

The Legal Path of Off-Farm Workers' Claims for Underpayment in China

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Keywords: Construction Industry; Wage Arrears; Off-farm Workers

Abstract: With the rapid development of China's construction industry, the phenomenon of wage arrears has become increasingly prominent. This article focuses on the social phenomenon of Chinese construction workers demanding unpaid wages, pointing out the universality and severity of the problem of unpaid wages among off-farm workers in the construction industry, and exploring various factors that make wage arrears increasingly serious and difficult to regulate. Then this paper further analyzes the challenges and difficulties faced by off-farm workers in the process of claiming underpayment. Solving the problem of wage arrears is of great practical significance, not only related to the immediate interests of off-farm workers, but also helps to build a harmonious employment relationship and a stable social environment. This article aims to provide ideas for effectively solving the problem of underpayment in the construction industry and for off-farm workers to better claim unpaid wages.

1. The Proposal of Wage Arrears among Off-Farm Workers in the Construction Industry

With the acceleration of urbanization in China, the construction industry has also experienced rapid development. Off-farm workers are the main force driving the development of industrialization and urbanization in China, and have made tremendous contributions to economic and social development^[1]. The construction industry requires a large amount of labor force and has a low entry threshold, making it the main workplace for off-farm workers^[2]. However, the problem of wage arrears among rural migrant workers is like an incurable scar that has always plagued this industry and society.

Although the country has introduced a series of laws, regulations, and policy measures to address wage arrears, there are still many shortcomings in the actual implementation process. Some unscrupulous enterprises and contractors intentionally delay the wages of rural migrant workers in pursuit of maximizing profits, and even take various measures to evade payment responsibilities. We need to prioritize this issue and take more effective measures to protect the legitimate rights and interests of off-farm workers, so that they can receive their due labor remuneration and create a fair, just, and harmonious working environment.

2. Examination of the Current Situation of Governance Difficulties in the Field of Engineering Construction

2.1 The Construction Company Has a Strong Position, and the Problem of Wage Arrears is Becoming Increasingly Severe

In the field of construction engineering, due to the fact that construction companies often hold the leading position in funding and project management, their position appears to be relatively strong. The construction company has taken advantage of its strong position to unreasonably delay wage payments. Some construction companies may even withhold project payments for various reasons, further exacerbating the occurrence of wage arrears. In this case, workers become the biggest victims, their labor rights cannot be protected, and their survival will also be greatly affected.

At the completion of the project, the construction party may not have received the project payment from the construction company, and in a situation where the construction party's funds are already tight, there is no need to talk about paying the workers' wages in full on time, which ultimately affects the rights and interests of both the construction party and the off-farm workers themselves. In addition, construction companies often maliciously default on project prices. Even if they have sufficient funds to pay, do not pay the project funds on time and in full according to the relevant provisions of the contract in order to reduce their financial risks through this approach. In practice, in the case of layer by layer subcontracting, many contractors run away with money after receiving it, resulting in construction workers working on their hands not receiving wages and ultimately having to rely on banners and other means to protect their rights. Whether it is the construction company itself or the contractor, if there is a problem in one link, it will cause difficulties for workers to seek compensation. Over time, the phenomenon of wage arrears has become increasingly common in society. The combination of multiple factors makes workers at the end of this chain the ultimate risk bearers^[3].

2.2 Insufficient Synergy among Governance Subjects and Unsatisfactory Governance Outcomes

The issue of wage arrears cannot be completely solved by the efforts of a single department alone. The handling of wage arrears among off-farm workers cannot achieve good governance results solely by the labor supervision department, industry regulatory departments, and construction companies^[4]. In practical work, due to the unsmooth cooperation mechanism between departments, responsibilities and obligations have not been clearly clarified, and there are also scenes where different departments shift responsibility to each other, ultimately unable to timely and appropriately handle the demands of off-farm workers in the construction industry, which is not conducive to the governance of wage arrears and the development of the entire industry.

Disputes over wage arrears seem like a cyclical phenomenon, almost always appearing at a specific point before the Spring Festival. This reflects the lack of construction and maintenance of long-term mechanisms by relevant departments in daily management, resulting in the ineffectiveness of the mechanism for protecting the rights and interests of workers. In the process of departmental law enforcement, although each department has its own responsibilities, such a dispersed situation cannot form a unified and coordinated force. Each department tries to act according to their own understanding and pace, which leads to uneven results in rights protection and sometimes even situations of responsibility shifting. This situation of fighting independently undoubtedly brings difficulties and uncertainties to the protection of the legitimate rights and interests of workers.

2.3 The Awareness of Protecting Off-Farm Workers Themselves is Weak, and the Ways to Protect Their Rights are Too Limited

The root cause of the lack of protection for the legitimate rights and interests of off-farm workers is that their legal awareness is relatively weak^[5]. Many off-farm workers, due to their limited cultural level, may not be clear about their specific rights in terms of salary payment, working conditions, etc., nor do they know how to protect these rights. They even voluntarily give up social security rights such as social insurance in order to obtain higher short-term returns^[6]. At the same time, when facing the issue of wage arrears, their ways of safeguarding their rights are also too limited. They may not know that they can reflect and solve problems through channels such as labor supervision departments and trade union organizations.

Instead, they may adopt some relatively simple and direct methods that may not be effective, such as simply waiting or repeatedly asking the contractor for help. The most common way to solve problems is to display banners and cause trouble on construction sites. Besides, they may have a fear of legal proceedings and other formal channels, fearing that they may take time and effort, and may not be able to obtain effective solutions. This often puts them in a difficult situation when facing wage arrears, making it difficult to timely and effectively protect their own rights and interests. This situation not only affects the normal life and work enthusiasm of rural migrant workers, but also has a certain negative impact on the healthy and stable development of the construction industry.

3. Exploration of Legal Paths for Off-Farm Workers to Claim Underpayment

3.1 Seeking the Best Remedies through Appropriate Channels

3.1.1 Civil Means Remedies

The Civil Procedure Law of the People's Republic of China stipulates that if a people's court seeks to recover labor remuneration, it may, on the application of the parties, rule to enforce it in advance. For such cases, off-farm workers can apply to the court for advance execution while filing a lawsuit, and ultimately recover their wages. As mentioned earlier, there is a phenomenon of illegal subcontracting and layered subcontracting in practice. Therefore, in civil trials, in addition to the contractor being responsible for paying the remuneration, off-farm workers can have three requests when filing a lawsuit with the court. The first is to request payment from the labor subcontracting unit that violated the contract. The Regulations on Ensuring the Payment of Wages for off-farm workers is an important content issued by the State Council, aimed at standardizing the management of wages for off-farm workers in the construction industry and preventing wage arrears. The Regulations on Ensuring the Payment of Wages for off-farm workers clearly stipulate that "If a subcontracting unit defaults on the wages of off-farm workers, the construction general contracting unit shall first settle the payment and then pursue compensation in accordance with the law." First, the general contractor shall settle the debt, and then the responsibility for recovery shall be handed over to the general contractor to ensure the maximum protection of the rights and interests of off-farm workers. The second type is to request the company that illegally lends qualifications to bear payment responsibility. The Regulations on Ensuring the Payment of Wages for off-farm workers also stipulate that "If the construction company allows other units and individuals to undertake construction projects in the name of the construction company, resulting in arrears of wages for off-farm workers, the construction company shall settle the payment." Finally, it is possible to request the general contractor, construction company, and contractor to jointly assume the repayment responsibility and be listed as joint defendants.

3.1.2 Administrative Means Remedies

In administrative channels, off-farm workers can recover overdue wages through administrative departments in accordance with Article 10 of the Regulations on the Protection of Wage Payment for off-farm workers and the Regulations on Labor Security Supervision.

According to the different administrative counterparts, it can be divided into different types. Violation of contract awarding is a common phenomenon in the construction field. The Interim Measures for the Administration of Wage Payment of off-farm workers in the Construction Field stipulates that "Engineering general contracting enterprises shall not contract or subcontract projects in violation of regulations to organizations or individuals who do not have the qualifications for employment, otherwise they shall bear joint and several liability for paying off overdue wages." The Regulations on Ensuring Wage Payment of off-farm workers also stipulate that "If construction companies or general contracting units contract or subcontract construction projects to individuals or units without legal business qualifications, resulting in overdue wages of off-farm workers, the construction company or general contracting unit shall pay off the arrears." Organizations or natural persons without qualifications shall borrow the qualifications of other units to undertake projects and carry out construction, and those who owe wages to off-farm workers shall be paid off by the construction company. If the construction company fails to allocate construction funds according to the agreement, resulting in off-farm workers not receiving wages, the construction company needs to advance payment of the wages owed to the off-farm workers. If the subcontractor defaults on the wages of off-farm workers, the general contractor shall first settle the payment and then pursue compensation. If an engineering construction project is subcontracted and there is a delay in the wages of off-farm workers in this situation, the construction general contracting unit shall first settle the payment and then pursue compensation in accordance with the law. In summary, the law provides sufficient protection for off-farm workers, therefore, it is necessary to safeguard their legitimate rights through legal means in order to ensure their wages are guaranteed.

3.1.3 Criminal Means Remedies

From a criminal perspective, according to the provisions of the Criminal Law, "If a company evades payment of labor remuneration to workers by transferring property, evading hiding, or has the ability to pay but does not pay labor remuneration to workers, and the amount is relatively large and is ordered by relevant government departments to pay but still does not pay, it shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if serious consequences are caused, it shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined. If a company commits this crime, it shall be fined, and its directly responsible supervisors and other directly responsible personnel shall be punished in accordance with the provisions of the preceding paragraph." Any company or individual who meets the requirements for constituting a crime, regardless of whether they have the qualifications of an employer, will be held criminally responsible.

3.2 Consolidate the Legal Responsibility and Cooperation among Various Administrative Subjects

The Regulations on Ensuring the Payment of Wages for off-farm workers explicitly mention the need to achieve departmental coordination and coordination, clarify the responsibilities of government territories and departmental supervision. The competent departments in charge of engineering construction in industries such as urban construction and water conservancy also fulfill their industry regulatory responsibilities in accordance with their duties.

The human resources and social security department is the labor supervision department, the housing and construction commission is the management department of construction enterprises, the finance department is the management department of salary deposits, the judicial department provides legal aid, and the people's court hears cases. At the same time, judicial administrative departments and legal aid institutions should list off-farm workers as the focus of legal aid and provide convenient legal aid for them^[7]. Each department complements each other, forming a tight network of wage arrears and rights protection. If a department's poor management or negligence leads to wage arrears, or makes the original wage arrears more serious, even causing personal injury or death, while criticizing the relevant units, it is also necessary to take responsibility for the relevant personnel and leaders, so as to truly fulfill their respective responsibilities. When investigating the issue of wage arrears, more attention should be paid to the work of supervisory agencies and staff. In order to better protect the rights of off-farm workers, all departments must strictly implement their responsibilities in accordance with legal provisions and must not engage in the phenomenon of "kicking the ball". In practice, some off-farm workers have already received arbitration awards or court rulings, but their salaries have not been received for a long time. Various regions should actively cooperate with courts and procuratorates to effectively solve the problem of off-farm workers not receiving money after winning lawsuits. Through such cooperation, the problem of wage arrears can be better solved.

3.3 Continuously Optimizing the Awareness and Approaches of Wage Claims and Rights Protection for Off-Farm Workers

Consciousness determines behavior, and the cultivation of consciousness requires time accumulation, while the cultivation of independent rights protection awareness among off-farm workers in cities requires the cultivation of a good social environment for rights protection^[8].

In order to better enhance the legal awareness of the vast group of off-farm workers, typical case videos can be played on construction sites, so that off-farm workers can intuitively feel the power and application of the law. Off-farm workers must enhance their self-protection awareness and legal awareness, and inquire whether they will sign a labor contract with the employer before starting work. The good cognition of off-farm workers actually plays an important role in the implementation of policies^[9]. After encountering issues such as wage arrears, actively seek help from judicial authorities. When facing difficulties in safeguarding rights, do not resort to extreme measures to seek compensation, but instead take legal weapons to protect your own rights and interests.

As mentioned earlier, there are various ways to claim unpaid wages. Off-farm workers who have been owed wages have the right to file a complaint in accordance with the law, or apply for labor dispute mediation, arbitration, and filing a lawsuit. Because the act of delaying wages seriously violates the Labor Law, workers can file an arbitration with the local labor arbitration committee. If wages are still owed, compulsory enforcement can be brought to the court at this time. In addition, complaints can be made to regulatory authorities. If the employer defaults on their wages, we can file a complaint with the local labor supervision department and demand compensation. Off-farm workers who believe that their work unit has infringed upon their legitimate rights and interests in labor security can also file a complaint with the labor security administrative department. If the supervisory department determines that the arrears are confirmed after verification, it will urge the relevant party to pay the labor remuneration of the workers. Thirdly, a payment order can be applied for when the evidence is conclusive. According to the Labor Contract Law, "Employers shall timely and fully pay labor remuneration to employees in accordance with the provisions of the labor contract and national regulations." If the employer fails to pay wages or labor remuneration in full, employees can apply for a payment order to the local court. Finally, a lawsuit can be filed with the people's court,

and filing a lawsuit is the last resort to collect outstanding debts. In addition to the traditional channels mentioned above, various regions have also established online rights protection channels. Taking Chengdu as an example, Chengdu launched the rapid handling platform for unpaid wages of off-farm workers in the construction field. Off-farm workers only need to scan the QR code to enter the "Complaint Application" page for complaints, ensuring that the issue of unpaid wages is resolved in a timely and effective manner. Similar approaches can be comprehensively promoted nationwide.

4. Conclusion

Although the legal path for Chinese off-farm workers to claim wage arrears has been clarified, it still needs to be continuously optimized and developed in practice. This process requires off-farm workers to enhance their legal awareness, actively use various means to protect their rights, and also requires government departments to continuously strengthen supervision and law enforcement efforts to ensure the strict implementation of laws and regulations. At present, labor remuneration, as the sole source of livelihood for most workers, is a condition on which they and their families rely for survival^[10]. Only through joint efforts from all parties can the rights and interests of off-farm workers in the construction industry be fully guaranteed, their efforts can be rewarded, and ultimately promote the healthy development of the construction industry.

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