

Research on the Legal Protection of Workers' Right to Rest

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Keywords: Laborer; Legal Protection; Countermeasure Research

Abstract: Human rights, as a core value in the contemporary world, are also a human right. The right to work is an important human right, and the right to rest is also an important right of workers. This paper clarifies the definition of workers' right to rest theoretically, analyzes the problems existing in the protection of workers' right to rest in China according to the current situation of the legal protection of workers' right to rest in China, and puts forward countermeasures. Based on the basic national conditions of China, this paper finds the existing problems of workers' right to rest in China, and puts forward the countermeasures for the path of protecting the rights of workers' right to rest according to the existing problems, in order to provide feasible opinions on legal protection for the protection of workers' right to rest, so that they can protect their legitimate rights as much as possible in practical work and create a good social environment conducive to the stable development of labor relations.

1. Introduction

Laborers are the creators of labor value, and the labor efficiency of laborers has a direct impact on the development of the whole society. Guaranteeing workers' right to rest is an important means to protect workers' physical and mental health and ensure their productivity. The right of workers to rest is an important human right. In recent years, problems such as excessive overtime, excessive fatigue, difficulty in realizing the right to rest and tranquility, and inability to enjoy paid annual leave have continued to occur in China. This not only has its special background of the times, but also reflects the insufficient labor law protection of workers' right to rest in China. Therefore, it is helpful to explore the protection of workers' right to rest and analyze specific problems in detail. Research on the protection of workers' right to rest is helpful to promote the legislation of working hour standards and promote the progress and development of social civilization.

2. The current situation of the legal protection of workers' right to rest in China

2.1. Overview of the legal protection of workers' right to rest in China

The right to rest is a basic right of workers and a universal social consensus. As an institutionalized legal right, the right to rest can be better guaranteed by the administrative power of the government of a country, and the right to rest itself is a natural right that everyone should have according to his or her nature, and it is a basic human right. The right to rest is a constitutional right enjoyed by workers, which has the dual attributes of freedom and social rights. China's constitution has also made clear provisions on citizens' rights to work and rest, and the citizens' right to rest is guaranteed by law.

With the promulgation of the Labor Law in 1994, the protection of workers' right to rest in China has entered a new stage, and the right to rest has been determined from the perspective of the Basic Labor Law, and on this basis, the rights of employees to work hours, rest and leave have been further strengthened. At the same time, the State Council promulgated the "Regulations on the Working Hours of Employees", which clearly reduced the weekly working hours from 44 hours to 40 hours, and established the system of two days off a week, which has been implemented until now; The 2007 Labor Contract Law of the People's Republic of China clearly defines collective contracts in labor contracts and quantifies the responsibilities and consequences of refusing to pay overtime wages. The Regulations on Paid Annual Leave for Employees, implemented in 2008, stipulate in detail the system of paid annual leave for employees. The introduction of this series of legislative measures marks the initial establishment of the rest and leave system for workers in China.

2.2. Analysis of the current situation of legal protection of workers' right to rest in China

2.2.1. Laws and regulations operate stably

At present, China's protection of the right to rest has basically realized the framework of the legal system for the protection of the right to rest. ^[1]The construction of a legal system for the protection of workers' right to rest is not a dead letter, and all legal systems are in operation, and the legislation for the protection of workers' right to rest is clearly defined. Only the smooth operation of relevant laws and regulations can promote social stability, ease labor-management relations, and protect the legitimate rights and interests of workers from infringement. In this regard, although there are a series of problems that need to be solved urgently in the protection of workers' right to rest, and the relevant regulations are not perfect, China's basic legal guarantees exist, laws and regulations operate smoothly, and there is no problem of empty law, and more attention is paid to the protection of workers' right to rest.

2.2.2. The law provides relief guarantees

When a worker's right to rest is infringed, China will provide certain relief guarantees, and the labor inspection department can exercise the power of law enforcement and impose penalties in accordance with the provisions of Article 25 of the Regulations on Labor Inspection and Protection. Our laws clearly stipulate the working hours of workers to ensure that their right to rest is not violated. Governments enact regulations to punish the responsible entities, providing legal protection for the realization of workers' right to rest.

At this stage, China implements a market economy system, the market economy is developing rapidly, and in the face of the state and the market, workers are in a weak position compared with capitalists, so rights protection is the core task of protecting the rights and interests of workers, and Article 6 of the Trade Union Law clearly stipulates the function of trade unions to protect the rights

of workers.^[2]Trade unions protect the legitimate rights of employees through the law, balance labor-management relations, so that workers can not only be protected for their right to rest, but also all legitimate rights and interests can be protected in accordance with the law.

Article 5 of the Labor Dispute Mediation and Arbitration Law clearly stipulates the system for resolving labor disputes between workers and employees, and the current labor dispute resolution mechanism in China can be briefly described as "one mediation, one adjudication and two trials". This mechanism is also conducive to resolving initial labor disputes and avoiding the problem of excessive time. In disputes, the decision of the labor mediation committee is final, therefore, labor arbitration effectively solves the problem of long time for employees to protect their rights and effectively reduces the cost of rights protection.

3. Problems existing in the legal protection of workers' right to rest in China

3.1. The object of protection of workers' right to rest is not clear

Not all natural persons are legal workers, who meet the conditions and have the capacity to work and law. There are significant differences in the protection of employees' right to rest in different industries and enterprises: large enterprises are more likely to comply with laws and regulations and guarantee two days off a week, while special industries can be flexibly resettled according to the actual situation.^[3]However, due to the lack of legal awareness and systems in many small and medium-sized private enterprises, workers often do not have normal rest time. Even if the Labor Law has a special working hours system for high-risk industries, it is difficult to effectively implement it due to the characteristics of business and business.

In terms of the implementation of leave benefits, the performance of various departments is different. Although the central government has repeatedly issued documents urging the implementation of statutory and paid annual leave regulations, local implementation has been inadequate. The different degrees of protection of employees' right to rest in education, government, enterprises and institutions lead to huge differences in the protection of employees' right to rest in different departments, highlighting the imbalance in the protection of the right to rest in practice.

3.2. The content of the protection of workers' right to rest is not comprehensive

With the development of social and economic development, some enterprises have taken advantage of legal loopholes to extend workers' working hours, such as the "996 work system" of Internet companies, which seriously infringes on workers' right to rest.^[4]

There are unclear provisions in China's Labor Law on the overtime system for employees. The definition of "production and operation needs" is vague, resulting in reasonable and unreasonable overtime being easily classified as business needs, and the scope of its interpretation should be limited. The expression "special" in "special reasons" is ambiguous and requires strict and detailed provisions by law. At the same time, although Article 42 of the Labor Law stipulates the extension of working hours under special circumstances, it should also be clearly restricted so as to protect the right of workers to rest in accordance with the law under special circumstances.

In terms of the paid leave system, there is a lack of specific provisions in our country. Developed countries such as Germany and France clearly restrict work during paid leave, and France stipulates that employees' vacation time is determined through consultation with the employer, and their society generally attaches great importance to employees' right to rest. However, China's concept in this regard is different from that of France, and the relevant legal system has not yet been fully integrated with international standards, and it is difficult to achieve a legal balance between employers and employees when taking paid leave. Therefore, China urgently needs to improve the legal provisions

on paid leave, maternity leave, marriage leave and other types of leave and rest for workers, so as to effectively protect the legitimate rights and interests of workers.

3.3. The protection and supervision of workers' right to rest are not sound

Although the law gives the labor administrative department the power to warn, order corrections and punish employers for violations of employees' right to rest, the current protection measures do not address the root causes. At present, the punishment of infringing entities is insufficient, and it is difficult for administrative penalties such as fines to form an effective deterrent to employers chasing high profits. Driven by profits, many lawbreakers briefly relented after receiving punishment, and soon relapsed into their old ways, continuing to infringe on workers' right to rest.

China's current criminal law only provides for the crime of forced labor, and the standard for filing a case is relatively high, and employers bear administrative liability for infringing on employees' right to rest, and there are also loopholes in the implementation of civil liability. In practice, indirect torts such as overtime pay falling below the statutory standard and mandatory immediate overtime cannot be effectively restrained by criminal law. As the most punitive legal department, if the criminal law can include employees' right to rest in the scope of protection and greatly increase the cost of violating the law, employers will not dare to arbitrarily deprive employees of their right to rest for fear of serious consequences, and effectively build a solid legal defense line for employees' right to rest.

3.4. The path for the protection and relief of workers' right to rest is not smooth

Although China's Labor Law is a special law on labor security, it does not have sufficient provisions on workers' rights and remedies. The inadequacy of the legal system and the inaction of the relevant authorities have made it highly vulnerable to violations of workers' right to rest, but there is no avenue for redress. Although Articles 89 to 105 of the Labor Law stipulate the remedial system for the tort liability of the employer and the right to rest of the employee, and require the labor administrative department to warn, order corrections and compensate for losses, the punishment is weak, the cost of the employer is low, and it is difficult to play a punitive role, forming a vicious circle of frequent infringement and no way to protect rights, and even leading to serious consequences such as "death from overwork".

The lack of a system of rights and remedies is also reflected in the difficulty of adducing evidence in the remedial process. Since the Labor Law does not clearly stipulate the burden of proof in labor disputes. When an employee's right to rest is violated, the proof shall still be adduced in accordance with the Civil Procedure Law. Although the judicial interpretation reverses the burden of proof for specific labor disputes, the principle of "whoever asserts the claim shall bear the burden of proof" is still followed in other cases, and the legal remedy system has defects in the process of collecting and presenting evidence, which affects the protection of the right to rest.

In labor disputes, the law requires the employee to arbitrate first, and only if he is dissatisfied with the arbitration result can he litigate. Although both arbitration and litigation are remedial properties of the state's public power, due to the large time limit for labor disputes and the low public awareness of arbitration procedures, employees are more inclined to litigate, which greatly increases the cost of rights protection. In addition, the statute of limitations for the conclusion of court cases is 6 months, and after the expiration of the statute of limitations, not only the cost of rights protection will increase dramatically, but also the risk of losing the case will also increase if the evidence is lost.

4. Improve the countermeasures for the legal protection of workers' right to rest in China

4.1. Distinguish the characteristics of industries and narrow the gap in the protection of workers' right to rest

In view of the phenomenon of employers lacking legal awareness and infringing on employees' rights and interests for profit, it is necessary to clarify the infringing entity and refine the legal provisions to ensure that employers of all sizes are aware that employees' right to rest is protected by law.

In the market economy, there is a large gap in the protection of workers' rights and interests in different industries, and informal employment groups are often marginalized. Relevant departments should strengthen social support for this group, provide legal protection, and increase supervision and punishment of illegal acts in the field of informal employment. ^[5]At the same time, differentiated law enforcement priorities should be formulated for different types of informal employment, such as focusing on regulating the employment behavior of temporary workers in large and medium-sized enterprises. ^[6]Since the majority of informal workers are disadvantaged in the process of marketization, the protection of their right to rest should focus on a combination of equality and special protection. This will enable employers to raise their legal awareness of the protection of employees' right to rest from the perspective of clarifying the subject of labor.

Only when workers themselves raise their awareness of rights protection, clarify the connotation of the right to rest, and grasp reasonable remedies, can they truly build a system for guaranteeing the right to rest. When workers are good at using legal weapons to protect their rights, the infringement of corporate rights will be effectively curbed. By comprehensively considering the characteristics of employers and workers, we will narrow the gap in occupational protection and achieve equal and complete protection of the right to rest.

4.2. Standardize working hours and increase the protection of workers' right to rest

Although the eight-hour working day stipulated in China's labor law is in line with international standards, it is difficult to implement in practice. In view of the fact that the system is difficult to adapt to the actual overtime work in various industries, the working hours can be graded and the minimum working hours, 8 standard working hours and overtime over 8 hours can be defined. The minimum working hours standard can be targeted at "special" groups, while the maximum working hours can meet the needs of specific industry positions, so that both employers and employees have more choices through the establishment of flexible working hours and the implementation of a tiered working hour system.

On this basis, a perfect paid leave system is proposed, which not only ensures that employees enjoy sufficient rest rights, but also ensures the legitimate rights and interests of employers. ^[7]The law grants employees paid leave to ensure adequate physical and mental rest, but in light of the actual situation in China, it can be treated differently: if the employee works in a peer enterprise during the paid leave period, a "non-competition" can be implemented, and the employer has the right to dismiss, cancel the leave and impose penalties; Statutory holidays allow workers to perform simple work.

With regard to the overtime system, the overtime provisions of the current labor law have a wide scope of application, which can easily make overtime the norm and even become an excuse for infringement. Therefore, it is necessary to strictly limit the overtime standards and conditions stipulated in Article 41 of the Labor Law, clarify the specific overtime system and various leave systems, effectively protect the right of workers to rest, and realize the sustainable development of workers' working ability.

4.3. Persist in regular inspections and improve the supervision mechanism for workers' right to rest

To protect workers' right to rest, it is necessary to improve the supervision mechanism and optimize the punishment measures. The government can impose fines based on the percentage of the company's operating profit in the previous year, so that the cost of violating the law can be linked to the company's income, so that the larger the scale and the greater the social responsibility, the more effective the right to rest for workers. In response to the problems of single means of punishment for infringement by employers, low levels, and weak feasibility, punishments may be graded according to the degree of violation, and measures such as public criticism, fines, public disclosure of creditworthiness, and orders to suspend production and business may be employed, and where the circumstances are serious, the business license may be directly revoked.

At present, only the crime of "forced labor" in China's criminal law involves the protection of workers' right to rest, and the strength is insufficient. In view of the fact that the deterrent effect of criminal sanctions far exceeds that of administrative and civil sanctions, violations of workers' right to rest should be included in the criminal law system, and criminal penalties such as criminal detention should be added. Only by strengthening supervision and improving the punishment system through multiple channels can we truly build a protective barrier for workers' right to rest.

4.4. Give full play to the role of trade unions and smooth the path for workers to protect their right to rest

To improve the relief liability system for workers' right to rest, we can start from three aspects: early prevention, process supervision, and post-infringement relief. Early prevention requires enterprises to sign a labor security commitment letter when registering, and clarify the legal obligation to protect workers' right to rest; Process supervision discovers and deals with infringements in a timely manner through regular or irregular surprise inspections and the establishment of complaint channels. At the same time, the punishment of infringing employers should be strengthened, and diversified punishment measures should be taken according to the degree of infringement. It is recommended to improve Article 90 of the Labor Law: if an employer infringes an infringement for the first time, it shall be warned and ordered to make corrections; for further infringement, in addition to ordering correction, a fine shall be imposed; If the circumstances are serious and they refuse to change their ways, their business licenses will be revoked, and a fine of more than 50,000 yuan will be imposed and recorded in the case file.

In view of the difficulty of adducing evidence when workers protect their rights, the labor inspection department should assist in collecting evidence, but this method alone is still insufficient. For the problem of inaction, regularly conduct legal education for grassroots cadres, publicize legal knowledge, and explain legal cases; Those who continue to fail to act are to be dealt with strictly in accordance with law, and where the circumstances are serious, administrative punishments are to be given. The disciplinary committee is to strengthen oversight of the deliberation of relevant cases, combining ideological education with punishment mechanisms.

At the legislative level, the process of protecting the rights of workers should be simplified, allowing them to directly choose litigation, reducing the cost of rights protection, giving full play to the advantages of neutrality and professionalism of court staff, and avoiding the waste of judicial resources. In addition, the government needs to strengthen the supervision of labor arbitration cases, ensure the fair and efficient progress of arbitration procedures through investigation of workers and the facts of the cases, and build a solid line of defense for the protection of employees' right to rest in an all-round way.

5. Conclusion

Employers in China often infringe on workers' right to rest for profit, resulting in physical and mental damage to workers. At present, there are problems such as differential treatment of protection objects and insufficient supervision and relief, and it is necessary to distinguish the characteristics of industries, improve the supervision mechanism, and give full play to the role of trade unions to protect workers' right to rest, which is of great significance for safeguarding the rights and interests of workers and promoting social and economic development.

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