

Research on Legal Issues Concerning Employers' Unilateral Termination of Labor Contracts

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Abstract

This thesis focuses on the legal issues related to employers' unilateral termination of labor contracts. Through in-depth analysis of relevant provisions in the Labor Contract Law and combining with a large number of real and typical judicial practice cases, it systematically sorts out the dilemmas and contradictions existing in the operation of the current system. The study finds that prominent problems include vague definition of "serious violation", disputes over the application of moral principles, and abuse of the "last-place elimination system". In response to these issues, this paper puts forward improvement suggestions from the aspects of clarifying legal concepts, strengthening judicial review, and standardizing enterprise management, aiming to balance employers' autonomy in management and workers' legitimate rights and interests, and promote the healthy and orderly development of the labor market.

Keywords

Unilateral Termination; Labor Contract; Last-place Elimination; Rules and Regulations; Workers' Rights and Interests

Introduction

In a market economy, labor relations, as one of the most fundamental and important social relations, play a crucial role in the harmonious and stable development of society and economy. The unilateral termination of labor contracts by employers is a significant way to end labor relations, which not only affects the normal operation and management order of employers but also directly impacts the survival rights, interests, and career development of workers. The Labor Contract Law of the People's Republic of China has formulated a series of provisions on employers' unilateral termination of labor contracts, aiming to regulate employers' employment practices and protect the legitimate rights and interests of workers. However, in practical operations and judicial practice, due to factors such as the ambiguity of legal provisions and the differences in interest demands between employers and

workers, legal disputes arising from employers' unilateral termination of labor contracts have been increasing. An in-depth study of this issue is of great theoretical and practical significance for improving the labor legal system, resolving practical labor disputes, and building harmonious labor relations.

1. Overview of Employers' Unilateral Termination of Labor Contracts

1.1. Concept and Legal Basis of Employers' Unilateral Termination of Labor Contracts

Employers' unilateral termination of labor contracts refers to the act where, during the performance of a labor contract, an employer unilaterally decides to terminate the labor contract relationship based on statutory or agreed grounds without reaching a consensus with the worker. China's Labor Contract Law, as an important law regulating labor relations, provides a clear legal basis for employers' unilateral termination of labor contracts. Through provisions on termination conditions, procedures, and other aspects, the law regulates employers' termination behaviors, granting employers a certain degree of autonomy in employment while fully protecting the legitimate rights and interests of workers.

1.2. Types of Employers' Unilateral Termination of Labor Contracts

Immediate termination: According to Article 39 of the Labor Contract Law, employers may immediately terminate labor contracts when workers have serious faults. Specifically, these circumstances include: failure to meet the employment standards after verification during the probation period; serious violation of the employer's rules and regulations by the worker; causing significant losses to the employer due to serious dereliction of duty, malpractice for personal gain, or other acts; the worker establishing labor relations with other employers at the same time, which not only seriously affects the completion of the work tasks of the current employer but also refuses to correct after being pointed out by the employer; the worker concluding or changing the labor contract by means of fraud, coercion, or taking advantage of the other party's difficulties, leading to the invalidity of the labor contract; and being pursued for criminal liability in accordance with the law, etc. In such cases of termination, the employer is not required to give prior notice to the worker nor to pay economic compensation.

Advance notice termination: Article 40 of the Labor Contract Law clearly stipulates that under specific circumstances, an employer may terminate the labor contract if it notifies the worker in writing 30 days in advance or pays the worker an additional month's salary. These circumstances are: the worker, after suffering from an illness or non-work-related injury, is unable to engage in the original work nor in other work arranged by the employer after the expiration of the specified medical period; the worker is incompetent for the job and remains incompetent even after training

or adjustment of the job position; the objective conditions on which the labor contract was concluded have changed significantly, making the labor contract difficult to perform, and the employer and the worker fail to reach an agreement on changing the content of the labor contract after negotiation. Advance notice termination reflects the law's protection of workers' rights and interests, giving workers a certain buffer time to find new job opportunities.

Economic layoffs: When an employer faces the circumstances specified in Article 41 of the Labor Contract Law, such as reorganization in accordance with the Enterprise Bankruptcy Law, serious difficulties in production and operation, corporate transformation, implementation of major technological innovation or adjustment of business methods, and still needing to reduce staff after changing labor contracts, etc., and the number of staff to be laid off reaches 20 or more, or although less than 20, accounts for more than 10% of the total number of employees in the enterprise, it may implement layoffs. Given that economic layoffs are related to the vital interests of a large number of workers, the law sets strict regulations on its procedures. Employers are required to explain the situation to the trade union or all employees 30 days in advance, listen to the opinions of the trade union or employees, report the layoff plan to the labor administrative department, and then implement it.

2. Problems in the System of Employers' Unilateral Termination of Labor Contracts

2.1. Ambiguity in the Definition of "Serious Violation" Leading to Inconsistent Judicial Decisions

In the practice of employers' unilateral termination of labor contracts, terminating contracts on the grounds that "the worker seriously violates the employer's rules and regulations" is a relatively common situation. However, the law does not provide a clear and unified definition of "serious", resulting in significant differences in judicial practice regarding whether the same act constitutes a "serious violation".

Case 1: In a manufacturing enterprise, employee Zhang played mobile games during working hours and was criticized and educated by his supervisor. However, Zhang refused to correct his behavior and repeatedly played mobile games during working hours within a month. The enterprise terminated the labor contract with Zhang in accordance with the provision in its rules and regulations that "engaging in activities unrelated to work during working hours and failing to correct after a warning shall be deemed as a serious violation of the rules and regulations". Zhang was dissatisfied and applied for labor arbitration. The arbitration institution held that although Zhang's behavior violated the rules and regulations, it had not reached the "serious" level, and the enterprise's termination of the labor contract was illegal.

Case 2: In a financial enterprise, employee Li browsed web pages unrelated to work during working hours. After discovering this, the enterprise immediately terminated the labor contract with him, citing the provision in its rules and regulations that

"engaging in activities unrelated to work during working hours shall be deemed as a serious violation of the rules and regulations". After Li applied for arbitration and litigation, the court held that the enterprise's rules and regulations were legally valid, Li's behavior constituted a serious violation of the rules and regulations, and the enterprise's termination of the labor contract was legal.

In these two cases, the nature of the workers' behaviors is similar, both engaging in activities unrelated to work during working hours, but the judgment results are completely different. The reasons are, on the one hand, that the rules and regulations of different employers have inconsistent standards for "serious"; on the other hand, the lack of a clear definition standard in the law gives judges significant discretion in adjudication, leading to instability and uncertainty in judicial decisions, and damaging the authority and fairness of the law.

2.2. Controversies over the Legality and Rationality of Using Moral Principles as a Basis for Termination

With the improvement of society's requirements for workers' comprehensive quality, employers are increasingly inclined to incorporate moral standards such as integrity and dedication into their rules and regulations when formulating them. However, directly using moral principles as a basis for terminating labor contracts has many legal controversies.

Case 3: Employee Zhao concealed the fact that he had been administratively penalized for a minor traffic accident when filling out the employment application form. Some time after joining the company, the enterprise discovered this situation and terminated the labor contract with Zhao on the grounds that he violated the principle of integrity and constituted fraud. Zhao believed that his traffic accident was minor and unrelated to his work, and the enterprise's termination of the labor contract was illegal. After labor arbitration and court trials, it was held that the fact concealed by Zhao had no substantial impact on his work ability and job requirements, and the enterprise's termination of the labor contract on the grounds of the principle of integrity and fraud lacked sufficient basis and was illegal.

In this case, although employers have the right to require workers to be honest, moral principles are highly abstract and subjective. Directly using them as a basis for terminating labor contracts may easily lead to employers' abuse of the right to terminate.

2.3. Legal Dilemma of Using the Last-Place Elimination System as a Ground for Termination

The last-place elimination system is a management method adopted by enterprises to improve employees' work efficiency and competitiveness. It ranks employees through performance appraisal and takes elimination measures against those at the bottom. In practice, some employers use the last-place elimination system as a rea-

son for terminating labor contracts, but this approach conflicts with current legal provisions.

Case 4: An internet enterprise implemented a last-place elimination system, stipulating that employees would be assessed quarterly, and those ranked last would have their labor contracts terminated. Employee Sun ranked last in a quarterly assessment, and the enterprise terminated the labor contract with him in accordance with the regulations. Sun believed that although he ranked last, his work performance did not reach the level of being incompetent for the job, and the enterprise's termination of the labor contract was illegal. After arbitration and court trials, it was held that "last place" is not equivalent to "being incompetent for the job", and the enterprise's use of the last-place elimination system as a basis for terminating the labor contract lacks legal basis and is illegal.

The Labor Contract Law clearly stipulates that employers' acts of terminating labor contracts must strictly follow statutory circumstances. Among them, "being incompetent for the job" is one of the statutory grounds for terminating labor contracts recognized by law. Specifically, if an employer intends to terminate a contract on this ground, it must not only provide sufficient evidence to prove that the worker is indeed incompetent for the current job but also first train the worker or adjust his job position. Only when the worker is still incompetent for the job after the above steps can the employer legally terminate the labor contract.

2.4. Unclear Criteria for Determining Ineligibility during the Probationary Period

When employers terminate labor contracts on the grounds that "the worker is proved not to meet the employment criteria during the probationary period," the lack of specific legal provisions regarding "employment criteria" has led to inconsistent determination standards in practice.

Case 5: An enterprise recruiting salespersons simply stated in its recruitment advertisement that candidates must "have good sales abilities." After employee Qian started his probationary period, the enterprise terminated his labor contract, claiming that he did not meet the employment criteria because his sales performance fell short of expectations. Qian argued that the enterprise had not clearly defined specific employment criteria and that he had worked to the best of his ability during the probationary period. The arbitration institution ruled that the enterprise failed to provide clear and specific employment criteria or sufficient evidence that Qian did not meet these criteria, rendering the termination illegal.

In cases of terminating labor contracts during the probationary period, employers should clearly inform workers of specific employment criteria during recruitment and conduct objective and fair evaluations of their performance during the probationary period. However, in practice, many employers set vague employment criteria or lack objective standards and due process in the evaluation process, thereby

infringing on workers' rights and interests.

3. Suggestions for Improving the System of Employers' Unilateral Termination of Labor Contracts

3.1. Clarify the Definition and Judgment Standards of "Serious Violation"

To address the issue of inconsistent judicial decisions caused by the vague definition of "serious violation", legislative authorities should clearly define the connotation and extension of "serious violation" through judicial interpretations or legal amendments. The following aspects can be considered: First, specify which acts constitute a serious violation of rules and regulations based on the nature and consequences of the act, such as causing significant economic losses, seriously disrupting production and operation order, or damaging the enterprise's reputation. Second, take into account the number and frequency of the acts; repeated violations of the same rule or cumulative violations of multiple rules can be deemed as serious violations. Third, formulate reference standards for "serious violation" for enterprises in different industries and of different scales by referring to their industry characteristics and scale, making the judgment standards more operable.

3.2. Regulate the Application of Moral Principles in Labor Contract Termination

Strict regulations should be imposed on employers' inclusion of moral principles in their rules and regulations as a basis for terminating labor contracts. On one hand, when formulating rules and regulations, employers should make moral standards specific and clear, avoiding overly abstract and ambiguous expressions. For example, the "principle of good faith" can be specified as specific behavioral norms such as not concealing important work-related information and not disclosing the enterprise's trade secrets. On the other hand, judicial organs should strictly examine the legality and rationality of the rules and regulations when reviewing employers' termination of labor contracts on the grounds of moral principles.

3.3. Prohibit the Use of the Last-Place Elimination System as a Reason for Terminating

In view of the conflict between the last-place elimination system and current legal provisions and its damage to workers' rights and interests, it is necessary to explicitly prohibit employers from using the last-place elimination system as a reason for terminating labor contracts. Meanwhile, to meet enterprises' reasonable needs for talent management, the concept of the last-place elimination system can be reasonably applied to the post adjustment mechanism. After completing performance appraisals, employers should first determine whether employees ranked at the bottom are really incompetent for their jobs. If confirmed as incompetent, employers must

provide training or adjust their positions in accordance with legal provisions, and conduct a re-evaluation after the training or position adjustment.

3.4. Clarify the Standards for Determining Ineligibility for Employment during the Probation Period and the Burden of Proof

Legislative authorities should clearly stipulate the specific content and form requirements of "employment conditions" during the probation period. Employment conditions should be clear, specific, and legal, covering requirements for work ability, work attitude, professional qualifications, etc., and should be informed to workers in writing during recruitment. At the same time, the burden of proof for employers to terminate labor contracts during the probation period should be clearly defined. Employers shall bear the burden of proof to show that the worker does not meet the employment conditions, such as providing specific assessment records and work performance evaluations. If an employer fails to provide sufficient evidence to prove that the worker does not meet the employment conditions, its termination of the labor contract shall be deemed illegal. In addition, strengthen the supervision and management of employers' termination of labor contracts during the probation period, and impose corresponding administrative penalties on employers who illegally terminate labor contracts in accordance with the law to protect workers' legitimate rights and interests during the probation period.

4. Conclusion

The employer's unilateral termination of labor contracts involves significant interests of both employers and workers, and the improvement of its legal system is crucial for maintaining the harmony and stability of labor relations. Currently, China's system of employers' unilateral termination of labor contracts has many problems in practice, such as vague definition of "serious violation", disputes over the application of moral principles, abuse of the last-place elimination system, and unclear standards for determining ineligibility during the probation period. Through improvement measures such as clarifying legal concepts, standardizing the application of systems, strengthening judicial review and supervision, we can effectively balance employers' management autonomy and workers' legitimate rights and interests, reduce labor disputes, and promote the healthy and orderly development of the labor market. In the future, with the development of social economy and changes in labor relations, the system of employers' unilateral termination of labor contracts should be continuously studied and improved to better meet the needs of the times.

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