

Status Quo and Countermeasures of Labor Rights Protection in New Forms of Employment: A Case Study of Food Delivery Workers

Yuji Lin*

Southwest Minzu University, Chengdu 610093, Sichuan, China

**Author to whom correspondence should be addressed.*

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Abstract: Since the 21st century, with the rapid development of the platform economy, new forms of employment have emerged swiftly. Under this situation, the number of workers has surged, especially flexible employment groups such as online car-hailing drivers, live streamers, and food delivery workers, who have begun to occupy an important position in the social employment structure. New forms of employment have created a large number of job opportunities, effectively solving the employment problems of new entrants and facilitating people's lives. However, these new forms of employment have also encountered certain obstacles and challenges in their development. Issues such as the identification of labor relations and labor protection measures for these flexibly employed workers are becoming increasingly prominent, with food delivery workers being a typical example. Taking food delivery workers as an example, this article deeply explores the current situation of labor rights protection for food delivery workers in the context of new forms of employment and proposes corresponding countermeasures, aiming to provide theoretical and practical support for the construction of socialist rule of law in the field of social law.

Keywords: New forms of employment; Workers; Rights protection; Social law

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1. Introduction

1.1. Research background and significance

1.1.1. Social background of the rise of new forms of employment

With the development of information technology, the widespread application of internet platforms, and the rise of the platform economy, new economic formats have given birth to new forms of employment. According to the results of the Ninth National Survey on the Status of the Workforce, the total number of employees in new formats has reached 84 million. This new form of employment is characterized by flexible labor relations, diverse work content, and flexible work methods. However, the "lag" of the law has led to insufficient regulation of this "new

normal” of employment. Workers in new forms of employment face issues such as legal identity determination, work intensity, actual income, occupational risks, and lack of social security ^[1].

1.1.2. Typicality and importance of food delivery workers as research subjects

Food delivery workers are typical representatives of workers in new forms of employment. Nowadays, the delivery business scope of food delivery platforms is quite wide, covering various aspects such as catering, healthcare, and gifts. While the business scope of food delivery platforms is expanding, the food delivery industry has also attracted many people seeking flexible employment opportunities due to its low entry barriers and flexible working hours. In addition, the work mode of food delivery workers has strong flexibility and autonomy. They can receive orders through online platforms and plan their own working hours and delivery routes. However, it is precisely because of this flexibility and autonomy that food delivery workers face many problems in terms of labor relationship identification, labor remuneration, social insurance, etc. Therefore, taking food delivery workers as the research object has important demonstration and reference significance for the entire research on the protection of labor rights in new forms of employment.

1.2. Problem introduction

Under the new forms of employment, the chairman of the CCP has made important instructions and directives many times, requiring the protection of the legitimate rights and interests of employment groups such as couriers and truck drivers. On July 16, 2021, the Ministry of Human Resources and Social Security of China, jointly with seven other departments, issued the Guiding Opinions on Protecting the Labor Security Rights and Interests of Workers in New Forms of Employment. On the same day, the State Administration for Market Regulation also issued the Guiding Opinions on Implementing the Responsibilities of Online Catering Platforms and Effectively Protecting the Rights and Interests of Food Delivery Workers. The publication of these guiding opinions indicates the future policy orientation. In recent years, the protection of workers’ rights and interests under the new forms of employment has also become a hot topic in the field of labor law and social law studies in China ^[2].

2. Theoretical basis and literature review

2.1. Concept and development of new forms of employment

2.1.1. Legal definition and characteristic analysis

New forms of employment refer to a novel employment model emerging from the rapid development of information technology and the Internet platform economy.

The most prominent feature of new employment forms is their flexibility. Workers can freely choose their working hours, locations, and content based on their own circumstances. This flexibility enhances workers’ autonomy and satisfaction, while also improving overall employment efficiency. Another characteristic of new employment forms is digital management. Internet platforms utilize advanced information systems and technological means such as big data and artificial intelligence to conduct real-time monitoring and data analysis of workers’ work processes and results. From a legal perspective, labor relations under new employment forms also exhibit complexity. A situation arises between workers and platforms that does not fully conform to traditional labor relationships. This model breaks through the traditional legal definition of clear boundaries between workers and employers, referred to as the “trichotomy of labor” in academic circles.

2.1.2. Development of new forms of employment

The development of new forms of employment is closely related to the popularization and application of Internet technology. Since 1994, when China achieved full-function connectivity with the international Internet, marking the beginning of the Internet era. According to the “Observation on the Development of Platform Economy (2024)” by the China Academy of Information and Communications Technology, there are 12 platform enterprises in China with a scale exceeding US\$10 billion within 15 years or less. With the development of the Internet, traditional industries are undergoing transformation and upgrading with the help of Internet platforms, giving rise to new employment models. Taking the food delivery industry as an example, it originated around 2008. After years of development, the number of food delivery workers has grown rapidly, and the employment model has gradually evolved from a relatively single model to a coexistence of multiple models. According to statistics, as of 2021, its market size has reached 100 billion yuan.

2.2. Review of relevant literature at home and abroad

Currently, there are many profound studies on the protection of labor rights for flexible employment workers under new forms of employment in China. Jin Wenjing et al. pointed out that the difficulties in protecting the rights and interests of food delivery workers include complex employment relationship identification, weak awareness of rights protection, weak role of trade unions, platform algorithm and management issues, and lack of labor security^[3]. Therefore, they propose measures such as improving legislation, clarifying judicial relations, improving the social insurance system, strengthening third-party supervision, and implementing the principal responsibility of employing units. Xu Xinpeng and Yuan Wenquan emphasized that the new economic formats have spawned new forms of employment, and prominent issues such as the ambiguity of labor relations for flexible employment groups^[3]. They face problems such as vulnerable employment rights, difficulties in individual rights protection, and the easy implicit occupation of labor achievements. Lou Yu found through comparative law research that many countries have established “third-category workers” to solve identity issues, breaking through the traditional dual employment concept^[5].

In terms of foreign-related research, Richardi from Germany introduced the “dichotomy” of labor relations that are not labor relations in the pre-platform economy era, referring to independent labor transaction relationships that are not labor relations, such as contracting relationships and entrustment relationships^[6].

These domestic and foreign studies have revealed the current situation and problems of labor rights protection under new forms of employment from different aspects and proposed corresponding countermeasures, providing important references for further research on the protection of rights and interests of groups such as food delivery workers.

3. Issues in labor rights protection for food delivery workers

3.1. Challenges in determining labor legal relationships

In the new forms of employment, the labor relationships of food delivery workers exhibit characteristics of ambiguity and instability.

On one hand, the employment relationship between food delivery workers, platforms, and merchants is complex and diverse. From the perspective of delivery worker types, there are distinct forms such as “crowdsourced riders”, “outsourced riders”, and “dedicated riders.” Among them, determining the labor relationship of “crowdsourced riders” is the most complicated. Their working hours are determined by their own will; they have

no fixed workplace or supervision mechanism, and they usually provide their own tools. The personal attachment between them and the food delivery platform is unclear^[7].

On the other hand, this type of employment relationship has a high degree of fluidity, and food delivery workers may choose to participate in or withdraw from different delivery tasks based on their own situations.

3.2. Imperfections in regulatory mechanisms

Under the current multi-departmental regulatory model, there are issues of unclear responsibilities and coordination difficulties in protecting the labor rights of food delivery workers.

The food delivery industry involves multiple departments such as human resources and social security, market regulation, and transportation. However, the division of responsibilities among these departments is not clear enough, leading to overlapping and gaps. In terms of labor rights protection, the human resources and social security department is responsible for determining labor relationships and labor security supervision. The transportation department also has a certain regulatory responsibility for the traffic safety of food delivery workers during the delivery process. However, in practice, due to the lack of an effective coordination mechanism among departments, mutual shirking often occurs, which seriously affects the effectiveness of regulation.

3.3. Lack of rights and interests protection

The income of food delivery workers is extremely unstable. Their earnings primarily depend on the number of orders and the delivery price per order. The delivery price is subject to significant fluctuations due to factors such as platform algorithms, market competition, and weather conditions. Additionally, food delivery workers typically do not have a basic salary, leaving them without a fundamental income guarantee. Meanwhile, these workers face numerous obstacles when participating in social insurance programs. One reason is the employment units themselves. Some platform enterprises fail to contribute to social insurance for their delivery workers to reduce costs, resulting in these workers being unable to enjoy corresponding social security benefits. Another reason is that delivery workers may be deterred by complex labor relationships and high insurance fees.

3.4. Inadequate awareness of food delivery workers

As a typical physically labor-intensive occupational group, the overall educational level and professional quality of food delivery workers exhibit certain industry characteristics. From an educational background perspective, a high proportion of this group has junior high school or high school education, which, to some extent, limits their legal awareness and ability to protect their rights. Furthermore, when pursuing delivery efficiency and maximizing economic benefits, some workers may demonstrate relatively weak adherence to traffic rules. This professional behavior characteristic is influenced by both the external assessment mechanisms of the platform and the workers' own sense of professional norms.

4. Countermeasures and suggestions for improving the labor rights protection of food delivery workers

4.1. Innovation and improvement of labor legal relationship identification rules

Although the government recognized the particularity of platform economy employment in the “Guiding Opinions on Maintaining the Labor Security Rights and Interests of Workers in New Forms of Employment” released in 2021, it only served as a guiding opinion without legislative confirmation. Currently, there is still a need to break

through the traditional dichotomy of labor and construct a “trichotomy of labor” or other new identification standards adapted to new forms of employment ^[8]. This can be done by referencing foreign legislation, such as the German approach to distinguishing between employees, similar employees, and self-employed individuals mentioned earlier. China should combine its national conditions to reasonably categorize new forms of employment workers, such as food delivery workers, and provide varying degrees of rights and interests protection ^[9].

4.2. Strengthening the construction of the social security system

The primary task for strengthening the social security system is to optimize the current insurance mechanism. To address the difficulty of food delivery workers participating in social insurance, measures such as providing government subsidies to lower the insurance threshold can be taken to encourage workers to actively participate. Simultaneously, the coverage of social insurance should be expanded. Besides basic insurance at the current stage, targeted occupational injury insurance can be established for the special risks faced by new forms of employment, such as traffic accident risks for food delivery workers. Occupational injury insurance can adopt compulsory participation, with premiums shared between the platform and the workers.

4.3. Optimization and strengthening of regulatory mechanisms

Given that the food delivery industry involves multi-departmental regulation, it is necessary to integrate the regulatory functions of human resources and social security, market regulation, transportation, and other departments. This will clarify the responsibilities of each department and overcome the current issues of unclear responsibilities and coordination difficulties.

To improve the regulatory mechanism, a specialized regulatory body for new forms of employment can be established, or multiple departments can collaborate to build a unified regulatory platform to achieve information sharing and collaborative supervision across multiple platforms. At the same time, the regulatory body should conduct regular inspections of food delivery platforms and delivery companies, focusing on areas such as the work intensity and safety measures of delivery workers. Additionally, apart from regular inspections, the regulatory body can conduct spot checks during peak delivery periods, such as major holidays and promotional events.

4.4. Improvement and enhancement of industry governance

Platforms should bear the primary responsibility for protecting the rights and interests of food delivery workers ^[10]. They can establish an internal management system to regulate their own employment practices. A transparent salary calculation system should be established to clearly showcase the compensation structure to delivery workers and the public, including basic delivery fees, distance subsidies, weight subsidies, and time-based subsidies. Meanwhile, platforms need to regularly evaluate and adjust compensation standards, taking into account factors such as price increases, changes in delivery difficulty, local cost of living indices, and industry average income levels to formulate reasonable standards ^[11].

4.5. Cultivating workers’ self-protection awareness

Cultivating the self-protection awareness of food delivery workers is an important path to effectively enhance the level of protection of their rights and interests from a subjective perspective.

Regulatory authorities and platform enterprises should collaborate with labor law research institutions, trade

unions, and other professional entities to develop systematic legal training programs tailored to the characteristics of the food delivery industry. The training content should focus on normative documents such as the “Labor Law”, “Social Insurance Law”, and “Guiding Opinions on Protecting the Labor Security Rights and Interests of Workers in New Forms of Employment.” The core aspects to be analyzed include labor remuneration, rest time and the right to rest, and social insurance. However, mere knowledge imparting is not sufficient to form substantial protection capabilities. Certain mechanisms need to be implemented. For example, the human resources and social security department can establish a “legal training credit system” jointly with platforms, linking training participation to algorithm-based dispatch weights, and promoting a virtuous cycle between subjective awareness and objective rights and interests through incentive mechanisms.

5. Conclusion and outlook

This article delves into the current status of rights and interests protection for food delivery workers, a typical group representing the new forms of employment, revealing the existing problems and challenges in this aspect. These issues not only affect the survival and development of individual food delivery workers but also reflect universal and systematic defects in protecting workers’ rights and interests in the entire field of new employment forms. Through analysis, this article also proposes constructive suggestions, aiming to provide beneficial assistance and references for protecting the rights and interests of food delivery workers. Looking ahead, under new forms of employment, there is hope for positive changes in protecting workers’ rights and interests. With concerted efforts from multiple parties, people can certainly build a more equitable, stable, and harmonious employment environment.

Disclosure statement

The author declares no conflict of interest.

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