

## Identification of the Nature of Net-Real Labor in Platform Economy

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**Abstract:** The rapid development of the platform economy has brought about a large number of flexible jobs, while the protection of the rights and interests of net workers has been hotly discussed. The characteristics of net workers, which are rich in the characteristics of Chinese farmers, include net workers and take-out riders. Combined with the protection practice of flexible employment groups abroad, this paper puts forward that the main standard is labor bargaining power, and the net workers with low bargaining power are classified as atypical labor relations, and the preferential protection measures for the transfer labor law to net workers are considered.

### 1. Introduction

With the rapid rise of the Internet economy in China, various platforms have sprung up, taking the take-out industry as an example. By June 2019, the number of users in China's online take-out industry had reached 421 million, accounting for 49.3 percent of the total number of Internet users[1]In such a large group of users behind the normal operation of the take-out industry is a large number of "take-out brother ." At the same time, such groups as ride-hailing drivers, shared accommodation workers and other groups are increasingly becoming an important direction of new jobs, in such an environment, the "identity" of net-hailing workers is constantly emerging, many net-hailing workers because the platform does not belong to labor relations and can not get the corresponding protection of rights and interests. On the premise of giving all workers the most basic undifferentiated protection of rights and interests, according to the different characteristics of net employment and then give different breadth and depth of rights and interests protection is more in line with the legal principle. Therefore, the nature of net hire is the basis for the protection of net hire.

### 2. Characteristics of networking work in china

#### 2.1. The main body of net labor is mostly "migrant workers"

The survey shows that the new generation of urban migrant workers are gradually becoming the main force in the rural migrant workers. In addition, the new generation of migrant workers in cities is catching up with the period of vigorous development of the Internet platform, but also for the use of the platform economy workers acceptance and recognition, the development of the platform economy created employment opportunities are mostly accepted by them. In addition, the single (by piece) income (commission), that is, the model of more work and more gain, so that many migrant workers to earn more income will focus their main working hours on the net-hailing platform, become full-time net-hailing workers[2]The great attraction of net labor to migrant workers mainly lies in the following: the new generation of migrant workers in cities pursue their job autonomy strongly; the secondary labor market and flexible employment provided by net labor; the knowledge level of migrant workers is limited and their labor skills are low; and the threshold of net labor posts is relatively low.

## **2.2. The object of net labor is usually the act of paying service**

According to the survey, the employment in the service industry is the main group of net workers in Shanghai, and the distribution of the industry is more concentrated, the first is the transportation, storage and postal industry (48.98%), the second is the accommodation and catering industry (18.37%), and the others are mostly domestic service industry.[3]Because the result of payment is the process of providing the service, it is invisible and often accompanied by the control of the payment service, which is the supervision of the service process by the platform enterprise using the network technology means, including but not limited to the evaluation of the service quality by the consumer customer, the quantity, efficiency and quality of the order received by the net laborer, etc. The hidden supervision of the algorithm and the receiving control of consumer feedback make the essence of direct control of platform enterprises fade out of view, blurring the subordinate attributes of network service providers to platform enterprises and the civil relationship between consumers and users. The characteristic that the object of net-sharing labor is usually the act of paying service influences to some extent the determination of "labor management" in judicial practice.

## **2.3. The relationship between the rights and obligations between the net labor group and the platform**

As far as net labor group is concerned, there is no fixed workplace, no fixed and stable source of salary, facing uncertain market risk, and the quality of social security is not high; for enterprise platform, it encounters a series of problems such as labor process control, determining working hours and paying wages, and safety guard of net workers (industrial injury identification). Aside from the question of whether it constitutes labor relations, the contradiction between the rights and obligations relationship between the net labor group and the platform is to some extent the contradiction between whether the platform should bear the uncertain market risk so as to prevent the uncertain risk from transferring to the laborer and increase its work vulnerability and instability.

## **2.4. The particularity of the protection of net labor relations**

It is worth noting that the determination of labor relations in the context of net-sharing does not necessarily mean that net-sharing workers enjoy all kinds of protection in traditional labor relations in labor arbitration or labor litigation. Such as "good chef" case referee, in the determination of labor relations only support the claim for compensation for illegal dismissal; flashman Li Mou v. Tongcheng Bing Science and Technology Co., Ltd., in the case of labor relations, but also only support limited to traffic accident compensation liability. Although the current labor legislation can not adapt well to the determination of net labor relations, which makes it more difficult for judges to determine labor relations and choose the applicable means of protection, it does not exclude the space for the choice of applicable means of protection [4]. The referee does not have to apply non-selective protective measures to such cases in the context of netting, and may choose different means of protection on a case-by-case basis.

## **3. Main types of net hire**

### **3.1. Car-hailing drivers**

When determining the labor relationship between the ride-hailing driver and the ride-hailing platform, we should take full account of the identification of labor management under the background of net-hailing, which should be determined from the aspects of obtaining business mode, income mode, appearance characteristics, etc.

#### **3.1.1. Access to business[5]:**

The relationship between the rights and obligations of the ride-hailing driver in obtaining the business mode plays an important role in labor management.

1) Assignment of business type.

The ride-hailing platform assigns information collected on the travel location of consumers to

ride-hailing drivers. In this mode, the relationship between the two is "1-1", and the business of ride-hailing drivers is constrained by the information provided by the platform, and their autonomy is weak.

2) Shared business type.

The ride-hailing platform will collect information about the travel location of consumers assigned to a certain range of ride-hailing drivers. According to this model, the relationship between the two is "1- N", and a number of ride-hailing drivers carry out "snatching orders".

### **3.2. Income patterns**

The income types of ride-hailing drivers are: base salary, commission, full-time award, performance pay and so on. The composition of income type has certain reference function to identify labor relations. For example, the existence of full attendance award, performance pay, in fact, is the indirect proof that the platform manages the commuting time and attendance record of the ride-hailing driver, which already has the characteristics of labor management in labor relations. In addition, the hidden control of the platform under the background of net-sharing should also be included in the factors identified by labor management.

Some ride-hailing drivers use ride-hailing revenue as the main source of income for their families, while some ride-hailing drivers only earn extra income as a sideline outside their main job. In this case, it is reasonable not to exclude from the labor relationship the main business or the main source of economy.

### **3.3. Appearance features**

In judicial practice, there are appearance characteristics similar to "work permit, service certificate" to prove its identity. The combination of network service provider and means of production is mainly reflected in the combination mode of platform vehicle collocation platform driver, private car collocation private car owner, rental vehicle collocation platform and labor company, all of which need to be analyzed according to the case.

Labor law under the vision of labor relations to take the principle of priority. The author believes that although the appearance characteristics can not be used as the main basis for the determination of labor relations, but under the condition that the degree of inner conviction can be formed in the process of determining labor management, the appearance characteristics will be regarded as auxiliary characteristics and have its rationality. In other words, if there is still a vague boundary of labor management or when there is no labor management, the appearance characteristics can not prove or independently prove the existence of labor relations.

### **3.4. Riders net**

The way of business acquisition mostly reflects the rights and obligations between the ride-hailing rider and the take-out platform, which can be the main judgment basis of whether or not to establish the labor relationship. The main modalities are:

1) Self-employed rider: the net rider signs the labor contract directly with the take-out platform, which is distributed and managed uniformly by the platform.

2) Agent rider: a third-party agent who cooperates with the take-out net-hailing platform contracts with the net-hailing rider and issues remuneration, including labor dispatch relationship, intermediary contract relationship, processing contract relationship, etc.

3) APP crowdsourcing riders: ride-hailing riders who meet the basic requirements of the platform are registered online through APP and use their spare time and transportation for distribution services.[6]

Take Meituan takeout, for example, self-employed riders are required to comply with the take-out delivery service specification, with a uniform style of delivery boxes and clothing. In addition, the main types of income include: relatively fixed monthly labor remuneration, distribution subsidies given by the platform, related service insurance social insurance and so on. The labor relations under this business mode are relatively clear, which form a written labor contract on the basis of mutual agreement, and conform to the labor management and business components, which

can be regarded as labor relations. The agent rider mainly lies in the rights and obligations relationship between the agent and the net hire, does not carry on the analysis.

The relationship between APP crowdsourcing riders and the ride-hailing platform is controversial, mainly reflected in the characteristics of individual riders in the APP crowdsourcing mode, such as the degree of management and restraint of the take-out ride-hailing platform, and the strength of economic subordinate attributes are not identical. Crowdsourcing riders are mostly part-time riders, which are not limited by the strict working hours of the net take-out platform. Net-hailing platform provides information on transaction distribution and completes value in combination with rider labor and its means of transport as means of production. Although crowdsourcing riders have the same evaluation feedback mechanism as self-employed riders, and regulatory feedback mechanism to some extent, it is far less than the strict management standard of the delivery service specification. In addition, from the economic attributes, its main income mainly comes from the commission of the delivery fee after the completion of receiving the single delivery order, but can not be recognized as the relatively fixed monthly labor remuneration for engaging in the business behavior of net-sharing platform, so it is often recognized as labor relations in practice.

#### **4. Reasons for difficulties in identifying the nature of net labour**

##### **4.1. More flexible working hours and spaces**

The mode of Internet work has changed the mode that the laborer belongs to the employment unit for a long time, using the space of the employment unit to carry on the labor to pay the activity at a certain time, is a kind of liberation to the production relation, is of progressive significance. However, it also brings high difficulty to the determination of labor relations. For a long time, the important condition of judging the standard of "labor management of workers' employing units and engaging in paid labor arranged by employing units" is unified time, unified space and unified rules and regulations. In the era of platform employment, rules and regulations still exist, but space and time are very flexible, workers can choose the appropriate time, scattered in their respective workplaces to complete the same work, resulting in the second element identified by the traditional employment relationship, although in the judicial decision out of the principle of protection of workers' rights and interests, often implied, but often not supported by the statutory perspective, which is also an important factor in the identification of labor relations cases will often cause heated debate.

##### **4.2. The mix of temporary and permanent employment personnel**

One of the major effects of the net-hired employment model is the increased mobility of jobs, with Internet platforms absorbing a large number of temporary employees. Platform employment can be roughly divided into two types: long-term employment, similar to employees in the traditional sense; and temporary employment, including part-time work outside formal labor relations and short-term part-time work. For the first type of workers, it is relatively easy to judge labor relations, but for part-time workers and part-time workers, because they are not so closely related to the employment unit, that is, the Internet platform, and the relationship between rights and obligations is not clearly formed, it is difficult to identify labor relations. However, a major feature of employment on Internet platforms is that they are often incorporated into the same framework's rules and regulations, adopting a one-size-fits-all contract model, which results in either the weakening of the right to part-time work or the lack of adequate protection of the rights and interests of long-term employed persons, thereby placing greater reliance on arbitration and judicial procedures and putting greater pressure on the relatively weak enforcement of justice on the one hand.

##### **4.3. Changes in the situation of "strong and weak capital"**

Historically, China's labor market has been characterized by a situation of "strong and weak capital," with enterprises possessing most of the social means of production, which makes them in

fact superior in signing agreements with workers, with the result that Chinese labor in the labor market, especially in the lower end, is highly dependent on the economy of workers[12]Once divorced from labor relations, it is not only difficult to obtain the protection of employees' due rights and interests, but also can not complete the production work through the social resources they have, so they lack the conditions to be recognized as labor contracting. For a long time, there is a problem that the proportion of labor distribution income is not high in the social distribution of our country, and it usually needs social redistribution to ensure that the surplus value of labor is reasonably distributed.

But after the advent of the Internet era, on the one hand, management information is more open and transparent, so that workers have more choice space between different enterprises, but also enable workers to master new production methods, that is, through the Internet to obtain means of production or complete production work, increased bargaining chips, so that the new Internet platform workers have a higher claim for their own labor surplus, but also reduce the risk of separation, economic dependence significantly reduced, this phenomenon is more obvious in the network car drivers who master vehicle resources and housing resources of net rent groups.

#### **4.4. Changes in economic, organizational and personal affiliation**

In the traditional sense of enterprises, apart from the fixed workplace and working hours, an important symbol is the composition and management of employees. In terms of management methods, traditional enterprises mostly adopt "hierarchical" pyramid management structure, through multiple management levels to concentrate management power to a few high-level hands, while the Internet platform because of the loss of a fixed workplace, more rely on less hierarchical "flat" management structure, or even rely on employees or small groups of self-management, more similar to the representation of labor supply through the form of groups, the decentralization and dispersion of management power greatly reduce the personal attributes, enterprises to "de-management".[13]Furthermore, because of the decentralization of labor, the collective color of the joint organizations of employees in traditional enterprises, such as labor associations, has been diluted and even disappeared, which makes workers no longer enjoy an important bargaining chip — collective bargaining power of wages. But at the same time, because of the relative decrease of collective management, the personal dependence of workers on the collective organization of enterprises is also reduced, and the personal subordinate attribute is reduced.

### **5. Foreign protection practices of flexible employment groups**

#### **5.1. Germany**

##### **5.1.1. Definition of "Class Employee"**

In terms of the classification of workers, German law recognizes "employees in the category", while flexible groups of workers, including net workers, fall within the category of employees, who often provide services to employers by means of "contracting", such as in-house workshop workers. Reflecting to the net-hailing level, net-hailing from the net-hailing platform to continue to contract orders for long-term service for the booking. The criteria for judging whether employees are classified are as follows: First, economic subordination (more than 50 per cent of net income). Second, social protection needs that can be compared with employees. Third, the main payment part must be provided by myself.

##### **5.1.2. Main rights**

The reason why German law protects a class of employees is that they do not have a personality affiliation to the employer, but have economic subordination and social protection needs. German employees enjoy 24 working days of annual leave and six weeks of paid sick leave per year, the level of labour safety for general health protection in the workplace, the main rights that fall under the protection of collective bargaining legislation (excluding commercial agents), the possibility of labour disputes falling under the jurisdiction of the labour courts (conditions to be met

by commercial agents), and so on. The domestic workers of these categories also have the right to be informed of the period of notice of dismissal when they are mainly working for one person and to be covered by the social insurance provided by the enterprise pension system.

Since class employees are largely excluded from the statutory social insurance system, they often do not go to court to claim their rights. Therefore, the promotion of the relevant rules similar to the level of protection of domestic workers is a feasible solution to the problem.

## **5.2. United Kingdom**

### **5.2.1. Definition of "b workers"**

Section 230(3) of the Employment Rights Act (Employment Right Act 1996) of 1996 provides that worker means (a) a person (b) working under a labour contract, whether expressed or implied, orally or in writing, who enters into a contract with the other party to undertake or perform any work or service in person, while the other party is not the principal or customer of the undertaking or occupation in which the individual is engaged.[14] British workers can therefore be subdivided into three types: employees, b workers and self-employed.

### **5.2.2. Main rights**

Some net workers enjoy worker labour rights because they belong to b category of workers. The National Minimum Wage Act (National Minimum Wage Act) and the Working Hours Ordinance (Working Time Regulations), adopted by the United Kingdom in 1998, both directly use the worker expression, so net workers enjoy minimum wages, paid annual leave, sick leave, continuous rest and other rights related to wages and working hours.

## **5.3. United States**

### **5.3.1. Definition of workers under the 1.AB-5 Act**

The current worker classification system in the United States is similar to that in China, adopting a binary classification structure, with only employees and self-employed people. The Parliament of California passed Parliamentary Act No .5(AB-5) in September 2019, which presumes that employees of a part-time economy company are employees unless the employer can prove that the worker is not directly controlled by the company; B, the worker performs tasks other than the company's core business; and C, the worker to engage in independent established trade, occupation or business of the same nature of the work performed.

### **5.3.2. Main rights**

Under the AB-5 Act, workers DoorDash, Postmates by car-hailing service companies and take-out distribution companies will be highly likely to be identified as employees because of the difficulty of proving the employee's status, thus obtaining the corresponding protection of the employee's labour rights.

## **6. Solutions to determine the nature of net labor**

From the litigation brought by Uber and so on, the identification of net workers as employees will increase the cost of employment, platform companies in the case of greater economic pressure may have adverse business, and then the results of layoffs, which is a reaction to the employment of workers. On the other hand, China is facing the situation of rural labor transfer at this stage, similar to Didi car, Meituan take-out net-sharing platform for migrant workers with lower labor skills and other low-income groups to provide flexible jobs, so in order to avoid extreme group conflicts of interest, net-sharing workers are not suitable for being directly recognized as employees. At present, China's flexible employment personnel "according to whether they have subordinate attributes, divided into subordinate labor (atypical labor relations) and autonomous labor (labor relations)", the author thinks that although net and platform companies do not constitute typical labor relations, they can be classified as atypical labor relations in flexible employment, and the bargaining power

of workers can be regarded as an important criterion when determining whether different types of net workers meet atypical labor relations. Labor bargaining power is usually considered to be an indicator linked to the level of labor income, and is used to reflect the right of individual and labor groups to speak in income negotiation with management under different conditions. The lower the bargaining power of workers, the higher the possibility of infringement of their rights, the lower bargaining power of net-work groups can be classified into the protection of atypical labor relations, or expand the coverage of labor relations (typical labor relations and atypical labor relations), and tilt the protection measures of labor law to net-work workers. Specific criteria can be based on the characteristics and internal factors:

### **6.1. Characterization factors**

Gender, education, means of production [16] of which the means of production can be said to be the decisive factor, and several other items can also be used as reference.

1) Gender is one of the most important factors affecting remuneration for work. Although explicit gender discrimination in the workplace has decreased considerably as economic standards have improved, awareness-raising on equality between men and women in China and the law has clearly stated that there is no discrimination in employment, it cannot be denied that such phenomena as implicit discrimination still affect the bargaining power of labour and employment units, and that even platform workers tend to use male employees more frequently, especially in the Internet industries where large amounts of time and effort are required, such as take-out groups. However, it is worth noting that with the influence of industrial upgrading and other aspects, women's bargaining power in the middle and high-end industries gradually tends to be balanced with men, so appropriate protection should be considered, but excessive tilt is not necessary. At the same time, however, gender is not the determinant of whether or not a labour relationship is constituted, and at this stage it is only a reference.

2) The level of education directly determines the position of the labour force in the era of the Internet economy. Workers with higher education tend to master more labor skills more easily. Labor skills are an important resource in the process of labor negotiation, and whether they have the resources or not is the direct criterion that affects the judgment of "labor relations" and "independent contractors" in common law countries. Under china's current circumstances, it is difficult for workers with lower levels of education to become part-time workers in the developed world context, which means that they use their skills to jump back and forth between platforms in order to accomplish tasks such as filling out questionnaires, obtaining experimental reports, writing codes and so on, so that they are less likely to get paid for their work, and are more likely to remove them from difficult-to-determine part-time relationships and turn them into judicial judgments either labor or labor relations.

3) The means of production is one of the important factors in measuring whether it can constitute labour relations. In the context of network, the means of production can refer to both physical and intangible resources. Net-sharing labor creates a combination of "own means of production + platform means of production ", for example, the ride-hailing driver holds the vehicle resources, while the ride-hailing platform provides the customer information resources; the shared landlord holds the housing resources, the rental platform provides the short-term tenant resources; the take-out distributor has the means of transportation, while the take-out platform provides the channels to contact the merchant and so on. It can be seen from above that if the total amount of labor resources held by the laborer exceeds a certain level, he will have the conditions to carry out production independently from the platform, but for example, the take-out distributor, because of the extremely rare means of production, can not have a decisive impact on the production system, so it is still attached to the means of production provided by the platform, this group of people should be recognized as constituting a labor relationship. The result of the "good chef" case can also counter the argument that the chef employed by the platform involved, although having a certain means of production, should be recognized as constituting a labor relationship because his production is extremely dependent on the "door-to-door" resources provided by the platform and the chef's

individual resources are not sufficient to achieve the effect of "door-to-door service".

## 6.2. Intrinsic factors

Based on the analysis of the factors affecting the means of production in the combination of "labor force + means of production", Bai Chongwen and Yang Zhicai put forward to construct the model from four variables: supply and demand of labor force, labor force attribute, leisure utility and labor force system protection, and analyze the time and space change of labor bargaining power.[17]The basis of this analysis is to directly explore the nature of labor force, so as to reveal whether the factors affecting labor relations constitute.

1) The relationship between labor supply and demand refers to the urgency of labor export between labor and capital in the labor market. Direct impact on the negotiation of the contract between the two sides of the hammer — that is, when the supply exceeds the demand, the management of the contract signed the main vein, because at any time can give up overpriced workers, but can replace the number of workers more. Combined with the assignment business type, the sharing business type and the mixed type different types of net car, the sharing business type should belong to the oversupply, the driver bargaining power is low, the assignment business type bias supply is lower than the demand, the driver bargaining power is high, then the former should be protected by more labor law tilt.

2) Why should a temporary contract be signed instead of idle home waiting for a better employer? This is the second measure factor, the scope of leisure utility. The utility of leisure, that is, workers can not get income in their leisure time, while workers living in poverty often cannot bear the leisure without income, rather than accept less income and security, but will not let time out of the work. Leisure utility has two main reference values: first, workers who cannot afford leisure utility often mean that the lower the level of knowledge of the means of production, that is, it is difficult to rent the labor force on their own, and workers who meet the conditions of independent contractors are more inclined to work on a full-time net, regardless of how the contract is stipulated, and the majority of this type of workers constitute labor relations in substance. Second, it involves another problem, the Internet economy era, the emergence of part-time work has made people reasonable use of leisure utility has more choices, such as in full-time work, weekend time to participate in take-out distribution work, or also rental platform owned by the landlord, are increasingly common phenomenon. And whether the labor relations formed outside full-time work should be affirmed and can be fully protected is also worthy of reference in judicial practice.

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