

## **Analysis on the off campus practice of higher vocational students from the perspective of labor law**

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**Abstract:** Off-campus practice is different from cognition practice and on-the-job practice, which has a special position and important role in vocational education. At the same time, however, due to the particularity of off-campus practice, specifically, the particularity of students' role, off-campus practice has exposed many problems in recent years. When the responsibility is divided according to the principle of fairness, many reasons for accidental injuries of interns are related to their own inexperience. Although many internship units will point out that all faults during internship are attributed to interns' masters, the proportion of this situation is very small. Most accident students also need to bear certain responsibilities, so the compensation for injuries that students can get is very limited. We should standardize the labor law system, amend laws and regulations, and establish an equal and win-win relationship between interns and internship units. Interns strictly abide by the rules and regulations of the internship unit and complete the agreed workload; At the same time, the internship unit must optimize the internship environment for interns, so that they can really learn something in practice, and should be given a reasonable living allowance.

### **1. Introduction**

Students' lack of experience in off-campus internship in higher vocational colleges can easily lead to work-related injuries and even production accidents; Social experience is shallow, interns are easy to be used, and even take the road of breaking the law. Off-campus practice is different from cognition practice and on-the-job practice, which has a special position and important role in vocational education. At the same time, however, due to the particularity of off-campus practice, specifically, the role of interns, off-campus practice has also exposed many problems in recent years. After the off-campus practice injury accident of higher vocational students, the interns bear great physical and psychological pain, while universities and internship units shirk each other in the face of huge financial compensation, which is even worse for the interns [1-2]. Statistics show that every year, 13 million students from higher vocational colleges and secondary vocational colleges in China enter the enterprises for internships. However, students are prone to injury accidents because they lack the necessary awareness of risk prevention. After the injury occurs, most students will choose to claim compensation through civil law, which is affected by the single law and cannot protect the rights of students in the whole range.

The fundamental reason why interns' rights and interests can't be guaranteed lies in the unclear definition of interns' identity in laws and regulations. In the process of internship, interns are engaged in production and business activities, which forms students and employees with dual identities, and they need to accept the management of dual management schools and internship units [3]. When the responsibility is divided according to the principle of fairness, many reasons for accidental injuries of interns are related to their own inexperience. Although many internship units will point out that all faults during internship are attributed to interns' masters, the proportion of this situation is very small. Most accident students also need to bear certain responsibilities, so the compensation for injuries that students can get is very limited. Therefore, this paper studies the off-campus internship of higher vocational students from the perspective of labor law. According to the relevant provisions of labor law, internship is an important educational activity arranged by the

school in order to enhance students' practical ability, and it is an extension of the classroom learning content of interns. The relationship between interns and schools is the teaching relationship [4]. In essence, the interns who take part in the internship form a non-labor legal relationship with factual labor. Due to the de facto labor, interns are faced with all the labor risks faced by ordinary workers, including: internship duration, internship location, internship content and job responsibilities, working and rest time, working conditions, labor protection and insurance, labor remuneration, dispute resolution and other items. We should standardize the labor law system, amend laws and regulations, and establish an equal and win-win relationship between interns and internship units. Interns strictly abide by the rules and regulations of the internship unit and complete the agreed workload; At the same time, the internship unit must optimize the internship environment for interns, so that they can really learn something in practice, and should give them a reasonable living allowance [5].

## **2. The Security Risk and Infringement of Vocational Students' Off campus Practice**

### **2.1. Specific manifestations**

Higher vocational colleges did not conduct field investigation on the internship unit in advance, did not understand the situation of the internship unit, and chose unqualified and unqualified units to arrange students for internship, resulting in security risks or violations [6-7]. Vocational colleges, internship units and students failed to sign an internship agreement as required before the start of post placement internship activities, or the agreed content was obviously unfair to students, and there was no provision for internship remuneration and payment method, which led to security risks or violations, and students lacked the basis to safeguard their rights according to law. If students are injured due to potential safety hazards in the dormitory facilities provided by the internship unit, first of all, the internship unit should assume all the obligations of compensation according to the presumed fault liability, and then can recover according to the fault liability. Internship units and higher vocational colleges did not provide education and training on safety protection knowledge and post operation rules for students, or allowed students who failed to pass the examination to participate in post practice [8].

The practice units failed to implement the safety production responsibility system and neglected to manage the students' practice, which resulted in the occurrence of accidents and infringed the students' rights to life and health. For example, when interns take a bath in the dormitory provided by their unit after work, they die of poisoning due to gas leakage. In this case, the interns should first assume full liability for compensation. Then, if it is identified that there is a quality problem with the gas water heater, the interns can assume liability for compensation to the manufacturer and seller of the water heater. This paper has carried out a variety of studies on the specific manifestations of the security risks and infringement problems of vocational students' post placement practice, and has constructed the structure chart of the specific manifestations of the security risks and infringement of vocational students' post placement practice, as shown in Figure 1.

For the personal injury of interns, the school needs to bear the corresponding liability for fault and tort. Generally, during the internship, the school only signed an internship contract with the internship unit, stipulating the rights and obligations of students during their internship in the internship unit. The internship unit did not cooperate with the school and interns to sign a written agreement, let alone sign a labor contract with the interns. Therefore, There is no labor contract relationship between the interns and the internship unit. For students' internship, as an extension of the school content in the students' classroom, it is usually a specific content of the school's teaching work arrangement. During the internship in the internship unit, the identity of the interns is still that of the students at school. In this case, the school needs to bear the management responsibility and the obligation to protect the students [9].

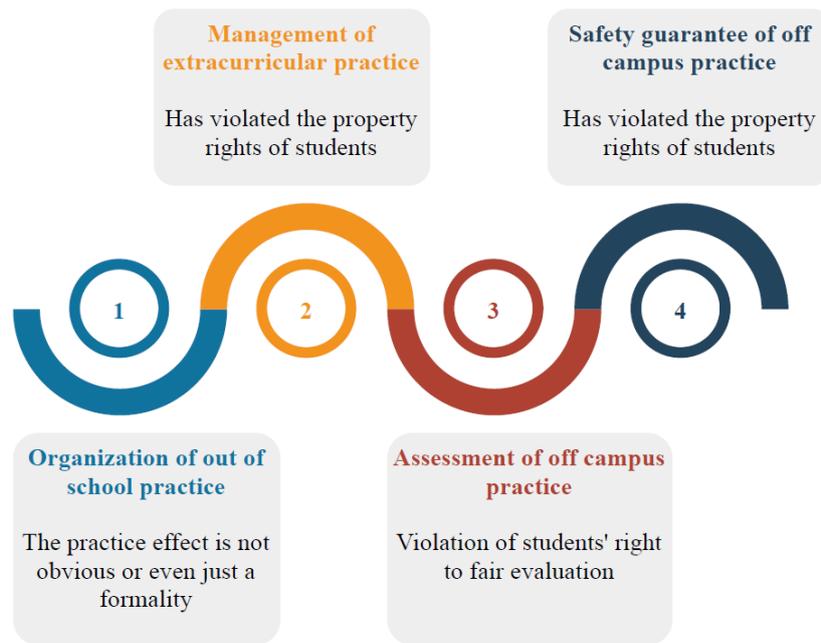


Figure 1 Specific manifestations of security risks and infringement of vocational students' internship

## 2.2. Main reason analysis

In case of a student injury accident caused by the fault of the school, students or other relevant parties, the relevant parties shall bear corresponding responsibilities according to the proportion of their behavior fault degree and the causal relationship between them and the damage consequences. It is an extension of classroom teaching in colleges and universities, and is jointly organized and managed by colleges and universities and internship units. Once interns suffer personal injury, they should follow [10]. General fault principle "to identify responsibility. Due to various reasons, students take the form of independent internship, and the internship unit does not require the relevant recommendation or certification materials of the school to receive interns. The internship activities involve students themselves, and the internship process is not reported to the school teachers or relevant departments [11]. At present, there is a lack of unified definition of the subject status of internship students, and there are mainly the following three viewpoints:

(1) It is considered that intern students are laborers. No matter whether they sign an agreement or a labor contract with the internship unit, they have actually established labor relations and become employees of the internship unit.

(2) It is considered that practice is only a link of school education and teaching activities. Students who go to practice units for internships are still students in school, not laborers in the legal sense, and there is no labor relationship between them.

(3) It is considered that the intern students are both students and employees of the internship unit. They have a student status and have a substantial labor relationship with the internship unit, and accept the guidance, management and protection of the school and the internship unit.

Therefore, the internship time of higher vocational students should be more than half a year, and it is required that during the internship period, schools and enterprises should do a good job in theoretical teaching and skills training, and at the same time do a good job in student safety protection system, and gradually establish a relatively sound system.

## 3. The Necessity and Feasibility of Labor Law Protection for College Interns

### 3.1. The Legislative Basis of Bringing College Interns into the Protection of Labor Law

The provisions of Article 12 of the Opinions on Several Issues Concerning the Implementation of the Labor Law of the People's Republic of China issued by the Ministry of Labor cannot explain

that the labor law excludes the protection of college interns. We believe that this provision not only does not exclude college students from the scope of labor law protection, but can draw a conclusion that college students can be included in the labor law protection according to this provision [12]. Higher vocational students in higher vocational education institutions are mainly learning professional skills and rarely contact with legal knowledge. Therefore, higher vocational schools have the responsibility and obligation to set up relevant courses and tell the real cases of relevant laws and regulations in detail to enhance the awareness of rights protection of higher vocational students. The college interns are included in the legislative basis of labor law protection, and the fundamental causes of labor risk in law are discussed to some extent, and the analysis chart is shown in Figure 2.

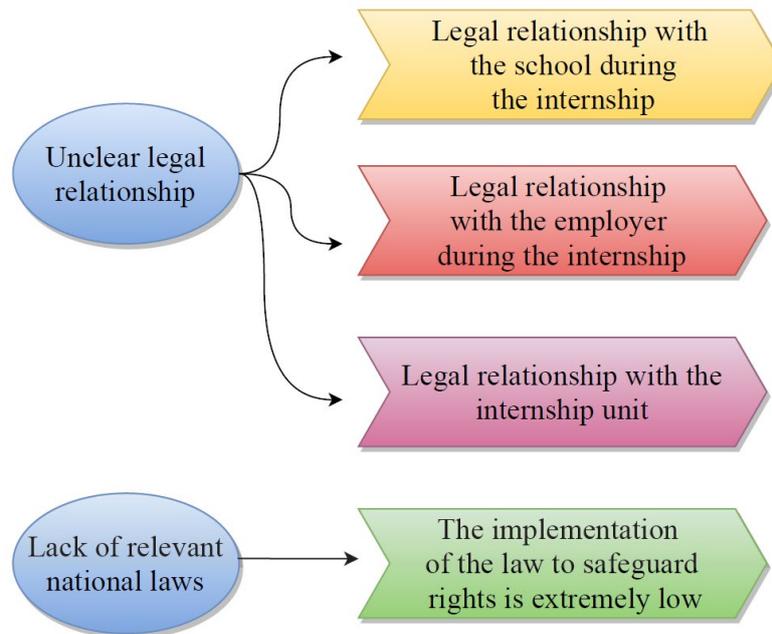


Figure 2 Legal root causes of labor risks

The practice of college students is by no means that students use their spare time to engage in relevant work. In most cases, it is in a specific period of time to carry out relevant legal education in the practice unit, so that the practice unit can realize its responsibility and understand that the practice unit has the obligation to protect and educate the post replacement interns under higher vocational education. At the same time of improving the policy norms, higher vocational colleges, employers and student families need to establish a closer cooperation mechanism to form a joint force to protect the rights and interests of students in post internship. For example, higher vocational colleges should strengthen the construction of post practice management system, formulate practice plans according to professional talent training programs, and select qualified teachers to guide and manage students' practice throughout the process. With this understanding, the practice unit will pay more attention to the safety of vocational college students in post placement practice, which can greatly reduce the probability of safety accidents in post placement practice, and devote itself to relevant work. The practice of college students does not meet the preconditions of this article if it is not the case of "using spare time" to engage in part-time work as specified in this article.

### 3.2. Practical basis of bringing college students into labor law protection

College interns have the corresponding labor capacity in terms of age, intelligence level, physical strength and freedom of behavior. College interns basically meet the age limit stipulated by the Labor Law. When they practice, their age will generally exceed 18 years old, which is in line with the relevant provisions of the Labor Law. Before the internship, carry out systematic training for students and carry out safety and discipline education; During the internship, we should strengthen communication with the internship unit, keep abreast of the students' internship situation and

ideological trends, and coordinate and solve the contradictions and disputes arising during the internship; After the internship, students will be assessed together with the internship unit, the assessment results will be reasonably determined, corresponding credits will be given and included in the student status file. Schools must strengthen the legal education of interns during their internship, speed up the reform of legal teaching, and improve the legal level of internship instructors. Interns must improve their awareness of learning methods, usage and law-abiding. The internship unit strengthens the legal education for interns and takes the lead in observing the law and discipline. With regard to labor remuneration, for workers, Article 48 of China's Labor Law stipulates: "The state implements a minimum wage guarantee system. The specific standard of minimum wage shall be stipulated by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government and reported to the State Council for the record.

In terms of work content, it is not much different from the regular employees of the internship unit. It is necessary to strictly abide by the working hours and requirements of the internship unit, and the work is difficult, with heavy tasks and great responsibilities. The labor that students pay during the internship is only the consideration of getting exercise, which is obviously unfair to students and contrary to the basic principles such as equal pay for equal work. Incorporate students' internship into the scope of application of industrial injury insurance, or draw lessons from some foreign practices, formulate special laws and regulations for the protection of the rights and interests of vocational college students' internship, promote the introduction of local regulations, government rules and normative documents by all provinces and municipalities, and speed up the construction of a relatively perfect legal system for the protection of the rights and interests of vocational college students' internship.

#### **4. Conclusions**

Schools must strengthen the legal education of interns during the internship period, speed up the reform of legal teaching, and improve the legal level of practice instructors. Interns must improve their awareness of learning, using and abiding by the law. The internship units should strengthen the legal education for interns and take the lead in abiding by laws and disciplines. For schools sending interns and units accepting interns, it is usually necessary to make clear agreements in advance on internship matters, including students' security, insurance obligations and liability for damages during the internship. As there is no labor legal relationship between the interns and the internship unit, the employer cannot purchase industrial injury insurance for the interns. Therefore, once the interns have personal safety accidents, they cannot apply for recognition as industrial injuries, and cannot receive industrial injury compensation and enjoy industrial injury treatment. In the process of student internship, if the internship students and the internship unit meet the conditions for establishing labor relations, and if the internship students and the internship unit do not meet the conditions for establishing labor relations, the internship students or the school can purchase personal accident insurance or internship liability insurance to solve the problem. Therefore, it is a better way to incorporate the personal injury of interns into the industrial injury insurance system. On the one hand, it can reduce the pressure of schools and interns, and on the other hand, it can effectively protect the legitimate rights and interests of interns.

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