet the constitutive elements of the de facto labor relationship, then it constitutes labor employment and forms a de facto labor relationship.

Second, BPC mode and B2C mode also include labor service employment, part-time employment and de facto labor relationship other than secondment, thus forming the coexistence of old and new legal relationships. Among them, the fact that these two types of model and legal relationship determination of the part of the difficulty lies in the determination of the de facto labor relations, in the litigation is easy to produce labor relations or labor relations of the determination of the differences, therefore, in practice, it is recommended to try to avoid de facto labor relations, and explicitly signed a labor contract. If you want to conclude a labor relationship try to choose part-time day labor and enter into a written contract to reduce legal risks.

5.2.2 Clarify the Rights and Responsibilities of the Main Body Responsible for Work-Related Injury Insurance, and Introduce Commercial Insurance to Enhance Protection

The difficulty in determining the main body responsible for work-related injury insurance lies in the coexistence of dual legal relationships of labor and service. Due to the different legal systems applicable to the two types of situations, it is easy to produce the phenomenon of old and new employers shirking their responsibilities.

First of all, in the secondment of labor, if the employee is injured in a work-related accident during the secondment period, the original employer shall bear the responsibility of work-related injury insurance, therefore, it is necessary to clarify the contents of the civil loan agreement, firstly, the original employer shall continue to bear the responsibility of work-related injury insurance during the secondment period; secondly, in order to avoid the inconsistency between the contribution unit and the unit in which the accident occurs, the contribution to the work-related injury insurance shall be firstly advanced by the actual employer, and the purchasing side shall be the employer, and the responsibility shall be the original employer; thirdly, the original employer and the seconded unit shall agree on the compensation method in the loan agreement. The purchasing party is the employing unit and the responsible party is the original employing unit; fourthly, if an employee is injured in a work-related accident during the period of being seconded, the original employing unit and the seconded unit need to agree on the compensation method in the secondment agreement.

Secondly, in the case of providing labor services, in order to avoid the occurrence of work-related injuries in which the contributing unit and the actual employing unit are not the same, making it difficult to enjoy work-related injury insurance, it is recommended that the new employing unit purchase work-related injury insurance for the workers.

In addition, enterprises are encouraged to purchase commercial insurance for their employees to reduce the economic pressure on the employing enterprise to bear the liability for compensation and to strengthen the protection of workers’ rights and interests.

5.2.3 Preventing Legal Risks Arising from Irregularities in the Termination of Labor Contracts

With regard to the risk of change and termination of labor contracts, try to conclude written loan contracts and labor change contracts as a principle. Clearly define the legal relationship between the three parties, to prevent the formation of de facto labor relations after the borrowed employees to the failure to sign a written contract on the grounds of economic compensation claims. For the termination of employment, it is recommended to specify

the termination conditions, termination methods, and employee return methods in the loan agreement. It is also recommended that trade unions play a role in protecting the rights and interests of workers and organize the loan of workers.

For other possible legal liability risks, it is recommended that enterprises take precautions in advance through civil loan agreements, such as the scope of confidentiality, confidentiality obligations, non-competition and other clauses. It is also recommended that enterprises and laborers choose a less risky mode of labor sharing based on the nature of the industry and the scope of employment.

5.3 Enhancing Comprehensive Governance Capacity to Prevent Legal Risks

First, administrative departments at all levels should conduct sufficient research and study in the preliminary policy and legal studies. On the premise of respecting the objective economic law and the law of market development, scientific and effective support is given. First, for the legal shortcomings faced in the issue of labor sharing, through the introduction of corresponding safeguard policies, the implementation of legal administrative means to improve. Secondly, for the difficulties in recognizing work-related injuries arising from such flexible employment, the labor administration department should, on the basis of the establishment of labor relations, adjust the original recognition and assessment methods in an appropriate and flexible manner, so as to expand the protection of workers in shared employment. Third, it should play an important role in supervision and guidance. Labor inspection departments should strictly examine and prevent some enterprises from carrying out illegal labor dispatch in the name of labor sharing. Borrowing agreements signed between enterprises and workers should be strictly scrutinized to prevent the existence of vicious clauses that jeopardize the rights of workers. Relevant labor administrative departments and supervision departments can propose corrective actions for unreasonable labor-sharing models, and suggest that both laborers and enterprises choose a sharing model with lower legal risks.

Second, social grass-roots organizations should play their role in organizing agreements, guiding workers and enterprises to be honest, trustworthy and actively participate. The B2C and BPC modes of labor sharing reflect the important participation of communities, parks and various civil organizations. It is recommended that communities, parks and other intermediary organizations do a good job of employee background checks, share resources and information, prevent the intentional concealment and fraud by some employees or enterprises to the detriment of the interests of others, and provide scientific and effective guidance and services. Secondly, labor and management abide by the principle of honesty and trustworthiness, establish an honest mechanism for shared employment, and set up a complaint platform and blacklisting mechanism for enterprises and employees who do not comply with the regulations. It is recommended that enterprises should try to conclude loan contracts and labor change contracts clarifying the types of employment and the corresponding legal relationships.

6. Conclusion

Shared labor as a new form of employment is the innovation and development of flexible labor in the sharing economy, which has a large potential for development in the future. As the first exploration of labor sharing reflects various potential legal risks, this article aims to explore the current legal risk prevention countermeasures for this employment mode that may become a future trend, with a view to its continuous improvement and maturity, and to become a new employment mode that promotes the diversification and flexibility of social employment modes, and protects the rights and interests of workers effectively.

References

- Cao Chunyan et al., (2011, October). *Research on Liability for Work Injury Damages*, first edition, Legal Press, p. 180.
- Cao Chunyan, (2006). "The Labor Contract Law's Affirmation of the Establishment of Dual Labor Relationships". *Politics and Law Series*, (4).
- Cao Chunyan, (2011, October). *Research on Liability for Workplace Injury Damages*, 1st edition, Law Press.
- Dong Baohua, (2005). "Jurisprudential Reflections on Labor Dispatch". *China Labor*, (6).
- Junichiro Mawatari, [Japanese], (2006). *Reform of Labor Market Law*, translated by Tian Si Si, Tsinghua University Press, 2006 edition.
- Wang Huayu, (2012, June). *Guidelines for the Operation of Labor Dispatch Legal Practice*, 2nd edition, China Law Press.

¹ Junichiro Mawatari, [Japanese], (2006). *Reform of Labor Market Law*, translated by Tian Si Si, Tsinghua University Press, 2006 edition, p.

3.

² Zhang Mingliang, (2020). “Analysis of the Working Mechanism of Shared Employees.” *Talent Resources Development*, (5).

³ Huang Yueqin, (2003). *New Theory of Labor Law*. China University of Political Science and Law Press, 2003 edition, p. 87.

⁴ Dong Baohua, (2005). “Legal Thoughts on Labor Dispatch”. *China Labor*, (6).

⁵ Wang Quanxing and Hou Lingling, (2004). “Legal Reflections on the Two-Level Operation of Labor Relationships — Taking the Practice of Labor Dispatch in Mainland China as an Example”. *China Labor*, (4).

⁶ See, Wang Huayu, (2012, June). *Guidelines for the Operation of Labor Dispatch Legal Practice*, 2nd edition, China Law Press, p. 112.

⁷ Xu Fei, (2009). Study on the Determination Standard of Employer’s Liability for Damage Caused by Borrowed Employees. Master’s Degree Thesis, Shanghai Jiaotong University.

⁸ Cao Chunyan, (2011, October). *Research on Liability for Workplace Injury Damages*, 1st edition, Law Press, p. 96.

⁹ Article 91 of the Labor Contract Law of the People’s Republic of China.

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