

Thinking and Discussion on the Identification of Employment Relationship of Network Host

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Abstract: The new employment methods produced by the continuous development of the Internet have a great impact on the identification of employment relations. Whether the employment relationship of network host belongs to labor relations or service relations has aroused great discussion in the academic circles. Based on the judgment of the court on such cases, this paper explores the advantages and disadvantages of identifying labor relations or service relations on the platform and host from the perspective of interest balance. At the same time, explore a new way of employment to solve this problem according to the relevant documents issued by the Ministry of Finance and foreign practices.

1. Putting forward the employment relationship issue between network host and platform

In China, there has been a lot of debate on the nature of the employment relationship of network host. There are many relevant cases on China's judgment document online. When the court hears such cases, it shall judge whether the employment relationship complies with the provisions of the notice on confirming matters related to labor relations according to the existing conditions, so as to judge whether the employment relationship belongs to labor relations or not. Different courts have different understandings of the employment relationship of network hosts.

2. Differences on the identification of employment relationship of network host in China's judicial practice

2.1 Current situation of judicial practice in China

In China's judicial practice, the employment relationship of network host is often recognized as service relationship rather than labor relationship. The company can effectively manage the network host, which will be recognized as labor relationship. The main source of income of network host comes from the company, and the company pays the salary according to the workload of network host. There are also business components, actual performance of labor obligations and other reasons identified as labor relations. In the case identified as not labor relations, the court held that the network host has no economic subordination and personal subordination to the company.^[1]

2.2 Views of both platform and host

Network hosts believe that they work on the platform, although there are no specific regulations on working time and working place, they need to broadcast live on the company's platform, and the live broadcast time should also meet the company's regulations. Therefore, although network hosts are nominally not bound by the company's rules and regulations and can freely choose working time and working place, they are actually strictly bound by the company. The relevant reward and punishment provisions for the network host in the company's rules and regulations also restrict the network host, so the network host has personal subordination to the company. At the same time, the main business of the live broadcast platform is to sell goods and get rewards through the live broadcast of the network host, which must be based on the live broadcast of the network host. Therefore, the labor of the network host constitutes the main business of the live broadcast platform.^[2] The salary of the network host also comes from the basic salary of the company and the Commission of the reward income of goods and netizens. It belongs to exchanging wages through labor. In conclusion, the employment relationship of the network host fully conforms to the three standards of labor relations in the notice on confirming matters related to labor relations, so it constitutes labor relations.

For the platform, they believe that the network host and the platform are just equal cooperative relations and do not establish labor relations. The main reason is that although the network host is subject to many restrictions of the company, the live broadcast location and time are determined by the host himself, for which the company cannot interfere too much, and many rules and regulations of the company cannot directly restrict the network host. There is no personal subordination between the host and the platform. At the same time, different from the salary payment method of general labor relations, the salary of network host is not paid directly by the company, but from the reward and goods income of fans. The company only transfers it to the network host after deducting a certain discount, which does not belong to exchanging labor for remuneration. Therefore, the network host and the company do not constitute labor relations, and the platform and network host are equal.^[3]

3. The influence of the identification of labor relations on network hosts in China

The traditional identification method of labor relations in China adopts either or method, but with the rapid development of economy, this identification method has some disadvantages. For the consideration of interest balance, it needs to be discussed and analyzed.

3.1 Identification of employment mode of network host in China's labor law

The network host signs a contract with the platform. However, due to the strength of the platform and the weak legal concept of some hosts, most of the contracts signed by the two sides are like the agreement. Most of the contents of the agreement do not confirm that the two sides belong to the labor relationship, but when there is a dispute between the two sides, the platform will deny the existence of labor relations between the two sides based on the fact that the host and the platform are not subordinate and the host's main salary income does not come from the platform, and interpret the agreement signed by the two sides as a cooperation agreement signed by equal subjects, so as to avoid the loss recognized as labor relations between the platform and the host.^[4]

Because China's labor relations have very high requirements for the personal dependence of workers on employers, and the emerging occupation of network host is sought after because of its high degree of freedom. Therefore, there is a contradiction between the degree of freedom of network host and the personal dependence in labor law. This contradiction is the key to determine

whether the employment relationship of network host belongs to labor relations in many cases. If the network host is under the strict management of the platform and engaged in the main business of the platform and receives the main remuneration from the platform, it shows that the network host is in a weak position compared with the platform and needs to be protected by the labor law, which can be recognized as a labor relationship. If the network host is not controlled by the platform at all, he can choose the live broadcast time independently, and the salary does not come from the platform, which shows that they are not subordinate and economic. Network host and platform belong to equal status. Network host is not weak and does not need to be protected by labor law.^[5-9]

3.2 Disadvantages of labor relations identification of platform and network host from the perspective of interest balance

For the platform, if the employment relationship between the platform and the network host is defined as the labor relationship, then for the platform, their burden is too heavy and they have to pay a high price. The management of the network host by the platform itself is not strict. If the management is strengthened, it will inevitably lead to an increase in costs and reduce benefits. In addition, it will be difficult to recruit host due to the reduction of freedom, so they have to solve the recruitment problem by raising wages. Without strict management and strengthening the control of network hosts, the responsibility of the platform will be increased.

For the network host, if it is recognized as a labor relationship, the network host cannot be given the strong protection of ordinary workers in the judiciary. If the platform and the network host are in an equal position, the network host must be at a disadvantage compared with the strong strength of the platform. When safeguarding their legitimate rights and interests, they are unable to do what they want, and at the same time, they cannot be protected by the labor law. In this case, it will inevitably damage the legitimate rights and interests of network hosts.

4. Possibility of building a new employment relationship

The identification of labor relations in China is strictly based on the principle of all or nothing, and there is no intermediate employment relationship between labor relations or non-labor relations. However, with the development of economy and the popularization of the Internet, the relationship between employers and employees has changed greatly, and the original identification method of labor relations cannot fully adapt to today's society. In judicial practice, many judgments related to the identification of labor relations are not completely convincing, so exploring a new way of employment relations is also a way to solve the difficulty of identification of employment relations.

In recent years, the Ministry of labor and social security has also pointed out that it is difficult to adjust the scope of this kind of employment relationship based on the traditional network host law, which has also led to the difficulty of the Ministry of labor and social security to integrate this kind of employment relationship into the current network host law.^[10] However, in order to promote the development of Internet economy and solve the worries of relevant staff, although the Chinese government has failed to solve this problem in legislation, it has issued relevant documents in other aspects to protect the interests of platform workers such as network host. In the guidance on safeguarding the labor security rights and interests of workers in the new form of employment recently issued by the Ministry of human resources and social security. It is mentioned that if it is in line with the establishment of labor relations, enterprises should conclude labor contracts with workers according to law.^[11]

5. Conclusion

Today, with the vigorous development of the Internet economy, great changes have taken place in the employment mode between units and individuals. The past identification methods of labor relations cannot fully adapt to today's society. The Chinese government has also issued corresponding policies to safeguard the interests of workers in emerging occupations. In the identification of employment relations of network hosts, in order to safeguard the legitimate rights and interests of vulnerable network hosts, it is in an advantageous position when identifying labor relations. At the same time, it can appropriately break through the restriction of dichotomy, change the identification method of all or nothing, learn from foreign experience, find a road suitable for China's national conditions, safeguard the legitimate rights and interests of network hosts through the third employment method, and finally realize the common development of Internet economy and platform workers.

Reference

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