

# Discussion on the Identification of Work-related Injuries of “Shared Employees”

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**Abstract:** With the start of the special era in 2020, the employment model of businesses has been confronted with new issues. As a kind of flexible employment, the “shared employee” has gotten a lot of attention, and the injuries that come with it have also gotten a lot of attention. Comparative analysis of the general mode of industrial injury of employment and casualties of “shared employee” of industrial injury and “share employees” cause person casualties of industrial injury related concerns based on the analysis on the basis of “shared employee” labor properties. Such as the model of “shared employee” recruiting, industrial injury management systems perfectly provide theoretical perspective, and appropriate thinking about industrial injury, risk prevention, and control is put forward from the perspectives of the country, enterprise, and employees.

**Keywords:** “Shared employees”; Identification of industrial injury; Labor relations; Special period

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## 1. Introduction

Personnel secondment, personnel leasing, and other forms of “shared employee” first developed in the 1990s, and they formed the early form of “shared employee” presently. With the support of cross-border “shared employee,” Vickers, a Swiss family-owned corporation, enabled the company escape the tremendous catastrophe precipitated by the terrorist attacks of September 11, 2001, and laid a stable talent foundation for its future development. During the 2008 financial crisis, several countries allowed “job-sharing” to replace layoffs in an effort to reduce labor costs. After 2017, the “shared employee” platform appeared to take shape, and has a huge trend of development. In 2020, with the arrival of a special period, enterprises are also facing new challenges in the way of employment <sup>[1]</sup>. Therefore, “shared employee” has become an important form of flexible employment. At the same time, the emerging way of “shared employee” also brings a lot of legal risks.

## 2. Theory and Literature Review

### 2.1. The concept of “Shared Employees”

“Shared employees” refers to the sharing agreement reached directly or with the help of a third party between enterprises that have difficulty in returning to work and those that have returned to work normally during the special period. Where in “shared employees,” the employer and the employee reach an agreement directly, it can be divided into two parties to sign an agreement directly. “Shared employees,” enterprises of both sides sign an agreement and “shared employees” sign an agreement with the employing unit. The agreement reached with the help of the third party can be further divided using the platform set up by the third-party company or the government to realize employee sharing. No matter what kind of mode it is, the

new employment mode of “shared employees” not only provides a choice for the special period, but also will become the trend of employment of enterprises in the future <sup>[2]</sup>.

## **2.2. Literature review**

Due to the identification of “shared employees” work-related injury, scholars compared “shared employees” with labor dispatch and employee secondment from the perspective of labor attributes, and summarized the similarities and differences of the three parties.

On one hand, some scholars think that “shared employee” is a new type of labor relations, with qualifications and comparing the legal entities involved, can explain “shared employees” and labor dispatch is different, the other employees seconded in practice subject cannot cover “shared employees” model, which can directly reflect the difference between the two, to judge as a kind of new labor relations exist independently. On the other hand, the relevant legal questions on “shared employees” issued urgently during the special period mentioned that the relevant legal problems caused by “shared employees” should be dealt with by referring to “leading employees.” It is not difficult to see that “shared employees” and “leading employees” have certain similarities under the existing laws. As a result of the “shared employees” labor relations are still controversial, scholars imputation of casualties from the staff and workers caused casualties imputation of the two angles are expounded and put forward from the angle of country, enterprise, and employee multiple responses, but for the intervention of a third-party platform will involve the relevant industrial injury problems after a mention in the existing literature.

## **2.3. The difference between “shared employees” and labor dispatch**

In the current promulgated laws and regulations, labor dispatch temporarily does not have a clear definition. Only in the individual laws of labor dispatch involved in the constraints of the parties. In labor dispatch, the relationship between the three parties is clear, while in the mode of “shared employees,” the relationship between the parties is complicated, and the rights and obligations involved cannot be fully guaranteed only by the existing Labor Contract Law temporarily.

The Labor Contract Law strictly restricts and manages the qualification, quantity, time limit and position of labor dispatch <sup>[3]</sup>. In the special period, most of the enterprises that implement the mode of “shared employees” do not have labor dispatch qualifications, and they have higher flexibility relative to labor dispatch in terms of the amount of sharing and the willingness of all parties in the post.

In the labor dispatching mode, the wages, welfare and other treatment of the dispatched labor are fully responsible by the dispatching agency. Due to the main means of profit of the dispatching agency is to earn the dispatch fee, the employing unit also needs to pay a dispatch fee to it. In the mode of “shared employees,” employers are not allowed to lend employees for the purpose of making profits, and the employing units do not need to pay additional employment costs to the employing units.

## **2.4. The difference between “shared employees” and secondment**

The legal provisions on the secondment itself have not been improved, and there is no relevant legal definition and specification on the secondment at present. Even if “shared employees” and secondment have many similarities and are completely regarded as a secondment, “shared employees” will also face the dilemma of “not to be followed.”

It is not difficult to see from the typical cases of secondment in history that the traditional secondment mode mainly occurs in the state organs or public institutions, whose purpose is to solve the shortage of personnel by borrowing employees from other relevant units, which forms a great difference with the “shared employees.” The “shared employees” mode is popular as an effective employment mode to solve the imbalance of labor force in a special period. Staff turnover can occur between any two units as long as

there is demand, which is more flexible than secondment. The subjects involved in the secondment mode are clear three parties. In the future, when the third-party platform of “shared employees” mode tends to be stable, the relationship involved in the secondment mode cannot be covered.

### **2.5. The identification of “shared employee” work-related injury**

Compared with the traditional labor relationship, the mode of “shared employees” has more uncertainties. In the absence of relevant legal constraints and norms, the implementation of “shared employees” has greater potential risks <sup>[4]</sup>. Among them, as the core of industrial injury insurance, the identification of industrial injury plays an important role in the future development of “shared employees.” There are two main problems in the identification of “shared employees” work-related injury.

## **3. Injury Identification of Employee Casualties**

### **3.1. Identification of work-related injury of “shared employees” under the three parties**

When the “shared employees” mode involves three parties, both the employer and the employee belong to the labor relationship, and the important basis for judging the “shared employee” injury is the relationship between the employee and the employer. According to the related questions in a special period in the premise condition that is not difficult to determine the regulation executes is unit of choose and employ persons and employee with the unit that they agree and sign the agreement, once facing employers did not signed an agreement with employees or employers and employees signed up but the unit of choosing and employ persons does not know it, the rules are also applicable there are still some controversies <sup>[5]</sup>. In addition, this regulation refers to the secondment treatment of “shared employees.” Compared with labor dispatch, “shared employees” is indeed more inclined to be similar to the secondment mode. Although secondment has a certain legal gap, there is a lot of time experience to refer to.

When the number of subjects involved in the “shared employees” is three parties and the employer and the employer have signed relevant agreements, the “shared employees” mode is almost the same as the secondment mode in form. However, when the mode of “shared employees” involves three subjects but no agreement has been reached between the employer and the employer, and only the employee and the employer have reached an agreement, if it is handled by relevant laws on secondment, the employer may assume the liability for industrial injury insurance without knowing the circumstances. Therefore, “shared employees” mode in the case of three subjects, if the employer and the employer have reached an agreement, related injury problems can refer to secondment treatment, other circumstances are not applicable.

### **3.2. Work injury identification under the third-party platform**

When Shared staff is with the help of a third - party platform to reach an agreement, sign labor contract with unit of choose and employ persons and employee, the labor relationship between both sides, in the case of with labor surplus ask laborer, unit of choosing and employ persons in third party platform release information workers, employers according to the requirements of the company to find the right worker on the platform, the platform for media “shared employees” agreement with unit of choosing and employ persons. At this time, the employer and the employer do not reach an agreement directly, and the employee and the employer do not form a labor relationship. The worker and the third-party platform are not directly connected, but the three parties are connected through the Internet platform. According to “regulation of industrial injury insurance” the employee is in two and above unit of employment, each unit should pay industrial injury insurance premium for the employee respectively, if the employee produces industrial injury, the unit that works when the employee is hurt assumes the responsibility of industrial injury insurance according to law. In real life, this regulation is relatively limited to solve the problem of “sharing employee” work-related injury with the help of a third-party platform. Whether the parties agree on the way

and proportion of the payment of work-related injury insurance and whether the relevant provisions are legal brings obstacles and difficulties for employees to apply for work-related injury insurance benefits.

Additionally, whether the third-party platform is jointly and severally liable for the employee injury is also a problem that needs to be solved in future development. Obviously, under the condition that all provisions are reasonable and legal and both parties have reached a consensus on the responsibility of the third-party platform, this regulation is still of great practical significance to the “shared employee” work-related injury problem, and also has certain reference value in the adjustment and revision of relevant laws in the future.

In addition, according to the “Injury Insurance Regulations” 14, in the working hours and workplace conditions at the same time by the provisions of the premise, because of the work of the injury of the employee shall be regarded as a work-related injury. In general, the working place and time of employees are relatively fixed, but for “shared employee,” the working time and place are uncertain, which also brings some difficulties and legal risks for the identification of “shared employee” occupational injury.

### **3.3. Determination of work-related injury caused by an employee to others**

Not only is it important to identify the injury of employees, but the injury of others caused by employees is also enough to arouse alarm. The workers of "Shared Employee" are mainly concentrated in front-line positions, and many of them are in accident-prone positions. In case of accidents, a clear confirmation of the subject and ownership of responsibility will provide great help to solve related disputes. According to the existing legal provisions related to similar cases are handled with reference to labor dispatch, through the analysis of the past labor dispatch method of processing, this kind of situation is generally borne by the labor unit main responsibility. However in practice, there are many differences between dispatching and “shared employees,” and the provision may not be sufficient to handle all cases. In the face of different situations, this paper divides the identification of work-related injuries caused by employees into the following two parts:

#### **3.3.1 “Shared employees” intentionally causes death or injury**

If an employee intentionally causes death or injury to others during his/her work, the employee shall first bear the corresponding criminal responsibility. Under the reference of existing law, “shared employees” cause person casualties by main responsibility of the unit that use worker, so in the case of employees deliberately cause person casualties, whether employers need a liable subject or part of the responsibility, whether has the right to recover from the staff, in the above situation, if there is a third party platform, the third-party platform in it and what kind of role, whether to have information disclosure incomplete and cause of the accident situation, in the face of such situation if the third party platform needs to undertake certain responsibility. The above factors may also lead to potential risks caused by the conflict of applicable laws. Therefore, in the absence of a clear provision that the case of “shared employees” causing death or injury to others should refer to labor dispatch treatment, whether this treatment method that applies to the “shared employee” mode remains to be discussed.

#### **3.3.2. “Employee sharing” causes casualties without intentional intent**

If the “shared employees” causes casualties to others without subjective intention, according to the Civil Code, if the dispatched employee causes damage to others due to work, the employing unit shall bear the tort liability. If the employing unit is at fault during the period, it shall also bear the corresponding liability. When the employer has to bear some supplementary responsibility for the casualties caused by it, if the employee reaches a sharing agreement with the employer without the knowledge of the employer, and the employer and the employer fail to reach an agreement, in this case, whether the employer can have the opportunity to exempt the supplementary liability according to the circumstances. It is also worth discussing whether the third-party platform, as a bridge between employees, employers and employers, should stay

out of the problem or should assume certain responsibilities.

In addition, regardless of whether the injury or injury is caused by the subjective will of the “shared employees,” the employee who is injured by the “shared employees” by the “Work Injury Insurance Regulations” and satisfies the relevant provisions can be identified as a work injury.

To sum up, there are many differences between “shared employee” and the identification of work-related injury in general circumstances. First, “shared employee” involves more stakeholders than usual and is therefore more complex. The relevant laws involved by both sides are generally the same, with minor differences in some regulations; On one hand, whether the employee is injured can be identified as the industrial injury, the general case of the industrial injury identified in the “Industrial Injury Insurance Regulations” has clear provisions, and for the “sharing of employees” there are some conditions difficult to measure; In addition, there are differences between the parties on the main liability for the tort of an employee's injury to others. However, whether the injured party can identify the injury can be judged by both parties according to the Regulations on Injury Insurance. The comparison between the identification of work-related injuries of “shared employees” and the identification of work-related injuries under normal circumstances is shown in **Table 1**.

**Table 1.** Comparison table of occupational injury identification

Comparison of Object	“Shared Employee”	The General Case
Subject Responsible for The Matter	Employing And Employing Units; “Shared Employees”; Third-Party Platform; Victimized Employee.	Employer; Victimized Employee.
Related Laws and Regulations	Regulations On Injury Insurance; Penal Code; Tort Liability Law (With Reference to Labor Dispatch); Civil Code.	Regulations On Injury Insurance; Penal Code; Tort Liability Act; Civil Code.
The Party Responsible for The Employee Injury	Controversial	The Employer Shall Bear the Main Responsibility
Whether To Identify for Industrial Injury	Some of the Conditions Are Difficult to Balance	Accord With “Industrial Injury Insurance Belong” Can
The Principal Party Liable for Tort	There Is Debate Over	If The Employer Is Liable for Tort, It May Claim Compensation from The Employee
Whether Does Victim Party Maintain to Be Industrial Injury	Satisfy The Relevant Provisions of The Regulations on Industrial Injury Insurance	

#### **4. Prevention and control of the risk of occupational injury identification of “shared employees”**

At present, the development of the mode of “shared employees” has been expanding day by day. The positive application and positive guidance of this mode are helpful for the resumption of work and production in special period <sup>[6]</sup>. However, as mentioned above, imperfect laws and regulations make the mode of “shared employees” have certain risks. Therefore, the author puts forward the following

suggestions:

#### **4.1. National level**

We will improve laws, regulations and issue detailed “shared employees” rules as soon as possible. As this model evolves, relying on a patchwork of laws for a long time cannot provide a solid legal guarantee for “shared employees”<sup>[7]</sup>. Therefore, relevant departments should strengthen the investigation of “Shared Employee” and collect and sort out the relevant regulations that are inconsistent with this mode, to ensure that “shared employees” has laws to follow.

Strengthen the supervision and guidance role of the “visible hand” of the government departments, and give certain support and guidance to the enterprises that implement the “sharing of employees.” Relevant government departments to work in a timely manner to carry out the instructional lest in the field beyond the scope of laws and regulations, should actively build and perfect the construction of the third-party big data platform, and strengthen the qualification of enterprise and employee review, on the background of the enterprise and the staff information to establish a perfect file, on the release of information to be able to do it accurately in real-time.

#### **4.2. Enterprise level**

Respect the wishes of employees and clarify their rights and obligations. Unit of choosing and employ persons in the decision to use “shared employee” to fully understand the wishes of the staff, not to profit for lending staff. Employees have the right to know their salary and welfare, labor insurance, occupational injury liability ownership and other issues, and make clear provisions in the agreement; When using third-party platforms, enterprises should pay attention to the qualification review of platforms to ensure the legitimate rights and interests of employees.

#### **4.3. Staff level**

Strengthen the consciousness of safeguarding rights and effectively protect their own interests. When workers sign agreements with enterprises, they should pay attention to the clear provisions on issues related to their own rights and interests, such as wages and benefits, labor insurance, occupational injury liability ownership, etc<sup>[8]</sup>. Improve their own awareness of rights protection, through laws, trade unions and other channels to understand the relevant provisions of employee sharing, to safeguard their legitimate rights and interests; At the same time, in daily life, I should pay attention to the preservation of evidence information such as working place and working route, to provide the greatest guarantee for safeguarding my rights and interests in the future.

### **5. Summary**

“Shared employee,” as a new employment mode emerging in China to deal with the asymmetry of labor resources in the special period, undoubtedly brings new hope and choice to both enterprises and employees. Compared with foreign countries, the application of “employee sharing” in China is less mature. With the intervention of third-party platforms, relevant laws will become more and more obvious. From the above research, it can be concluded that there is still a gap in the relevant laws that can be relied on by “shared employees.” Therefore, the labor attributes of “shared employees,” the ownership of work-related injury liability and the responsibilities and obligations of the third-party platform should be clarified urgently. For the “shared employees” mode in the future, whether to continue as the present general extension of the relevant laws and regulations of flexible labor or separate provisions are open to debate.

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