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Research on the Identification of Labor Relations and Rights Protection of Online Car-Hailing Drivers in China

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Abstract

The combination of the sharing economy and the Internet has profoundly changed the lives of social members, but at the same time, labor disputes between online car-hailing drivers and platforms have gradually increased. Under the current system, establishing a labor relationship with the employer is a prerequisite for workers to safeguard their labor rights and enjoy social insurance, and the identification of the labor relationship between online car-hailing drivers and platforms has become the key to solving such disputes. Based on the introduction of the development background of the sharing economy and the current development status of online car-hailing platforms, this paper summarizes the research status of platform employment and various representative viewpoints, conducts an in-depth study on the identification of the employment relationship between online car-hailing platforms and drivers, and further explores the issue of rights protection for online car-hailing drivers. The research results show that the current employment forms of online car-hailing mainly include three types, which adapt to the development of the current economic situation and the needs of platforms and drivers. However, the rights protection of online car-hailing drivers is still in a predicament: there are many disputes over the identification of labor relations, and the problems of overtime working hours and low proportion of social insurance purchase are prominent.

Keywords

Online Car-Hailing; Labor Relations; Rights Protection; Industrial Injury Insurance; Public Policy

1. Introduction

With the rapid development of information technology and the maturity of online payment, the Internet has been deeply integrated with traditional industries, trade and services, spawning the rapid development of the sharing economy. Online contract workers, the main service providers of the sharing economy, including

online car-hailing drivers, food delivery riders, etc., are widely distributed and inject new vitality into China's economic development by providing various products and services.

As an important part of the sharing economy, online car-hailing (relative to the traditional taxi industry) connects passengers and drivers through platforms to realize efficient resource matching. With its convenience and low access threshold, it has attracted a large number of participants, and the driver group has expanded rapidly, accounting for a significant share of the travel service market. The China Sharing Economy Development Annual Report (2019) shows that the proportion of online car-hailing passenger volume in total taxi passenger volume increased from 9.5% to 36.3% from 2015 to 2018, with about 350 million users in 2018 . While promoting economic development and facilitating people's travel, online car-hailing has also triggered frequent labor disputes between drivers and platforms, raising key questions: whether traditional labor relations identification criteria are applicable to new employment forms, what kind of relationship exists between drivers and platforms, and how to protect drivers' labor rights and interests.

Academic circles have heatedly debated the subordination of platform workers and their rights protection, but no consensus has been reached. China's Labor Law identifies labor relations based on the subordination between employers and workers, but the applicability of this standard to platform employment is controversial. Due to unclear legal definitions, judicial practice has inconsistent judgments on relevant labor disputes, making the identification of platform-driver labor relations more complex than that in traditional industries.

In China's labor legal system, labor disputes are prevalent, and the identification of labor relations directly determines whether workers can obtain labor law protection and effectively safeguard their legitimate rights and interests through labor arbitration. Specifically, if a labor relationship between online car-hailing drivers and platforms is confirmed, drivers, as legitimate workers in an unequal position relative to platforms, are entitled to inclined protection stipulated by labor laws; otherwise, drivers and platforms are equal civil subjects, and disputes arising between them shall be governed by the Civil Code of the People's Republic of China. The identification of labor relations has long been a key difficulty in China's labor law field, mainly due to the lack of an accurate and clear legal definition of labor relations in relevant laws and regulations. The traditional criteria for identifying labor relations, which are based on personal, economic and organizational subordination, have been significantly weakened in the "Internet +" era, making it difficult for the subordination standard to accurately judge the labor relations between online car-hailing drivers and platforms, thus requiring further adjustment and improvement.

Existing domestic and foreign researches on the labor relationship between online car-hailing platforms and drivers have not yet reached a unified consensus, and

their differences are mainly reflected in the understanding and application of the subordination standard. From the perspective of foreign research, scholars and judicial practices mainly adopt the "subordination" as the core identification criterion, forming three representative viewpoints: first, the cooperative or service relationship, which holds that platforms only play the role of information intermediaries, and drivers have strong autonomy, so there is no subordinate relationship between the two; second, the labor relationship, which argues that platforms exercise strong control over drivers through rules and supervision, and the personal and economic subordination between the two is obvious, so labor relations should be recognized; third, the new-type labor relationship, which holds that the relationship between drivers and platforms does not conform to the traditional labor relations model, but drivers have a certain degree of economic dependence on platforms, so an intermediate type of labor relationship should be defined to provide targeted protection. These domestic and foreign research viewpoints and disputes lay a foundation for this paper to further explore the subordination theory of labor relations identification and the specific path of labor relations identification for different types of online car-hailing drivers.

2. Subordination Theory of Labor Relation Identification

2.1. Overview of Subordination Theory

Labor relations is the core concept of the labor legal system, though no clear definition of this important concept has been given in China's current laws. As noted, "a labor contract in labor law is a special employment contract in which one party is in a subordinate relationship with the other, provides professional labor, and the other party pays labor remuneration, which can be called a subordinate employment contract" . This paper holds that subordination is the fundamental characteristic of labor relations, reflecting the essential attributes of such relations and the weak position of workers in work negotiations and consultations. Consequently, China's Labor Law provides inclined protection for workers with confirmed labor relations: workers work for employers, abide by the latter's rules and regulations, complete work objectives, and obtain corresponding labor remuneration and other benefits, with the essence being a value exchange between the two parties—workers gain wages through labor, while employers provide production materials and remuneration to achieve the purpose of utilizing and controlling labor. In this process, employers who own production materials and pay remuneration occupy a more advantageous position.

The subordination theory of labor relations was proposed against the background of insufficient legal protection during the Industrial Revolution. Although the two parties are formally equal, employers actually hold an absolute advantage in economic, cultural and other aspects, while workers enjoy unequal labor rights under the constraints of labor obligations. Based on this, the concept of "labor

relations" was put forward to significantly strengthen the protection of labor rights and interests. Compared with other types of relations between workers and employers, workers in labor relations enjoy more rights and interests because they are in a more disadvantaged position and need additional protection to achieve substantive equality with employers. This theory is mainly reflected in three aspects: personal subordination, economic subordination and organizational subordination.

2.1.1. Personal Subordination

In labor relations, while selling their labor force to employers who provide production materials and pay remuneration, workers must obey the legitimate instructions and orders of employers and abide by their rules, meaning workers are subject to others in the labor process, with their personal freedom, words and deeds even spiritual life restricted by employers—hence the term personal subordination. Specifically, it is reflected in four aspects: first, workers must obey the employer's control and arrangement of working hours; second, in the labor process, workers must follow the employer's instructions, with the scope of such instructions far exceeding that of commission contracts; third, workers cannot independently determine the methods and content of labor, but must perform work in accordance with the employer's requirements; fourth, workers must accept and abide by the employer's disciplinary decisions unless they are legally overturned .

2.1.2. Economic Subordination

Economic subordination refers to the economic dependence of workers on employers in labor relations: workers work for employers in exchange for remuneration, which is often the main pillar for the survival and development of workers and their families, and the lack of such remuneration will significantly affect their lives even survival. As an important factor in determining labor relations, economic subordination places workers in a weak position in the production and operation process—employers may restrict workers by reducing or withholding remuneration if they refuse work requirements. Generally, it is reflected in three aspects: first, workers' main income comes from employers; second, workers' labor is an important part of employers' profit-making activities; third, the fruits of workers' labor usually belong to employers rather than the workers themselves.

2.1.3. Organizational Subordination

Organizational subordination manifests when workers join the employer's organization to carry out work, mainly in two aspects: first, workers must work to achieve the goals of the employer's labor organization, abide by the organization's rules, and accept the management of organizational managers—for example, textile workers must strive to weave cloth to realize the factory's profits, abide by factory rules, and accept the arrangement of managers such as factory directors. Second,

when performing work for the organization, workers represent the organization symbolically, with their words and deeds affecting the organization's image; any adverse consequences caused by their work behaviors are borne by the labor organization rather than the workers themselves.

2.2. Identification of Labor Relations in China

To address the widespread lack of formal written labor contracts between workers and employers, urge employers to sign labor contracts, and handle disputes over de facto labor relations, China issued the Circular of the Ministry of Labor and Social Security on Several Issues Concerning the Confirmation of Labor Relations in 2005. The Circular stipulates that "where an employer recruits a worker without a labor contract, a labor relationship is established if the following conditions are met simultaneously: (1) both the employer and the worker have the subject qualifications stipulated by laws and regulations; (2) the labor rules and regulations formulated by the employer in accordance with the law apply to the worker, who is subject to the employer's labor management and engages in remunerated labor arranged by the employer; (3) the labor provided by the worker is an integral part of the employer's business". Currently, China's judicial practice still adopts these "three elements" to identify labor relations—if all three are met, the relationship is recognized; otherwise, it is not. In essence, the "three elements" cover the core of the subordination theory.

The first element sets requirements for the subject qualifications of both parties, which is the basic condition for determining labor relations. Only workers and employers who comply with legal provisions can be judged to have a labor relationship—for example, minors under 16 and legally retired elderly people cannot establish labor relations with any employer, nor can workers in non-employer entities such as public institutions.

The second element reflects personal, economic and organizational subordination simultaneously: within the scope of law, workers must accept the employer's work arrangements and daily instructions (personal subordination); employers are obligated to pay labor remuneration (economic dependence); workers must abide by the employer's legitimate rules and regulations (organizational subordination).

The third element connects workers with employers and reflects economic subordination: workers' labor is within the scope of the employer's main business, and only by meeting the employer's requirements can workers obtain remuneration, while their labor also contributes to the employer's output and profits. The coexistence of these three elements creates an obvious status gap between workers and employers, with workers being subordinate to and restricted by employers.

3. Types of Online Car-Hailing Drivers and Identification of Labor Relations

3.1. Types of Online Car-Hailing Drivers

In China's judicial practice, the type of online car-hailing drivers is not very important, but in fact, clarifying the type and characteristics of online car-hailing drivers is crucial for identifying their labor relations. Generally speaking, online car-hailing drivers on the market are roughly divided into three types:

3.1.1. The First Type of Online Car-Hailing Drivers

The first type of online car-hailing drivers are mainly private car owners, most of whom are pioneers who shared the dividends of the sharing economy in the early stage of the Internet upsurge. For these private car owners, they have a stable salary income enough to support their families, and they become online car-hailing drivers only to earn extra money on the way to and from work or in their spare time. Although they do provide labor services, they are not managed and controlled by platform enterprises, nor do they use the production materials of enterprises, and the labor remuneration they obtain only accounts for a small part of their actual total income. For platform companies, they share information with such online car-hailing drivers and obtain a certain income. In a sense, the business income of platform enterprises at this time should be "information service fee", and online car-hailing drivers provide services to passengers on a personal basis, and there is no legitimate employer. Therefore, online car-hailing drivers such as private car owners have no labor relations with car rental companies and platform companies, and are not restricted by labor laws and regulations.

3.1.2. The Second Type of Online Car-Hailing Drivers

The second type of drivers have registered on multiple platforms but have not signed a formal labor contract or other agreements with any car rental company or platform company. They join the online car-hailing industry with their own cars or cars rented from car rental companies. They take online car-hailing orders as their main source of income, and work about 9-10 hours a day, with a strong economic dependence on online car-hailing platform companies. Although this is the working time they voluntarily devote, because taking online car-hailing orders is their main source of income, they will abide by the rules formulated by the online car-hailing platform for drivers and provide better services for passengers. Otherwise, once passengers complain about drivers or the platform's supervision finds improper behaviors of drivers, the platform company will impose penalties such as deducting points or reducing orders due to customer evaluation, which to a certain extent forms the platform's control over online car-hailing drivers. At the same time, these drivers who "work" for a long time account for a large proportion of the platform company's business, and they will gradually become the representatives of the platform company. In order to shape the corporate image, the platform company will also conduct more strict management on this type of drivers.

3.1.3. The Third Type of Online Car-Hailing Drivers

The third type of drivers have signed a special work contract with a specific online car-hailing platform company or car rental company. The work contract they signed requires them to abide by the platform's rules and regulations, accept the command and arrangement of platform managers, and even need to wear specific clothes or post specific icons and promotional posters required by the platform inside and outside the car when taking orders at ordinary times. At the same time, they can enjoy the platform's basic salary, attendance award, parking subsidy and other benefits, and there are specific agreements on working hours, working areas and the time of logging in to the platform to receive orders. Such a work contract is very similar to a traditional labor contract, but drivers still have a certain degree of autonomy in working hours and working areas.

3.2. Identification of Labor Relations of Different Types of Online Car-Hailing Drivers

For these three types of online car-hailing drivers, we will discuss and analyze their labor relations in detail from the perspectives of workers and employers:

3.2.1. Identification of Labor Relations of the First Type of Drivers

The first type is mainly the group of private car owners. First of all, most of these online car-hailing drivers have a stable job outside the online car-hailing industry, with a salary enough to support their families, and have signed a legal labor contract with their employers. Therefore, they are unwilling to sign a labor contract with platform companies. Secondly, they adopt a random order-grabbing mode for online car-hailing orders, with no fixed time and area, and no need to achieve a certain number of orders, and are not managed and restricted by platform companies. Such online car-hailing drivers only regard platform companies as a medium for providing information, and platform companies only provide necessary information for passengers and such drivers and formulate basic rules to maintain the operation of online car-hailing services. The relationship between such online car-hailing drivers and platform companies is more like a cooperative relationship. Online car-hailing drivers provide travel services by using idle private cars, and the platform provides the required information, and then distributes the fares paid by passengers according to a certain proportion. There is often no status difference between them, and naturally no subordinate relationship. The actual transaction of online car-hailing services occurs between drivers and passengers, which is different from the traditional taxi industry in that there is an additional platform as an intermediary. This mode was very popular in the early days of the Internet, a typical P2P (peer-to-peer) mode when the Internet was just starting and the government had no policies to manage it. All Internet platforms were in a fragmented state, attracting a large number of private car owners to register and

invest their idle vehicle resources for matching or sharing (carpooling) to join the industry. Private car owners and platforms are in an equal position, and private car owners decide whether to accept orders according to their own wishes, with no restrictions on either party. Therefore, there is no labor relationship between private car owners and online platform companies. After the introduction of the new policy, online car-hailing drivers can only engage in online car-hailing work legally if they obtain an online car-hailing driver's license. The new regulations have strict requirements on driving experience and points deduction in the previous year. The local policies have added localization requirements, such as Shanghai requiring drivers to be local residents. These restrictive measures have kept some private car owners out, and some qualified owners have accounted for a disproportionate proportion in the carpool driver team. Because Didi and Uber have merged, forming a monopoly in the carpool market, and no longer need high subsidies, most owners are unwilling to see such a situation.

3.2.2. Identification of Labor Relations of the Second Type of Drivers

The second type of drivers do not sign labor contracts with platforms, but cooperate with platforms to take "orders" as their main source of income. Such drivers often work on multiple platform companies at the same time to grab orders. Because the number of orders taken determines their income, and they take this income as their main economic source. Therefore, their working hours are longer than those of the first type of drivers, and they also account for a larger market share. Platform enterprises often urge drivers under the platform to abide by the platform's rules and provide better services for passengers by allocating the number of orders. In this sense, in order to increase their income and the number of orders assigned, such online car-hailing drivers will more effectively abide by and perform the relevant rules and requirements of the platform, and also provide high-quality travel services to obtain passenger praise and reduce passenger bad reviews and complaints. Judging the nature of such drivers from China's "three elements". This group of online car-hailing drivers objectively abide by the rules and regulations formulated by the platform, accept the work arranged by the platform, and the travel services provided by drivers are indeed the main business operated by the platform, which meets the second and third elements at the same time. However, drivers work in multiple enterprises at the same time, which does not meet the subject qualification element, so it is difficult to identify a labor relationship between them and the platform. At present, it is impossible to identify that such online car-hailing drivers have a labor relationship with the platform in both ways, but in the actual business activities of online car-hailing platforms, such drivers are indeed in a weak position in negotiation and consultation with the platform, and are to a certain extent exploited and squeezed by the platform. From the perspective of the subordination theory, such drivers rely on online car-hailing to support their

families, but are not limited to specific online working hours or areas, and the "economic subordination" has not decreased. Online car-hailing income is basically the only source of income for drivers, but except for fare sharing, drivers have no other economic security; "Organizational subordination" is not reflected either. The operation mode of platform companies is an asset-light model, so there is no unified corporate culture, no unified clothing, and no specific workplace, so there is no "organizational subordination". Within the scope of the original labor relationship theory, the boundary of labor relationship identification is too narrow and vague. For non-standard form workers, the existing standardized labor relationship identification theory can never be fully applied, which will inevitably lead to contradictions. However, it is undeniable that China's labor law system does not cover non-standard workers.

3.2.3. Identification of Labor Relations of the Third Type of Drivers

The third type of drivers have signed work contracts with online platform companies and obey the platform's management. Because these online car-hailing groups have signed work contracts almost equivalent to labor contracts, actually accept the platform's management, and the platform pays them labor remuneration, allowances and bonuses, and their work actually creates income for the platform, they have met the standards of labor contracts, and basically determined to have a labor relationship with the platform company. They pay for gasoline by themselves, and accept orders according to different pricing services provided by the platform company, extracting a certain proportion of the market share from them. For example, Shenzhou special car drivers, the platform will provide them with a certain period of basic salary, hard work award, and income from the car with a fixed monthly fee. In this mode, there is a certain relationship between the car rental company and the online platform company, or the driver signs a car rental agreement with the car rental company, and the driver basically establishes a labor relationship with the platform company. Under the premise of a labor contract, the labor relationship of such online car-hailing drivers is recognized in judicial practice.

4. Dilemmas in the Identification of Labor Relations of Online Car-Hailing Drivers

At present, more than 200 laws and regulations mention "labor relations", but no document defines it. The Circular issued in 2005 determines the de facto labor relationship in the form of the constituent elements of the "three elements". Some scholars point out that while emphasizing the subjectivity of labor relations, this document establishes a standard combining the subordination of labor relations with personal subordination (applying labor rules and regulations), economic subordination (labor remuneration) and organizational subordination (labor is an

integral part of the enterprise's main business).

Although the Circular clarifies the standards for identifying labor relations, this definition is very abstract, especially the standards for identifying the subordination of labor relations are very vague, the identification of various types of subordination lacks specific indicators, and the identification mode is not classified according to industry characteristics, which has little guiding significance for practice. Because the legislation on labor relations of online car-hailing platforms adopts a general legislative paradigm, judicial practice has a larger space for interpreting labor relations in the application of law. Cases are similar, but the judgments on labor relations emerge in endlessly, which tries to be analyzed through examples.

In the labor contract dispute between Zhuang Yansheng, Wang Zhezuo, Sun Youliang and Beijing Yixing Automobile Technology Development Service Co., Ltd., the three drivers applied to the court to confirm their labor relationship with the company. However, because the three online car-hailing drivers in this case had no fixed working hours and places, and did not receive wages from the platform every month, the court did not support their application for identifying the labor relationship. However, in the simultaneous dispute between Tao Xinguo and Beijing Yixin Automobile Technology Development Service Co., Ltd., the court held that in this case, the online car-hailing driver should work within the time and place specified by the platform, and should collect fees from passengers without bargaining on the charging standard. Therefore, there is a labor relationship between the driver and the platform, and the platform should be responsible for the consequences caused by the driver's work in taking orders. For two labor dispute cases with mostly similar elements, the court interpreted and analyzed from different angles of the facts, but reached completely opposite conclusions on whether the labor relationship between online car-hailing drivers and the platform is established. Such a situation of "different judgments for similar cases" is undoubtedly contrary to the spirit of China's Labor Law and damages the authority of the legal system. Whether such cases will damage the rights and interests of online car-hailing drivers because the court adjudicates from an angle deviated from the spirit of the Labor Law. In fact, this is precisely because the relevant provisions on the identification of labor relations in China are not very clear, and there are no typical judicial cases as judgment examples, so there are difficulties and deviations in the judgment of such labor disputes in practice. It is difficult for Chinese online car-hailing drivers to identify the labor relationship with the platform, not to mention safeguarding their legitimate rights and interests by virtue of this.

5. Problems Caused by the Dilemma in the Identification of Labor Relations of Online Car-Hailing Drivers

5.1. High Occupational Risks of Online Car-Hailing Drivers

The unclear identification of labor relations has led to prominent occupational risks

for online car-hailing drivers, mainly reflected in long-term overtime work and low social insurance participation rate. According to the 2019-2020 Survey on the Employment Status of Online Car-Hailing Drivers, the average daily working hours of surveyed drivers reach 11.06 hours, with an average weekly working time of 70.16 hours (working 6.25 days a week), far exceeding the standard of 8 hours a day and 40 hours a week stipulated in the Labor Law, and the proportion of overtime work (weekly working hours > 40 hours) is as high as 89.73%.

Long-term high-intensity overtime not only endangers drivers' physical and mental health but also increases the risk of work-related accidents. Under the digital labor management system, platforms monitor drivers' work processes comprehensively; to increase profits, platforms may raise commission ratios, forcing drivers to work longer hours to maintain income, while also allocating more orders to high-performing drivers without restricting their working hours, essentially condoning overtime work. This special overtime phenomenon in platform employment requires urgent attention and regulation from relevant management departments.

In addition, the problem of insufficient social insurance coverage for online car-hailing drivers is serious. The survey data shows that only 19.12% of online car-hailing drivers participate in urban employee social insurance, and more than 80% are not covered by social insurance. Due to the ambiguous identification of labor relations and controversial judicial judgments, it is difficult for drivers to obtain labor law protection, making it hard to effectively safeguard their legitimate rights and interests in the face of overtime work and insufficient social insurance.

5.2. Difficulties in Local Government Intervention in Online Car-Hailing Industry Management

At present, China's main regulation on the employment relationship of online car-hailing is the Interim Measures for the Administration of Online Car-Hailing Operation and Services (hereinafter referred to as the Interim Measures). Article 18 of the Interim Measures requires platforms to sign various forms of labor contracts or agreements with drivers according to working hour characteristics and service frequency, clarifying the rights and obligations of both parties, but it does not provide clear legal guidance on how to identify the employment relationship, leaving the problem to be solved in practice. Thus, local governments need to formulate specific operating procedures based on the Interim Measures and local actual conditions.

Representative cities such as Beijing, Shanghai, Guangzhou, and Chengdu have issued detailed local management rules: Beijing stipulates that platform agreements shall not reduce or exempt the carrier liability to passengers, and platforms signing agreements shall purchase personal accident insurance for drivers; Shanghai requires platforms to pay social insurance for drivers with established labor

relations and include accident injury protection provisions in other agreements; Guangzhou mandates that platforms sign labor contracts with drivers who have no other employers; Chengdu emphasizes that platforms shall independently bear operational liabilities and risks and shall not transfer them to drivers. However, most other cities have not formulated detailed and operable management rules, lacking clear provisions on when to sign labor contracts, when to sign other agreements, and the standards for social insurance purchase.

Due to the ambiguity and poor operability of local management rules, coupled with technical limitations, local governments face great difficulties in intervening in the management of the online car-hailing industry, which further exacerbates the dilemma of drivers' rights protection.

6. Countermeasures and Suggestions for Protecting the Labor Rights and Interests of Online Car-Hailing Drivers

To effectively protect the labor rights and interests of online car-hailing drivers, targeted countermeasures should be taken from multiple subjects: first, establish an intermediate protection subject between labor relations and service relations to provide appropriate protection for drivers with obvious economic dependence on platforms but strong work flexibility, who cannot be protected under the current legal framework; second, deepen government supervision, where local governments should formulate detailed and implementable management regulations based on the Interim Measures and local industry characteristics, and strengthen supervision over platform behaviors such as overtime work and insufficient social insurance; third, strengthen platform responsibilities, requiring platforms to fulfill their social obligations, sign standardized labor contracts or agreements with drivers as appropriate, voluntarily purchase social insurance for drivers, and restrict driver overtime work to reduce operational risks; fourth, improve drivers' awareness of rights protection, guiding them to choose qualified platforms, actively sign formal agreements, and use legal means such as labor arbitration to safeguard their legitimate rights and interests when encountering unfair treatment.

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