

The Employment Mode and Legal Risk Response of Domestic Service Enterprises

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Abstract: At present, there are three employment modes in domestic enterprises: intermediary system, quasi-employee system and employee system. In the non-employee employment mode, there are problems such as the loss of workers' social security and other legitimate rights and interests, unclear division of responsibilities of enterprises, employers and employees in the face of accidents, and inadequate play of enterprise management responsibilities. Therefore, employees are regarded as the development direction of domestic enterprises. In order to reduce legal risks, we should improve the employment of domestic service enterprises from the aspects of implementing employee system, standardizing contract management, improving the standards of domestic service industry and perfecting the credit information system of domestic service industry.

1. Introduction

Domestic service industry, as an emerging service industry, covers a wide range of services and services in response to families' demands for life services. It plays an important role in improving residents' quality of life and creating jobs. Even in recent years, under the circumstances of economic restructuring and economic growth slowdown, domestic service industry still has huge development potential and has become an important industry to promote economic and social development. However, it is precisely because they serve families that the personalization and uncertainty of domestic service make the employees different from the traditional workers. The existing laws and regulations are difficult to fully protect the legitimate rights and interests of domestic workers. Domestic service enterprises are not highly specialized, industrialized and backward in brand building, and it is difficult to cope with the legal risks brought by the current employment mode.

2. The main employment mode of domestic service enterprises at present

The domestic service industry is in the early stage of development, the market size increases, and the development of the industry is not standardized. At present, domestic service enterprises mainly adopt three employment modes: intermediary system, quasi-employee system and employee system.

2.1 Intermediary system

Intermediary system refers to the domestic service agency as the middleman, for the domestic maid to find a job to contact the customer, the customer and the domestic maid directly sign a contract to establish the employment relationship.

The intermediary system has the following characteristics: In terms of management, the domestic service agencies of the intermediary system do not perform the management function and only collect the referral fee per time; Employees' salaries are paid directly by clients, and intermediaries do not participate^[1]; Some agencies train their domestic staff, some do not undertake the training task; The intermediary agency does not bear the insurance cost of the domestic staff and does not bear any risk liability.

At present, quite a few small and medium-sized domestic service enterprises still adopt this operation mode, and many domestic service agencies are nominally employee system, but in essence are intermediary system. They do not buy social insurance for domestic workers according to the law, and are unable to bear the corresponding responsibilities. Some domestic service companies have a mixed operation model of employee system and intermediary system, and carry out different management according to the performance of employees. In addition, the public employment service institutions organized by the labor and social security administrative departments provide employment services for workers and employers in accordance with the employment objectives and tasks determined by the government, which also applies to the intermediary system.

2.2 Quasi-employee system

The quasi-employee employment management mode of housekeeping industry was first put forward by Shanghai. Model domestic service stations are set up in the local area to "collect and pay" the service fees of domestic staff, and standardize the identity verification, health examination, signing of service contracts, purchase of insurance, pre-job training and service return visits of employees. Quasi-employee management mode promotes domestic management enterprises to undertake corresponding enterprise management functions and effectively safeguard the legitimate rights and interests of employers and domestic staff.

The quasi-employee system has the following characteristics: Housekeeping workers sign an entrustment management agreement (non-labor contract) with housekeeping enterprises as self-employed and flexible workers, in which the rights, responsibilities and obligations of both parties are defined. Employees are assigned by domestic service enterprises and engage in domestic service in the name of domestic service enterprises. Domestic service enterprises have the right to verify the identity of employees, urge them to take physical examinations, provide flexible employment certificates and social insurance payment services for them, implement skills training for employees, and assist in handling disputes between employees and employers. And through these services charge a certain management service fee.

2.3 Employee system

The employee system refers to that institutions engaged in the domestic service industry recruit domestic attendants as their employees, conduct unified training, assessment and issue qualification certificates to domestic workers in accordance with relevant regulations, and the domestic service agency is responsible for arranging their employees to work in the customer's home, and the customer directly pays the domestic attendants or pays the salary fee to the agency. It is paid to employees after deducting certain administrative expenses. In terms of management, domestic service agencies fulfill their management obligations to domestic staff, carry out regular training for them, pay their wages

and pay social insurance fees. They are provided with free accommodation by a domestic service agency in between job changes.

The employee system has the following characteristics: Domestic service companies sign formal labor contracts with domestic workers, and buy social insurance for them. The rights and interests of domestic workers are protected by the Labor Law. When domestic workers are injured at work, they can be solved through the way of industrial injury insurance, and no matter whether they are arranged for specific work, domestic workers can regularly receive wages from the domestic company, which is a good protection for the rights and interests of domestic workers. In addition, the domestic service company has provided relevant training for domestic workers, so that employers can get more professional and high-quality services, protecting the interests of employers, and employers are highly satisfied.

The three employment modes mentioned above have their own advantages and disadvantages, among which the employee system is superior to the intermediary system, which is the development trend of domestic service industry and the development mode advocated by the state. At present, large domestic enterprises and many jointly developed small and medium-sized enterprises have implemented the employee system, and the industry has begun to move from "small, weak and scattered" to scale, brand and specialization. Intermediary system has the lowest cost, and as the most widely used business model in many small and medium enterprises, there are still many aspects to be improved. The quasi-employee system is an innovative transition scheme, which is in line with the actual situation of the domestic service industry that "the employee system can't be promoted and the intermediary system can't guarantee the rights and interests of employers, employees and domestic service enterprises". However, it is still in the exploratory stage and has not become the dominant one.

3. The legal risk and prospect of domestic service enterprise employment

3.1 The existing law does not clearly define the legal relationship and legal liability of the three parties

In most of the existing cases, the legal liability of domestic service agencies is determined by whether domestic service agencies sign contracts with domestic service workers or customers as employers or employers^[2], and the legal relationship and legal liability among domestic service enterprises, customers and employees are not analyzed. Due to the particularity of the working environment of domestic workers, it is difficult to follow the legal provisions for obtaining evidence and verification when tort cases occur in the process of work, resulting in a deadlock in the final identification of responsibility.

3.2 Domestic service agencies are faced with risks

3.2.1 Intermediary domestic enterprises are mostly small and medium-sized, and their ability to resist risks is poor

The lack of appropriate occupational skills of untrained practitioners may jeopardize their own health and safety at work and the interests of employers. In this case, domestic service agencies have not established an employment relationship with domestic staff in theory and they should not be held liable. However, in actual cases, some domestic service agencies are still faced with joint and several compensation liabilities due to unclear relevant legal provisions. Domestic service agencies can't anticipate their own risks in advance, and if they do not take corresponding preventive measures, they will be in trouble when facing the liability for compensation. In serious cases, many small domestic

service agencies have to close down in serious cases, which also restricts the development of large-scale domestic service agencies.

3.2.2 Not conducive to the long-term stable development of domestic enterprises

The nature of informal employment group of domestic workers under the intermediary system, the uncertainty of their working time and the ambiguity of their work content also make them different from the traditional sense of workers. They lack awareness of rights protection and are highly mobile. Unable to get agency fees from domestic workers and employers will directly affect the income of domestic enterprises. The result of this situation is that it is difficult for domestic service agencies to achieve long-term sustainable development.

3.3 Legal risks of quasi-employee domestic service enterprises

3.3.1 There is a suspicion of evasion of responsibility

The trusteeship agreement is generally formulated by domestic enterprises, taking into account their own operation and development interests to the greatest extent. Domestic service enterprises only play a coordinating role in disputes between domestic service personnel and employers. The insurance of domestic service personnel is paid by the employer, and the trusteeship agreement can't cover the needs of domestic service enterprises, domestic service personnel and employers.

3.3.2 The terms of the agreement are too vague, and it is difficult to maximize the effect of safeguarding the rights and interests of practitioners

For example, the agreement of a quasi-employee domestic service agency has a clause of "respecting the personality and labor achievements of the employees". However, in the implementation process, due to the huge difference between the employer and the employees' social experience and education level, the employees often choose to endure in order to get paid, and their legitimate rights and interests are still violated.

3.4 The legitimate rights and interests of workers can't be protected

3.4.1 Social insurance premiums can't be paid, and individual social security is at risk

Intermediary domestic service agencies do not buy insurance for their employees. Once they are injured or fall ill due to accidents in the course of work, the medical expenses will be paid by the employer, which increases the risk and burden of the employer. In fact, there are many cases in which employers refuse to accept responsibility or are only willing to accept partial responsibility, and domestic staff have to bear the medical expenses alone and may lose the opportunity to continue working^[3]. Some quasi-employee domestic service agencies do not have commercial insurance provisions in their agreements, so both parties bear the same risk.

3.4.2 In the occurrence of labor compensation disputes, industrial injury disputes, workers are difficult to safeguard their own rights and interests

Getting remuneration should be the legitimate rights and interests of domestic workers, but in reality, less pay labor remuneration, not timely payment of the situation often occur. Domestic enterprises make use of domestic staff eager to find jobs, and there are unreasonable terms in the labor contract. Domestic staff are difficult to get the same remuneration as their pay, but they do not know it. The uncertainty of the working hours and contents of domestic maids makes some domestic

agencies or employers use the excuse not to pay, pay less wages^[4], and pay less or even no compensation for industrial injuries. Domestic maids themselves lack of legal awareness and awareness of rights protection, and have nowhere to complain when disputes occur.

3.4.3 The treatment of household employees is greatly affected by the employer

Employers differ greatly in the labor protection, accommodation, catering and special protection for female workers provided to domestic workers.

3.5 The prospect of domestic service enterprise employment

3.5.1 Under the quasi-employee system, domestic enterprises make full use of human resources to benefit the society

Employees sign custody agreements with many institutions. While solving their own human resource dilemma, domestic service enterprises revitalize idle employee resources of their cooperative enterprises and better serve consumers in special periods, thus contributing to the sustainable and stable operation of the society and shouldering due social responsibilities.

3.5.2 With the intervention of the third party, domestic enterprises transfer their obligations and save costs

Domestic enterprises do not have to directly establish labor relations with employees, but transfer to a third party, to avoid the direct establishment of labor relations should undertake the legal obligations, and by the third party labor dispatch company. Domestic enterprises can still arrange personnel according to the operation situation, but the economic cost of employment is lower than that of the model. The professional institutions entrusted by the government can also assume the knowledge, social insurance and risk management of domestic workers, so as to reduce the burden for enterprises, so that enterprises can concentrate on their own development^[5].

4. Domestic service enterprises employment legal risk coping strategies

4.1 Improve the employment model and promote the operation of the employee system

Employee system is currently the most able to protect the rights and interests of employees of the employment mode, its promotion by the national attention and local government support, enterprises should also change the employment thinking, do long-term consideration. Under the employee system operation mode, enterprises strengthen the management and professional training of employees to improve the quality of employees, reduce the vicious incidents and improve the service quality, employers are more satisfied, achieve a virtuous cycle, and promote the professional, professional and standardized development of domestic service industry.

4.2 We will strictly govern enterprises in accordance with the law and standardize contract management

Labor contracts or service agreements are mainly provided by domestic service agencies or employers. Domestic workers generally have low educational background, weak legal awareness and poor signing ability^[6]. The model contracts issued by government departments can clarify the responsibilities of domestic enterprises, employees and employers, and strengthen the protection of legitimate rights and interests of employees. Domestic enterprises have low entry threshold, mainly

small and medium-sized enterprises, operators lack legal knowledge, considering the cost and refuse to hire professional personnel, non-standard contracts will bring risks to the operation, and the government provides a standard effective contract model, will play a role in avoiding contract disputes. In addition, it is also necessary to enhance the legal awareness of domestic enterprises, employers and workers.

4.3 We will improve the standards of domestic service industry and promote the professionalization of domestic service

At present, due to regional economic development differences, the national applicable industry standards have not yet appeared, some areas have relatively perfect standards, but many areas of the standard is still under construction. These standards in the specific implementation process, some are not scientific, some have not been in line with the industry development status^[7]. Therefore, industry norms and management should be strengthened, national guidance, local government promulgation, industry association participation to improve the service standards of domestic service industry, timely update according to the actual situation of the industry, promote the standardization of domestic service, establish a domestic service management platform, carry out domestic service institutions and personnel record, domestic service personnel with certificates door-in-door service.

4.4 We will improve laws and regulations related to domestic service and strictly supervise the domestic service industry

4.4.1 Laws and regulations should be improved to make domestic service agencies assume reasonable legal responsibilities

Existing legal policy design, "Labor Contract Law" too rigid management, reduce the sensitivity of enterprises to respond to economic changes, but also the obstacle to the development of new economic forms. The relationship between domestic staff and clients is an employment relationship, which is not subject to the adjustment scope of the Labor Law. The nature of domestic service industry itself is special, in the working hours, welfare benefits, various insurance and other aspects can't be guaranteed and protected, can't use the Labor Law to regulate^[8]. Up to now, there has not been a national law or regulation regulating the domestic service industry, which has also resulted in the informal employment status of the domestic service industry, affecting the sense of belonging of the domestic staff, resulting in their low enthusiasm and high work mobility. From the perspective of the operation mode of intermediary domestic service agencies, the intermediary contract relationship between them and domestic workers and employers should be regulated by the Contract Law, and they should not bear excessive responsibilities.

4.4.2 Strictly supervise domestic enterprises to avoid infringing on the rights and interests of domestic workers

The management and regulation of domestic service industry involves multiple government departments. It is necessary to straighten out the powers and responsibilities, strengthen cooperation, build a market supervision and management system, establish a scientific management mechanism, clarify that the municipal and district commercial administrative departments assume the management responsibilities of domestic service industry, and the relevant administrative departments shall promote and standardize the healthy development of domestic service industry according to their respective responsibilities. For employees' compensation rights and other legitimate rights and interests should be strengthened to reduce the infringement from employers and domestic enterprises. Improve your overall understanding of the industry.

4.4.3 To formulate national, industrial and local legal regulations for domestic service industry

Laws and regulations should be scientific and authoritative after comprehensive and long-term practical research. The rights and obligations of employers and employees in the regulations should be clearly defined, mainly including: the employer's right to know information and the right to check certificates, as well as the obligation to pay fees according to the contract, provide necessary labor protection conditions, information disclosure, etc.; Employees' personal dignity is protected by law and they have the right to refuse housekeeping services that may endanger their personal safety. It shall be clarified that domestic staff shall truthfully disclose information and provide services as required or agreed^[9].

4.4.4 Evaluation of the adjustment of domestic service relationship into the Labor Law

The current Labor Law in our country has authority, after many years of judicial practice constantly improve, scientific, into the Labor Law undoubtedly is a more long-term means. However, with the immature development of domestic service industry and insufficient research, it is more feasible to realize the uniqueness of domestic service relationship and formulate reasonable laws and regulations to safeguard the rights and interests of all parties.

4.5 Improve and standardize the industry credit investigation system

Improve the credit investigation system and promote healthy competition. Disordered competition makes domestic services mixed, domestic enterprises, employees, employers do not trust each other^[10]. To build an online credit evaluation system, the state shall establish and improve the credit file system for domestic and political industry, establish and improve the credit file system for domestic service companies, and establish a national unified credit platform for domestic service. Market supervision departments and domestic service industry associations shall standardize the operation of domestic service enterprises, establish a market access mechanism, and establish a basic data and information database for domestic attendants, so as to improve the quality of service. Improve people's perception of the industry.

5. Conclusion

This paper analyzes the legal risks under the employment mode of domestic service enterprises, and proposes to prevent them by perfecting the legislation and regulations of the industry, strengthening supervision and promoting the employment mode of employees. Most domestic enterprises are small and micro enterprises, so it is difficult for domestic enterprises to deal with the risks brought by the employment mode. The multi-stakeholder participation is needed to prevent and dissolve risks, safeguard the legitimate rights and interests of employees, and finally achieve the standardization of the housekeeping industry and the professional development goal of employees.

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