

Liquidated Damages and Compensation in Labor Contract Law and the Improvement of Its System

Yun Zhang

College of Public Affairs, Fujian Jiangxia University, Fuzhou, Fujian, China, 350108

Email: walkcloud@126.com

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Abstract: Because the labor contract law of our country does not stipulate whether the labor contract can stipulate the liquidated damages or not, the provisions of local legislation on the liquidated damages of labor contract are not scientific enough, which makes the use of the liquidated damages of labor contract very unfavorable to workers, so people take a negative attitude towards the liquidated damages of labor contract. This paper studies the problems of liquidated damages and compensation in the labor contract law and the improvement of its system. The results show that the provisions of the labor contract law on the liquidated damages for labor contracts, which pay too much attention to the protection of workers, are obviously disadvantageous to ensure the performance and stability of labor contracts. In view of this, it is necessary to reconstruct the labor contract liquidated damages system in the labor contract law. This result has a certain reference for the improvement of the labor contract law.

1. Introduction

Labor contract law is formulated to improve the labor contract system, clarify the rights and obligations of both parties to the labor contract, protect the legitimate rights and interests of workers, and build and develop harmonious and stable labor relations. It was revised and adopted at the 28th meeting of the Standing Committee of the 10th National People's Congress on June 29, 2007, and shall enter into force as of January 1, 2008 [1-3]. On December 28, 2012, the 30th meeting of the Standing Committee of the 11th National People's Congress revised the decision on Amending the labor contract law of the people's Republic of China [4-5].

The purpose of legislation is to protect the legitimate rights and interests of workers, not to protect the legitimate rights and interests of both labor and capital. As a social law regulating labor relations, the value of legislation lies in the pursuit of balance between labor and capital. In practice, because the employer is too strong and the worker is too weak, if the law protects the employer and the worker equally, it will inevitably lead to the imbalance between the labor and capital and deviate from the value orientation of the labor contract law. Therefore, only by focusing on protecting the legitimate rights and interests of workers can we achieve a relative balance between labor and capital [6-8].

The promulgation and implementation of the labor contract law unifies the system of liquidated damages for labor contracts [9]. The labor contract law only allows the labor contract to stipulate liquidated damages for the employee's business secrets and service period. In addition to the above two situations, the employer and the employee shall not stipulate liquidated damages for the employee. In practice, because the labor law of our country does not stipulate whether the labor contract can stipulate the liquidated damages or not, and the local legislation is not scientific enough to stipulate the liquidated damages of labor contract, the use of the liquidated damages of labor contract is very unfavorable to the workers, so people take a negative attitude towards the liquidated damages of labor contract [10-11]. The labor contract law also takes a strict restrictive attitude to the liquidated damages of labor contract. This paper holds that the provisions of the labor contract law on liquidated damages for labor contracts, which pay too much attention to the protection of workers, are obviously detrimental to the performance of labor contracts and the stability of labor

relations. In view of this, it is necessary to reconstruct the labor contract liquidated damages system in the labor contract law.

2. Discussion on the Viewpoint of Negating the Penalty for Breach of Labor Contract

The view of denying the liquidated damages of labor contract is mainly from the perspective of social law, which holds that the labor law and the labor contract law have both the nature of public law and private law and belong to the category of social law. Social law is to adjust the unequal relationship of the main body as its own duty, pay attention to substantive equality, and protect the relatively weak workers. In practice, employers often set liquidated damages for workers in labor contracts, and workers have to accept them under the pressure of employment. Few employers set liquidated damages for early termination of labor contracts for themselves in labor contracts. Most of the liquidated damages in labor contracts restrict workers, and the application of liquidated damages in labor contracts causes great inequality. Based on the above reasons, people tend to hold a negative attitude towards the liquidated damages of labor contracts. To sum up, the view of negating the setting of liquidated damages in labor contract mostly comes from the following reasons.

2.1. The Particularity of Labor Contract Determines That Labor Contract is Not Suitable for Setting Liquidated Damages

The parties to a civil contract have equal status, and liquidated damages may be stipulated in the civil contract. Labor contract is different from civil contract. The economic status of the parties to labor contract is unequal. The employer is often in the position of strong economy, while the worker is in the position of weak economy. When signing labor contract, the employer often uses its advantage to force the worker to accept the liquidated damages clause. At present, the employment pressure of our country determines that workers can only be forced to accept the terms of liquidated damages against themselves. The application of liquidated damages for labor contract violates the legislative purpose of the labor law for the protection of workers' inclination. In practice, employers often set high liquidated damages for workers. Once the workers terminate the labor contract in advance, they need to pay high liquidated damages to the employers. The amount of liquidated damages is far more than the wages earned by the workers during the duration of the labor relationship, which negates the liquidated damages of the labor contract.

The labor contract is really different from the general civil contract. In the labor contract, the economic status between the employer and the worker is unequal. In the signing of the labor contract, there are indeed some unequal terms such as liquidated damages that the employer forces the worker to accept by using its advantageous position. However, the view of denying the liquidated damages of labor contract is inevitably too one-sided.

(1) Labor law and labor contract law belong to the category of social law. In the legislation of labor law and labor contract law, special protection for workers should be embodied. In fact, there are many system designs in the labor law and the labor contract law that reflect the special protection for workers, such as the working hours system, the rest and vacation system, the social insurance system, the wage payment system, etc. the above system of special protection for workers takes the particularity of labor relations into account and reflects the state's intervention in labor relations;

(2) As the basic system of adjusting labor relations, the labor contract system should pay attention to the particularity of labor relations and the special protection of workers, at the same time, it should also pay attention to maintaining the stability of labor relations and the protection of the legitimate rights and interests of employers. To stipulate liquidated damages in the labor contract is to require the laborer and the employer to perform the labor contract according to the time limit stipulated in the labor contract, to negate the liquidated damages in the labor contract based on the particularity of the labor contract, it seems that the liquidated damages system in the labor contract is not considered in the whole labor legal system, and the negative impact of the liquidated damages in the labor contract is viewed in isolation, The general principle requirements

of the contract are ignored;

(3) Due to the lack of consideration for the particularity of labor contract in the past relevant legislation on liquidated damages for labor contract, the application of liquidated damages for labor contract is obviously disadvantageous to workers. Therefore, in the reconstruction of the labor contract liquidated damages system, we should fully consider the particularity of the labor contract, and take the special protection of workers as an important reference factor in the design of the labor contract liquidated damages system, such as limiting the agreed method and agreed amount of the labor contract liquidated damages, so that the labor contract liquidated damages not only plays the purpose of ensuring the performance of the labor contract, It also reflects the special protection of workers.

2.2. The Application of Liquidated Damages in Labor Contract is Obviously Unfair

In the signing of labor contracts, employers often take advantage of their economic advantages to set a liquidated damages clause for workers to terminate labor contracts in advance in labor contracts. Generally, the liquidated damages clause is only applicable to workers, while the employer cancels labor contracts in advance without setting liquidated damages clause, forming a labor contract liquidated damages only binding workers, However, without restricting the employer, the application of liquidated damages for labor contract is obviously unfair. It is forbidden to stipulate liquidated damages in the labor contract, which can serve the purpose of protecting workers. The above point of view only sees the inequality in the application process of the liquidated damages for labor contracts, neglects the causes of the above problems and the solutions. In practice, when the employer provides the text of the labor contract for the workers, it unilaterally sets the liquidated damages for the early termination of the labor contract for the workers in advance, but there is no liquidated damage for the early termination of the labor contract for the employers. The employer only needs to pay economic compensation to the workers for the early termination of the labor contract, and the liquidated damages for the labor contract essentially become the unilateral liquidated damages, the application of liquidated damages in labor contract is obviously unfair.

The reasons for the above problems are, on the one hand, due to the unequal economic status between the parties to the labor contract, on the other hand, due to the legislation of liquidated damages for labor contract in China. In some department rules and local legislations, the preparation of the negative influence caused by the unequal status of the parties to the labor contract is insufficient, which results in the above problems. For the unfair application of the labor contract liquidated damages, we can completely intervene through legislation. If the labor contract only stipulates the liquidated damages for the early termination of the labor contract by the workers, it should be recognized that the agreement is invalid, in order to maintain the fairness of the application of the labor contract liquidated damages. This kind of legislation embodies the social law thoughts of labor law and labor contract law.

2.3. The Penalty Clause of Labor Contract Greatly Limits the Reasonable Flow of Labor

The setting of liquidated damages in labor contract does not limit the reasonable flow of labor. Article 37 of the labor contract law stipulates that the labor contract may be terminated if the laborer notifies the employer in writing 30 days in advance. The laborer may terminate the labor contract by notifying the employer three days in advance during the probation period. It can be seen that in the labor contract, the employer and the laborer agreed that the laborer should pay liquidated damages according to the agreement when terminating the labor contract in advance. The laborer still does not need the consent of the employer when terminating the labor contract in advance. The laborer only needs to perform the obligation of advance notice. The article thinks that the liquidated damages clause of labor contract greatly limits the reasonable flow of labor, mainly considers that the laborers need to pay liquidated damages to the employer when terminating the labor contract in advance, which is the same as limiting the reasonable flow of labor in disguise. However, as a kind of contractual relationship, workers should bear certain responsibilities to maintain the seriousness of the labor contract if they terminate the labor contract ahead of time. If the workers terminate the

labor contract ahead of time, they do not need to bear any responsibilities, which violates the basic principles of the contract, how can the labor contract become a unilateral contract that only constrains the employer but not the workers. While the law gives the workers the right to resign unilaterally, it can make them bear certain responsibility for breach of contract, which not only guarantees the workers' right to choose their own jobs, but also maintains the seriousness of the labor contract.

2.4. The Punitive Function of Liquidated Damages Determines That the Labor Contract is Not Suitable to Stipulate Liquidated Damages

Generally speaking, liquidated damages have both compensatory and punitive functions. If we deny the punitive nature of labor contract liquidated damages and only admit that it has compensatory nature, the labor contract liquidated damages only play a role of damages, and there is no need for the existence of labor contract liquidated damages, so we can completely replace liquidated damages with damages, The function of labor contract liquidated damages to ensure the performance of labor contract can not be reflected. When the early termination of the labor contract does not cause loss to the employer, the employee does not need to bear any responsibility. In this case, the legal effect of the labor contract cannot be reflected, and the agreement on the term of the labor contract has lost its significance. If there is no legal system to guarantee the performance of the labor contract, the performance of the labor contract is impossible. In the design of the new labor contract liquidated damages system, by limiting the amount of the labor contract liquidated damages, by complementing the labor contract liquidated damages and the compensation, and by limiting the payment conditions of the labor contract liquidated damages, the punitive nature of the workers can be completely reduced, reflecting the special protection of the workers.

3. Redesign of the System of Liquidated Damages for Labor Contract

In the legislation of the labor contract law, it is only allowed to stipulate liquidated damages for the employee's business secrets and service period. In addition, it is not allowed for the employer and the employee to stipulate that the employee shall bear the liquidated damages for the early termination of the labor contract. This paper holds that the current legislation of the labor contract law only pays attention to the negative impact of the labor contract liquidated damages, neglecting that the cause of this negative impact is precisely caused by the past legislative defects of the labor contract liquidated damages. If the system of the labor contract law's liquidated damages is scientifically reconstructed, this negative impact can be completely avoided, It can also guarantee the performance of labor contracts and stabilize labor relations. According to the general principle of labor contract liquidated damages, and considering the particularity of labor contract, reflecting the social law characteristics of labor contract law, this paper intends to design the labor contract liquidated damages system as follows.

3.1. Allow Both Parties to the Labor Contract to Agree on Liquidated Damages in the Labor Contract

In the construction of a harmonious society in China, the harmony of labor relations is one of the important contents of the construction of a harmonious society. Whether the labor relations are harmonious depends on the stability of the labor relations to a great extent. Only the relatively stable labor relations are harmonious labor relations. The labor contract system is an important form to stabilize labor relations. As a type of contract, labor contract should reflect the basic requirements of the contract. If it is forbidden to stipulate liquidated damages in the labor contract, the binding force of the labor contract cannot be embodied. The agreement of liquidated damages in the labor contract has a certain restrictive effect on the actual performance of the labor contract by the parties to the labor contract. If the parties to the labor contract rescind the labor contract in advance, especially the laborer party rescinds the labor contract in advance and does not bear any responsibility, then the labor contract loses its legal effect on the laborer party. For the parties to the labor contract, the purpose of signing the labor contract is to perform the contract, and restrict the

parties to the labor contract to perform the contract according to the time limit agreed in the labor contract. As a form of liability for breach of contract, the liquidated damages of labor contract is of great significance to promote the parties to perform the contract according to the provisions of the labor contract. Therefore, in the labor contract law, the parties to the labor contract should be allowed to stipulate the liquidated damages in the labor contract, that is, the liquidated damages can be used as an agreement of the parties to the labor contract, so as to guarantee the performance of the labor contract. As long as the laborer has fulfilled the labor contract according to the time limit stipulated in the labor contract, he will not bear the responsibility of liquidated damages for the labor contract. The establishment of liquidated damages for labor contract is conducive to encouraging workers to abide by the contract and keep faith in the process of labor contract performance. At the same time, the establishment of the labor contract liquidated damages is equal for both parties to the labor contract, in order to reflect the fairness principle of the labor contract law.

3.2. The Agreement of Liquidated Damages in Labor Contract Should Embody the Special Protection for Workers

According to the particularity of the labor contract and the social law attribute of the labor contract law, the parties to the labor contract agree on liquidated damages in the labor contract. On the one hand, the principle of equality, voluntariness and consensus between the parties to the labor contract should be embodied, and the parties to the labor contract are allowed to negotiate freely on the terms of the labor contract such as liquidated damages in the labor contract. On the other hand, "labor contract law" must intervene the agreement of liquidated damages of labor contract properly, so as to reflect the special protection of workers. The labor contract law provides special protection for workers in the setting of liquidated damages for labor contracts, which should be reflected in the following aspects:

(1) the agreement on liquidated damages for labor contracts should be implemented in an equal way. In order to reflect the fairness of the application of liquidated damages in labor contracts, it is not allowed to unilaterally set liquidated damages for workers in labor contracts. If the employer takes advantage of its advantageous position and only sets liquidated damages for the workers in the labor contract, but the employer cancels the labor contract in advance but does not stipulate liquidated damages, the stipulation of liquidated damages in the labor contract shall be deemed invalid;

(2) The amount of liquidated damages set for workers shall not be higher than the amount of liquidated damages borne by the employer, and the higher part shall be invalid. In order to prevent the unfair setting of the amount of liquidated damages, it can be stipulated that the amount of liquidated damages for the early termination of the labor contract shall not be higher than the amount of liquidated damages for the early termination of the labor contract by the employer, and the higher part shall be invalid;

(3) Limit the amount of liquidated damages borne by the laborer for early termination of the labor contract. In order to protect the weak status of workers, and in consideration of the actual payment ability and real life needs of workers, it can be stipulated that workers terminate the labor contract one year in advance, and the amount of liquidated damages paid to the employer shall not exceed the average working capital of one month of the year before the resignation of workers, and the maximum shall not exceed the average total wage of six months of workers;

(4) The laborer does not need to pay liquidated damages to the employer to terminate the labor contract during the probation period. Considering that the probationary period of labor contract is a period of mutual investigation between the parties to the labor contract, and the labor relationship is in an unstable state, the labor contract law also provides relatively loose conditions for the workers to terminate the labor contract during the probationary period, which can stipulate that the workers can terminate the labor contract during the probationary period of the labor contract without paying liquidated damages to the employer;

(5) If the termination of the labor contract in advance does not cause losses to the employer, the

labor dispute settlement agency may appropriately reduce the liquidated damages according to the actual payment ability of the employee. At the same time, due to the fault of the employer, the employee does not need to pay liquidated damages to the employer to terminate the labor contract in advance. The above provisions on the liquidated damages for labor contracts not only reflect the role of the liquidated damages for labor contracts to ensure the performance of labor contracts, but also reflect the special protection for workers.

4. The Relationship between Liquidated Damages of Labor Contract, Economic Compensation and Compensation

The penalty for breach of labor contract is a certain amount of money that the parties to the labor contract terminate the labor contract in advance and pay to the other party according to the agreement. Liquidated damages, as an important form of liability for breach of contract, play an important role in regulating labor relations and improving the performance rate of labor contract. Economic compensation refers to the economic compensation given by the employer to the workers according to the regulations after the termination of the labor contract. According to the provisions of the labor contract law, it is a legal obligation for the employer to terminate or terminate the labor contract in advance to pay economic compensation to the workers. In the legislative style of the labor contract law, economic compensation does not belong to the chapter of legal responsibility. Combined with the calculation method of economic compensation, economic compensation is not a legal responsibility. The economic compensation system designed by the labor contract law is mainly based on the protection of the weak status of workers and the need to guide employers to sign long-term labor contracts with workers as much as possible. As a form of liability for breach of contract, the liquidated damages of labor contract are applicable to both parties to the labor contract, reflecting the fairness principle of the labor contract law. The economic compensation is only applicable to the economic compensation paid to the laborer according to law when the employer cancels or terminates the labor contract, reflecting the social law function of the labor contract law. The combination of labor contract liquidated damages and economic compensation can not only ensure the performance of labor contract and stabilize labor relations, but also reflect the special protection of workers.

Compensation refers to the compensation liability that the employer or employee shall bear when terminating the labor contract in violation of the provisions of laws, administrative regulations or the provisions of the labor contract and causing losses to the other party. The purpose of setting up labor contract liquidated damages is to ensure the performance of labor contract, which embodies the legal effect of labor contract. The application of liquidated damages in labor contract is conditional on one party's breach of contract and the prior agreement on liquidated damages in labor contract. The compensation plays a role in compensating the economic losses of the other party, and the applicable conditions are that one party violates the law or breaches the contract and causes losses to the other party. Based on the understanding of the function of the liquidated damages and compensation in the labor contract, it is suggested that the employee should compensate the employer for the loss caused to the employer due to the violation of the agreement on keeping trade secrets and service period. As for the employees who violate the non competition agreement and the service period agreement, they shall also pay liquidated damages to the employer in accordance with the agreement. The application of the above-mentioned liquidated damages and compensation to the labor contract not only considers that the laborers have obtained certain economic compensation in advance when they undertake the obligation of non competition, but also that the laborers have received professional and technical training from the employer, improved their labor skills, and considered the interests of the employer.

5. Conclusion

The labor contract law belongs to the category of social law, which should focus on the protection of the weak in labor relations. However, if we think that the system design of the whole

labor contract law should focus on the special protection of workers, it is no different from looking at the function of a law as a single one. In fact, the functions of any law are diversified. In the system design of the labor contract law, there are not only systems that focus on protecting workers, but also systems that balance labor relations and ensure the effective performance of labor contracts. In the design of the above-mentioned labor contract liquidated damages system, it has included the system design of special protection of workers, and can ensure the practical performance of the labor contract, in order to facilitate the establishment of harmonious labor relations.

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