

Original Paper

Risks and Countermeasures of Flexible Employment in Enterprises under the Sharing Economy

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Abstract

The sharing economy has brought great challenges to the traditional employment mode of enterprises, and also provided important opportunities for their innovation. In this context, how to combine their own production and operation conditions to find a suitable employment model is an inevitable choice to optimize the labor cost. External conditions such as the optimization of the legal system, the support and guidance of the state in social security policies are also essential.

Keywords

sharing economy, flexible employment, risk

1. Introduction

In recent years, flexible employment model more and more favored by employers. According to the survey, 44.6 percent of enterprises chose flexible employment, and 68.7 percent of enterprises said they would choose flexible employment in the future. The flexible employment system is widely favored by enterprises, which can be summarized in the following reasons. First of all, flexible employment can reduce the operating costs of enterprises. By employing short-term labor contract workers, enterprises can meet the peak demand for labor, and avoid paying the wages of these workers during the low employment period. Secondly, flexible employment can improve the core competitiveness of enterprises. By adopting labor dispatch, business outsourcing and other flexible employment modes, enterprises outsource part of their business so that they can concentrate on the development of their core business and improve their core competitiveness in the core business. In addition, flexible

employment can quickly fill the enterprise position gap. In the era of rapid economic change and development, the personnel gap of posts will appear at any time. The flexible employment mode of labor dispatch can not only fill the position gap quickly, but also avoid the time delay caused by enterprises' self-recruitment.

2. Current Problems with Flexible Employment

In general, in the sharing economy, enterprises are more and more inclined to employ employees flexibly, which brings about more and more risks. For example, there are frequent disputes between enterprises and workers in the process of flexible employment. However, the legal protection system for flexible employment is not sound enough, and the legal level tends to protect workers, which increases legal risks for enterprises in the process of flexible employment. In addition, when enterprises in flexible employment, due to the laborer is not an official staff of the enterprise not only, and the work time, work location, and the form of the work and so on are all reflected the characteristics of flexibility, for reasons of saving the cost of training and management, most companies will choose wrong flexible employment of workers for the training and management system, leading to the risk of enterprise in recruitment is not standard. Moreover, because the original labor relations in China are defined in terms of standard employment, enterprises have to bear the risk of unclear labor relations with workers in the process of flexible employment. Therefore, in order to better avoid the risks in the process of flexible employment, it is more necessary for us to timely analyze and study it and find out the corresponding countermeasures.

3. Overview of Flexible Employment of Enterprises in the Sharing Economy

3.1 Definition of Sharing Economy

The term "sharing economy", also known as "solidarity economy", was first put forward in 1978 by Joan Spence, a professor of sociology at Texas state university, and marcos verson, a professor of sociology at the university of Illinois (Li & Luo, 2019, pp. 108-118). At present, due to the rapid development of Internet technology, the concept of sharing economy has been defined in a new way. It refers to "a social and economic system sharing human and material resources through the establishment of a system platform for the direct exchange of goods and services between individuals". Its essential feature is the temporary transfer of the right to use idle resources, which is manifested in the following two aspects: first, the right to use is more important than the right to own. The traditional concept is "first to possess, then to use", "first to own, then to use", and "better use than have" is the unique concept of the sharing economy. The Japanese scholar kazuyuki miura once proposed that "in the fourth consumption era, the transformation from exclusivism to sharism will be realized". It will also be accepted by most people to "withdraw from the era when shopping made people happy and turn to sharing for pleasure". People are not only willing to share private resources such as cars and apartments with strangers, but also have the consciousness to make full use of idle resources and fully

display their use value, so as to realize the maximum efficiency of the society. Second, is flexible employment. “The sharing economy is an unprecedented revolution that is quietly turning millions of people into part-time entrepreneurs”, says the Forbes cover story. Under the background of sharing economy, the employment mode is extremely flexible on the whole, with strong self-control in working time, working place and working method, so that a large number of employees can flexibly engage in the work that suits them according to their own will and expertise, so as to obtain satisfactory remuneration.

3.2 Concept of Flexible Employment

Flexible employment is a new form of employment, which is different from the fixed full-time employment. Based on the different needs of employment, enterprises have the flexibility to employ employees, and the employees they employ do not establish any formal full-time labor relationship with the enterprise itself. It embodies the flexibility of employment form, employment time, employment form and employment form.

3.3 The Mode of Flexible Employment

According to the specific manifestation of the above flexible labor, this paper divides the flexible labor into the following modes.

3.3.1 Labor Dispatch

Dispatching the most rapid development in recent years, also known as “personnel dispatch”, “labor dispatching”, etc., in the labor dispatch, conclude a labor contract both sides is the dispatching institution and the dispatched workers, the dispatched workers by dispatching agency, to transfer to other Shared unit, employers need to pay a service charge for sending company, the dispatched labor wage is issued by the labor dispatching company (Li, 2017). In recent years, in order to meet the needs of talents in China, a new employment method that can span regions and industries has been adopted. When labor dispatch is used reasonably, it can simplify the management procedures, reduce labor disputes, share risks and responsibilities, reduce costs and expenses, use labor freely and flexibly, and regulate labor behavior. From the perspective of the company, outsourcing some businesses that do not belong to the core department to other companies will give them more time and energy to develop their own core businesses.

3.3.2 Non-Full-Time Employment

Hourly Labour remuneration for part-time labor refers to is given priority to, in the same unit of choose and employ persons, laborer working hours must not exceed an average of four hours a day, working hours accumulated shall not exceed twenty-four hours in a week, unit of choose and employ persons and laborer can choose a verbal agreement, do not sign labor contract, at any time, both sides have the right to notify the other party to end the employment practices (Ren, 2019). In terms of law, the regulations on part-time labor are relatively loose and extensive, giving enterprises a greater degree of employment freedom and management flexibility. For the post with strong replacement, the enterprise will adopt the mode of part-time labor for the purpose of reducing the cost.

3.3.3 Business Outsourcing

Business outsourcing, also known as “outsourcing of resources” and “outsourcing of resources”, is often used by enterprises to reduce costs, improve efficiency, give full play to their core competitiveness and enhance their ability to respond quickly to the environment (Tan, 2017, pp. 89-97). When using pure internal resources, the competitive advantage is not obvious enough. Therefore, in order to achieve a more favorable competitive advantage, the enterprise will often direct its non-core business to the corresponding cooperative enterprise. As an employer, the enterprise only contributes to supervision and training, and pays more attention to the result.

3.3.4 Short-Term Labor Contract Workers

Short-term labor contract is a form of employment that employs workers for a short period of time according to the employment needs of enterprises. Enterprises and workers will sign short-term labor contracts with fixed terms, mainly including seasonal employment, project employment, rehired personnel, interns and so on (Tu, 2018, p. 19). Short-term labor contract workers are a typical employment mode that reflects the diversity of flexible employment forms.

3.3.5 Platform Labor

Platform employment is a mode of flexible employment based on platform economy. With the rapid development of the Internet, the platform employment has gradually become an important form of flexible employment. According to the different functions of the platform, the use of platform labor can be divided into two modes: autonomous platform labor and organizational platform labor. In the employment of autonomous platform, it is the platform that provides the virtual trading place and trading rules, which requires the contracting between the supply and demand of labor services independently, and the platform is the intermediary. In the use of organizational platform, the platform is in the position of organizer, and both parties of labor supply and demand shall conclude a contract with the platform. The mainstream platforms such as online labor contract, express delivery, and food delivery all belong to the typical organizational platforms.

3.4 Market Size of Flexible Labor

With the rapid development of the sharing economy, the employment mode of enterprises and the employment concept of workers have changed, and China's labor market has also undergone earth-shaking changes. The scale of flexible employment has expanded rapidly in recent years.

From the perspective of the overall market, the scale of flexible labor force in China has been in a state of continuous growth since 2013, and it is predicted that it will continue to be in a state of growth in the future. From the specific data, in 2013, the scale of flexible labor in China was 18.1 billion yuan, and in 2019, the scale of flexible labor in China has reached 73.8 billion yuan. It is predicted that in 2022, the scale of flexible labor in China will reach 139.2 billion yuan. Therefore, the development potential of flexible employment in China is huge, and the potential risks should be paid more and more attention.

3.5 The Characteristics of Flexible Employment of Enterprises in the Sharing Economy

3.5.1 Comparison of Flexible Employment in China's Sharing Economy and Traditional Economy (Vertical Comparison)

Under the traditional economic background, flexible employment is mainly based on the physical means of production. Under the background of large-scale production scale of ford system, the means of production had relatively high fixed costs, so it was urgent for enterprises to take possession of the means of production. At that time, employees only needed to provide labor and depended on the means of production of the enterprise. The enterprise was in a relatively strong position to command and command employees. In the actual business model of online ride-hailing, if the ride-hailing driver only owns the vehicle as the entity means of production, it is often not enough to support himself to survive in this industry, and more importantly, the ride-hailing driver needs to have a platform to provide the information resource of passenger order. Thus, the structure of the means of production in the sharing economy is completely different from that in the traditional economy.

Under the traditional economy, the employment relationship of flexible labor is embodied in the triangle structure of atypical labor relationship, that is, the enterprise, the employee and the third party organization involved (labor dispatch agency, labor outsourcing agency, etc.). With the intervention of the third party, on the one hand, the enterprise can concentrate on the development of its core business, so as to effectively improve its labor productivity; on the other hand, it can realize the transfer of labor relations, reduce labor costs and reduce its responsibilities as an employer. Under the sharing economy, the employment relationship of flexible labor is more inclined to the two-end structure of the typical labor relationship, that is, enterprise and employee. In the use of platform labor, what is reflected is that platform enterprises and workers cannot simply transfer labor relations through outsourcing and reduce labor costs. Thus it can be seen that the employment relationship in the sharing economy is obviously different from that in the traditional economy.

3.5.2 Differences in Flexible Employment between China and Developed Countries in the Sharing Economy (Horizontal Comparison)

The core of the sharing economy is information technology. There are also great differences between the flexible employment positions in China and those in developed countries. Because for flexible employment in developed countries has a relatively perfect system security, the safety coefficient is relatively high, in the United States, for example, in the 1980s, has been working in private enterprises and the government actively introduce remote, so under the background of Shared economy, most of the flexible employment of developed countries with remote labor is given priority to, with platform enterprise on-demand labor is complementary, and remote labor mainly appear in white-collar jobs, some even belonging to the enterprise's core business. On the one hand, China's system of flexible employment is not perfect enough, the safety factor is not high enough, and remote labor has not been promoted. On the other hand, China's offline network about the number of workers, and the rate of rapid development, far more than the developed countries. According to the new economy, new

employment—2017 didi platform employment research report, during the period from June 2016 to June 2017, the number of people with income from didi platform alone reached 2,018 million. According to the 44th statistical report on Internet development in China in 2019, by June 2019, China had 337 million users of online taxis, and 339 million users of private or express taxis. It can be seen from this that flexible employment in China's sharing economy is mainly the on-demand labor of platform enterprises, and the majority of which are blue-collar jobs.

4. Risk Analysis of Flexible Employment of Enterprises in the Sharing Economy

4.1 Non-Standard Employment of Enterprises

Under the background of sharing economy, enterprises pay attention to the flexibility of time, place and form in the employment process. When the job position presents the characteristics of alternative, temporary and auxiliary, the enterprise usually adopts the form of flexible employment, and it has very loose and flexible requirements for the workers with flexible employment. In many cases, it does not select the workers with flexible employment according to the traditional recruitment method, and most of them only pay attention to the quantity but ignore the quality. In the employment process, there is also a lack of daily management of flexible workers in the later period, and most enterprises do not disclose their employment rules, making flexible workers unable to understand their legitimate rights and interests. All of the above have led to non-standard employment in the process of flexible employment. When the non-standard employment of enterprises appears in the ride-hailing industry, on the one hand, it will lead to the mixed business process of ride-hailing platforms, on the other hand, it will make it difficult to fully protect the legitimate rights and interests of ride-hailing drivers.

4.2 The Legal Liability of the Enterprise Itself Is Not Clear

In the sharing economy, there is a non-standard labor relationship between the users and the workers in flexible labor, which is different from the typical standard labor relationship. As a result, the users usually deny their corresponding legal responsibilities. Although the user is not clearly defined as the subject of employment in law, the existing policy stipulates that flexible user needs to assume the necessary protection obligation to the worker, especially in the ride-hailing industry. Ride-hailing platforms should clarify their different legal responsibilities as platform operators and special carriers. Because in the process of employment, enterprises in the sharing economy can not only determine the employment subject from the perspective of employment relations, but also establish the employment subject status from the perspective of social governance. In other words, in the sharing economy, enterprises can be used as a social platform to organize production factors, accept a wide range of information data, and have a strong externality.

4.3 The Employment Relationship between Enterprises and Employees Cannot Be Clearly Defined

At present, most of the labor relations in China are based on the typical standard labor relations, and there are no clear laws and regulations to define the flexible labor relations in the sharing economy. Although it can be defined from the three standards of economic subordination, personality

subordination and business subordination, it is difficult to unify the three standards to define the relationship between enterprises and employees under the condition of flexible employment due to the diversity of forms of flexible employment in enterprises, especially in the online car-hailing industry. For example, when dealing with disputes over labor relations in the ride-hailing industry, it is difficult to unify the criteria.

4.4 “Institutional Dilemma” of Social Security

According to our country “labor law” the 72nd regulation: “unit of choose and employ persons and laborer must attend social insurance lawfully, pay social insurance premium” (Wu, 2013, pp. 60-62). But this only applies to standard traditional labor relations. And “social insurance law” point out clearly, flexible worker can attend endowment insurance and medical treatment insurance by oneself, industrial injury insurance can be paid by unit of choose and employ persons only (Wang, 2019). At the same time according to the “implementation of the social insurance law of the People’s Republic of China > several provisions” article 9 provisions: “workers (including part-time employees) in two or more employing units at the same time employment, each employing unit should be the workers pay insurance premiums for work-related injuries. The worker produces industrial injury, by the unit that the worker is injured when the job assumes industrial injury insurance liability lawfully”. But in the specific implementation process, only a small number of enterprises can come forward and take the initiative to buy industrial injury insurance for flexible workers. Most of them seize the loopholes in the system collision and hold a fluke’s mind to evade their responsibilities. Especially in the large network car hailing industry, there is no occupational injury insurance, which greatly increases the work risk of flexible workers.

5. Study on Measures to Deal with the Risk of Flexible Employment of Enterprises in the Sharing Economy

5.1 Actively Guide and Standardize the Employment of Enterprises

In the era of sharing economy, with the rapid development of the network, the explicit information resources become more and more prominent, and the release of employment information also emerges in an endless stream. In order to better guide and standardize the employment mode of enterprises (especially platform enterprises), we can start from the following aspects. First of all, for the recruitment of platform enterprises, it is necessary to improve the difficulty of applying for platform workers. By referring to the recruitment procedures of conventional enterprises, we should pursue the quality of platform workers rather than just the quantity. When conditions permit, we should sign necessary labor contracts with participating workers as far as possible. Not just for participation

5.2 Strengthen the Legal Responsibility of the Main Body of the Enterprise

In order to better adapt to the popularization of the flexible employment system of enterprises under the sharing economy, enterprises need to keep in mind their main legal responsibilities at all times, so that they can always regulate their behaviors and actively participate in maintenance during the rapid and

efficient development of flexible employment. The basic rights and interests of flexible workers. For example, in the online car-hailing industry, the online car-hailing platform, as a platform enterprise, should not only exert its subjective consciousness, and provide order information to the online car-hailing driver in a timely manner, but also have certain requirements for the behavior of the online car-hailing driver, which can ensure online car-hailing. The driver provides the best service for passengers. At the same time, during the operation of the platform, it should also clarify its legal status as the platform operator and special carrier to ensure that it can operate according to law.

5.3 Improve Labor Laws That Promote the Flexible Use of Labor by Enterprises

5.3.1 Commissioning the “Labor Standards Law”

The “Labor Standards Law” protects the basic legal rights and interests of laborers through the compulsory state. It is partial to public law and applies to typical standard labor relations. Part of the coverage of the labor benchmarks of the country, and clarify the rights and obligations between the workers and workers of flexible employment in the sharing economy, so that they can also be applied to the different characteristics of flexible employment of enterprises in the sharing economy, thus ensuring the legal rights and interests of flexible workers who are in the sharing economy.

5.3.2 Amend the “Labor Contract Law”

Today’s “Labor Contract Law” is mainly used to standardize and adjust the standard labor relationship. However, in the era of rapid development of the sharing economy, more and more enterprises have adopted flexible employment models suitable for development, resulting in the inability of labor relations. Obviously identified controversies are increasing. In view of the particularity of some enterprises in employment, the “Labor Contract Law” should fully consider expanding the scope of labor relationship adjustment. The establishment of labor relationship operation rules suitable for different employment subjects and different employment methods, the development of diversified non-standard labor relations and the research on the regulatory methods of non-standard labor relations have become imminent. At the same time, the “Labor Contract Law” should carry out classified and hierarchical management of enterprises, and fully implement the employment responsibilities that various types of enterprises should assume. For large enterprises, their internal structure is relatively stable, their business forms are relatively standardized, their ability to assume responsibility is relatively strong, and their enforcement of the Labor Contract Law is relatively strong. For small and medium-sized enterprises, they lack a standardized management model, and their employment methods are relatively flexible, and their enforcement of the Labor Contract Law is relatively weak. Therefore, the “Labor Contract Law” should fully take into account this situation and implement the employment relationship of enterprises at different levels.

5.3.3 Improve the “Trade Union Law”

In the era of the sharing economy, the “Trade Union Law” needs to actively adapt to the requirements of the enterprise’s flexible employment model. It can participate in the legal protection of enterprises’ flexible employment in the sharing economy from the following aspects, and actively protect the

legitimate rights and interests of participants of flexible employment. First, expand the coverage of the Trade Union Law. Actively incorporate the protection of the rights and interests of flexible employment participants in the sharing economy into the perspective of the trade union law, and actively guide trade union organizations to implement their own legislative participation rights and rights protection and supervision rights at the legal level. In addition, at the legislative level, trade unions are encouraged to actively target more flexible workers. Guide the flexible employment participants in the sharing economy to actively participate in the union organization, unite them, and always have the awareness that they can fully utilize the power of the union when safeguarding their legitimate rights and interests. In the era of sharing economy, you can make full use of Internet technology to innovate trade union organization and management methods, establish an online trade union system, organize the younger generation of flexible labor participants through the Internet, and protect the scattered flexible labor participants in the location to share in the economy, flexible employment participants provide psychological consultation, legal aid or education and training. Second, establish the "Industry Trade Union Law" to provide legal protection for flexible collective employment participants in industrial collective consultations in the sharing economy, which is conducive to jointly solving outstanding problems in the industry.

5.4 Improve the Social Security System

The traditional social security system mainly protects employees who have established typical standard labor relations with enterprises. For flexible workers, basic social security is difficult to meet. On the one hand, due to the uncertainty of the working hours and locations of flexible workers, it has caused great difficulty in maintaining their basic social insurance relationship. Therefore, in view of the rapid development of the sharing economy, Internet technology should be fully utilized to better improve the social insurance system under flexible employment, so that the social insurance relationship under flexible employment can achieve barrier-free connection between provinces and cities in China, so that flexible workers do not have to worry about the basic social insurance will not be guaranteed because of the flexibility of their work. On the other hand, because flexible workers and employers do not meet the typical standard labor relationship, they cannot compulsorily purchase integrated social insurance for flexible workers in accordance with the provisions of the Labor Law, and in accordance with the Social Insurance Law, it is stipulated that individuals cannot participate in work injury insurance. Therefore, a large number of flexible workers cannot normally participate in work injury insurance, which makes it difficult for them to obtain basic protection after being injured at work, especially in online car-hailing vehicles such as Didi Chuxing Workers in the industry. This shows that the government should actively implement the policy of separating work injury insurance and labor relations, so that the majority of flexible employment workers can solve the problem through work injury insurance in the event of a work injury.

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