

Review and Application of the Additional Compensation Provisions in the Labor Law

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Abstract

During its evolution, the additional compensation provisions within China's Labor Law have progressively established multiple legal purposes, including de-terrence, incentive, and correction. Regulatory inconsistencies exist in the stip-ulations concerning additional compensation across labor legislation, relevant judicial interpretations, and normative documents, resulting in difficulties in legal application. The causes of these difficulties include: the complexity and un-timely consolidation of normative documents governing additional compen-sation; the ambiguous nature of additional compensation; functional confusion between labor inspection and labor dispute resolution mechanisms; and uncer-tainty regarding the subject matter of judicial interpretations. To ad-dress these issues, it is necessary to clarify the punitive damages nature of addi-tional com-pensation, adopt and refine the adjudicative approach based on Article 85 of the Labor Contract Law to achieve uniformity in legal application. For the future, legislative amendments should focus on the dispute resolution mechanism, sub-jective elements, and applicable circumstances for additional compensation.

Keywords

Additional Compensation for Damages; Application of Law; Normative Conflict; Punitive Damages

1. Introduction

With the promulgation and implementation of the Labor Law of the People's Republic of China (hereinafter referred to as the "Labor Law"), additional compensation, as one form of legal liability for employers, was officially established. The rule of additional compensation has played a significant role in safeguarding the legitimate rights and interests of workers, as well as punishing and curbing employers' wage arrears. However, due to its special institutional design, additional compensation straddles the line between labor supervision measures and relief measures in labor dispute resolution, lingering on the edge of administrative liability and civil liability. How to clarify the boundary between the two has always been a theoretical chal-

lenge. With the continuous enrichment and improvement of legislation, additional compensation has successively appeared in various categories of labor legal norms. Although these legal norms have clarified the institutional details of additional compensation, overlaps and even contradictions have emerged among norms introduced in different periods, causing confusion for judicial authorities in applying the law. The phenomenon of "different judgments for similar cases" occurs frequently, making it difficult to achieve the institutional purpose of additional compensation. In view of this, this paper intends to: first, sort out the historical evolution of additional compensation in labor law, and clarify its normative status quo and value functions; second, take problems as the oriented, reveal the coordination dilemmas faced by the rules of additional compensation in judicial application; finally, put forward application countermeasures and improvement suggestions for the rules of additional compensation from both interpretive and legislative perspectives.

2. The Functional Positioning of Provisions for Additional Compensation in Labor Law

Any creation of legal rules serves specific value objectives, and functional positioning is an important support for achieving these value objectives. The rules of additional compensation in labor law reflect quite different functional positioning for employers and workers. For employers, additional compensation has the functions of punishment, deterrence and supervision. First is the punishment function. From the perspective of legislative purpose, additional compensation is a punitive compensation system established for the intentional, reckless or negligent acts of employers that infringe on the rights and interests of workers. In the workplace, the act of the employer defaulting on wages, overtime pay and economic compensation and still not paying after being ordered by the labor administrative department to pay within a time limit seriously infringes on the property rights and interests of workers, while forced labor and failure to provide working conditions seriously endanger the personal safety of workers. Punishing them is in line with the legislative purpose of the rules of additional compensation. Second is the deterrence function. There is inherent inequality in labor relations. The profit-seeking nature and strong economic strength of employers make it easy for them to abuse the freedom of contract, thus infringing on the legitimate rights and interests of workers. In the face of the infringement acts of employers, the civil compensation litigation filed by workers only has the role of making up for the losses, which is not enough to curb the illegal acts of employers. Only by introducing the rules of additional compensation to make the employers pay extra costs can they be truly punished, so that the employers dare not commit the same infringement acts again and deter other employers from committing the same or similar infringement acts. Finally, there is the supervision function. As market entities, employers are committed to finding ways to limit labor expendi-

ture in the process of operation, and may take the difference between the cost of abiding by the law and the cost of breaking the law as an important factor in deciding whether to comply with the labor law. The rules of additional compensation can urge employers to strictly comply with the Labor Law and the Labor Contract Law by improving the rigidity of the rules and the cost of breaking the law.

For workers, the rules of additional compensation have two major functions: incentive and correction. First is the incentive function. From another perspective, imposing additional compensation on employers as punishment is a reward for non-faulty workers and another form of incentive, which allows workers to obtain extra benefits, make up for the explicit and implicit costs of safeguarding their rights, and encourage workers to actively fight against the illegal acts of employers. Second is the correction function. The rules of additional compensation have corrected the unbalanced protection of workers' rights and interests in the provisions of economic compensation in the Labor Law and the Labor Contract Law. The rules of additional compensation bring such circumstances as employers forcing labor by means of violence, threats or illegal restriction of personal freedom into the scope of application, changing the previous practice in the Labor Law and the Labor Contract Law of only setting economic compensation for such circumstances, so that employers can be more severely punished when committing more serious infringements, so as to reflect the principle of suiting punishment to fault. It is worth noting that this correction function is incomplete, only covering the circumstances stipulated in Article 32 of the Labor Law, and not covering all the circumstances stipulated in Article 38 of the Labor Contract Law.

3. Analysis of Regulatory Conflicts Related to Additional Compensation

The provisions on additional compensation in the Labor Law are relatively general. The former Ministry of Labor established the details of additional compensation rules through regulatory documents, and the old Judicial Interpretation I made minor adjustments but basically maintained the approach of the Labor Law and related regulatory documents. Starting from the Regulations on Labor Security Supervision, significant changes occurred in the standards and preconditions for additional compensation, which were then continued in the subsequent Labor Contract Law. These changes have led to objective conflicts between regulatory documents and the Labor Contract Law. In addition, since the new Judicial Interpretation I replicates the provisions on additional compensation from the old Judicial Interpretation I, how to coordinate these relevant norms has become an unavoidable issue. The existence of these regulatory conflicts has posed significant obstacles to the uniform application of additional compensation rules, while also revealing the legal application dilemmas of this rule.

Since both Article 45 of the new Judicial Interpretation I and Article 85 of the Labor

Contract Law govern additional compensation, they differ significantly in applicable circumstances, and the new Judicial Interpretation I does not specify the compensation standard. In judicial practice, such regulatory conflicts leave substantial room for interpretation, where different interpretations represent distinct legal application approaches and disparate adjudicative outcomes. Regarding the regulatory conflicts between them, there are at least three possible interpretations:

The first interpretation is the "merger system". According to this interpretation, when laborers are forced to terminate labor contracts under the circumstances stipulated in Article 45 of the new Judicial Interpretation I, the regulatory object (i.e., economic compensation) overlaps with Item 4 of Article 85 of the Labor Contract Law. The handling method is as follows: if the employer fails to pay labor remuneration as agreed and required by law, and does not pay economic compensation to the laborer, the laborer shall request the labor administrative department to order the employer to pay within a time limit for the economic compensation; for the payable labor remuneration, the laborer may directly claim it through labor dispute resolution. If it only involves economic compensation without payment of labor remuneration, and the employer voluntarily pays the economic compensation, no liability for additional compensation will arise. If the employer fails to perform the payment, the laborer cannot directly claim economic compensation through labor dispute resolution, but can only request the labor administrative department to order payment.

The second interpretation is the "dual-track system". This interpretation handles matters by distinguishing situations based on whether the laborer is forced to terminate the labor contract. Specifically, if the laborer terminates the labor contract for the reasons stipulated in Article 45 of the new Judicial Interpretation I, they may directly request handling in accordance with labor dispute procedures without going through the prepositive procedure of administrative handling. However, if the laborer does not terminate the labor contract, Article 85 of the Labor Contract Law shall apply, and the matter shall be referred to the labor administrative department for ordering handling. If the order is not effective, it shall be resolved through administrative dispute procedures. The only connection between the two provisions is that since the new Judicial Interpretation I does not stipulate the standard for additional compensation, it shall be made with reference to the provisions of Article 85 of the Labor Contract Law, and the additional compensation shall be paid to the laborer at a standard of not less than 50% but not more than 100% of the payable amount. The basis for the "dual-track system" is as follows: first, the object of interpretation of the new Judicial Interpretation I is not Article 85 of the Labor Contract Law, because the new Judicial Interpretation I follows the old Judicial Interpretation I in content, but the latter does not have a clear object of interpretation and is not even an interpretive provision; second, different from the new Judicial Interpretation I which is only applicable to the situation where the laborer is forced to propose the termination of the labor contract, the subject of the termination and expiration of the labor contract

in Item 4 of Article 85 of the Labor Contract Law only refers to the employer. The third interpretation is the "single-track system", which means that the payment of additional compensation should return to Article 85 of the Labor Contract Law and not rely on the provisions of the new Judicial Interpretation I. Regarding compensation, this article uses "may", which means that not all circumstances meet the conditions for paying compensation, depending on the legal provisions, such as the additional compensation stipulated in Article 85 of the Labor Contract Law. In judicial practice, some courts have also adopted this view.

4. Legal Application Countermeasures and Improvement Paths for Additional Compensation Rules

4.1. Premise Confirmation: Clarifying that the nature of additional compensation is punitive damages

To clarify the nature of additional compensation is a prerequisite for determining its applicable circumstances and dispute resolution methods. The author believes that additional compensation should be defined as punitive damages in civil liability, for three reasons: First, in terms of literal meaning, additional compensation carries a strong punitive color. It imposes additional and aggravated liability on employers beyond compensatory liability to punish their major breaches or illegal acts, which is consistent with the normative structure and institutional function of punitive damages. Second, the reason why additional compensation is mistakenly interpreted as administrative liability is that the procedure of ordering payment within a time limit by the labor administrative department is added, thus changing the "private enforcement" structure of traditional punitive damage liability. However, the legislative provision of prior administrative handling by the labor administrative department is also, to a certain extent, in line with the jurisprudence of the punitive damage system, that is, to supplement the subjective fault elements of the employer through its illegal act of failing to pay within the time limit. Third, the dispute resolution procedures regarding additional compensation in China gradually conform to the jurisprudence of punitive damages. In the process of change, the procedures for handling disputes over additional compensation have gradually shed their administrative color. Although they are still different from the traditional model of claiming punitive damages through civil litigation, they conform to the jurisprudence of punitive damages. First, there is no essential difference between labor disputes and civil disputes. The only difference is that the former should apply mandatory arbitration procedures before taking judicial procedures. But in essence, labor dispute arbitration still conforms to the basic characteristics of "judicature", and its difference from traditional judicial organs is only that its adjudication results are not completely final and its adjudication process lacks complete compulsoriness. Second, the adoption of the labor dispute handling model is consistent with the accessory nature of punitive damages. Punitive damages are accessory and not an independent cause of action, that is, the

right to claim additional compensation must be attached to compensatory damages. The requirement of laborers for employers to pay labor remuneration, economic compensation, etc., originally belongs to traditional labor disputes. Therefore, the current law incorporating additional compensation into the category of labor disputes just conforms to the accessory jurisprudence of punitive damages.

4.2. Taking the "Single-track System" as the Current Legal Application Path

Under the circumstance that Document No. 481 has been explicitly abolished, the conflict between the Labor Contract Law and regulatory documents has been alleviated to some extent, but the coordination between Article 85 of the Labor Contract Law and the new Judicial Interpretation I still needs to be resolved. Based on the above three legal application paths, the author believes that China should currently choose the "single-track system" path, but it also needs to be adjusted accordingly.

In terms of specific application, for the "merger system" approach, although it can maximize the connection between the two provisions, judges must repeatedly examine and switch between the two regulations, which is difficult to apply. Moreover, applying different procedures to the same matter not only artificially increases the burden on administrative organs, adjudicative institutions, and parties, but also may lead to uncertainty in case outcomes due to multiple parties' participation. The "dual-track system" approach only needs to divide the legal application basis according to whether the laborer is forced to terminate the labor contract, which is relatively simple in adjudication and avoids the tediousness of judges applying the two provisions alternately. However, it rigidly cuts off the connection between the two provisions, and laborers may terminate the contract after obtaining additional compensation stipulated in the Labor Contract Law for the same reason and obtain additional compensation again. In contrast, the "single-track system" approach not only maintains the authority of the Labor Contract Law, but also simplifies the links of legal application through semantic interpretation, makes acceptable handling of the relationship between the new Judicial Interpretation I and the Labor Contract Law, and has a small change in the past case handling methods, so it should be adopted.

However, the greatest flaw of this approach is that it violates the basic principle of judicial interpretation, which requires that the understanding of a judicial interpretation itself should return to the provisions it interprets. Therefore, thoroughly implementing the "single-track system" also has serious drawbacks, as it excludes circumstances where additional compensation could originally be obtained under the new Judicial Interpretation I, such as the employer's failure to provide working conditions, and the resulting unfairness to laborers is obvious.

Thus, the author suggests adjusting the "single-track system" approach by clarifying that the applicable circumstances of additional compensation stipulated in Article 45 of the new Judicial Interpretation I may continue to apply when they do not conflict

with the applicable circumstances of Article 85 of the Labor Contract Law, so as to coordinate the relationship between the Labor Contract Law and the new Judicial Interpretation I as much as possible.

4.3. Legislative Improvement of Additional Compensation Rules

Taking the "single-track system" as the current legal application path is a "provisional measure" that is insufficient to fundamentally resolve the normative conflicts and legal application dilemmas of additional compensation rules. In the long run, the provisions on additional compensation in Article 85 of the Labor Contract Law and Article 45 of the new Judicial Interpretation I should be revised and improved. First, the relationship between labor supervision and labor dispute resolution should be properly handled in the context of additional compensation. Specifically, the scope of application for labor supervision should be reduced to law enforcement of labor standards. "Labor standards" refer to the minimum standards stipulated in labor laws. In Article 85 of the Labor Contract Law, this only includes scenarios where the employer "pays laborers wages below the local minimum wage standard" or "arranges overtime work without paying overtime pay". In such cases, since the employer's violations are obvious, there is no need to set a "buffer period" through an order for payment within a time limit. Instead, legislation should stipulate that the labor administrative department shall order the employer to pay the payable wages and corresponding additional compensation within a time limit. If the employer fails to pay, compulsory enforcement measures may be taken against it. For other applicable circumstances, including underpayment of labor remuneration and economic compensation, since the specific composition of "labor remuneration" and the causes of labor contract termination or expiration are all disputable matters involving complex fact-finding and legal issues, they should not be handled by administrative organs through labor supervision. Some local adjudication rules have already recognized this issue, requiring that laborers' requests for employers to pay additional compensation in accordance with regulations should be supported, except where there are disputes between the parties regarding whether the labor contract has been terminated, whether economic compensation should be paid, or the payment standard, etc.

Secondly, clarify the subjective fault elements of additional compensation. Generally, punitive damage liability requires the injurer to have serious subjective fault. The provisions of China's Labor Law and the old and new Judicial Interpretation I on "deduction or ungrounded delay" and "refusal to pay" also reflect the subjective malice of the employer. Although this fault element is weakened by Article 85 of the Labor Contract Law and supplemented by the form of the employer's overdue payment after being ordered to pay by the labor administrative department, from the perspective of the jurisprudence of punitive damages, it should still return to the employer's own subjective fault. Therefore, the legislation should stipulate that when laborers

claim additional compensation from labor dispute arbitration institutions or people's courts, they should provide evidence to prove the employer's subjective fault, and their claims should only be supported after reaching a certain level of severity. The judgment of the degree of severity can refer to Japan's regulations on additional payments, comprehensively considering factors such as the degree and pattern of the employer's violation, the nature and content of the disadvantages suffered by the laborer, the course of the violation, and the employer's response. If the employer can provide evidence to prove that it is unable or temporarily unable to perform the payment obligation due to objective reasons or justifiable reasons, the application of the additional compensation rules should be excluded. However, in the case where the employer pays labor remuneration below the minimum wage standard or obviously violates the maximum working hour standard without paying overtime pay, since the act itself violates the legislative provisions, it should be regarded as the employer having major fault, and the laborer can directly claim additional compensation.

Finally, expand the applicable circumstances of additional compensation. At present, the applicable circumstances of additional compensation in the new Judicial Interpretation I still remain within the scope stipulated in Article 32 of the Labor Law, which is inconsistent with the extension of Article 38 of the Labor Contract Law, resulting in its correction function being unable to be fully exerted. Therefore, the new Judicial Interpretation I should be further amended to include other circumstances in which laborers are forced to terminate labor contracts under Article 38 of the Labor Contract Law into the applicable circumstances of additional compensation, such as the employer's failure to pay social insurance premiums for laborers in accordance with the law, the rules and regulations violating legal provisions and damaging the rights and interests of laborers, and the invalidity of labor contracts caused by the employer's fraud, coercion, or taking advantage of others' difficulties.

5. Conclusion

The "fragmentation" of additional compensation rules in China's labor law has led to coordination dilemmas, potentially causing confusion for administrative and judicial organs, and the goal of protecting laborers' rights enshrined in these rules may thus be undermined. In response, this paper argues that based on clarifying the nature of additional compensation as punitive damages, improvements should be made from both interpretive and legislative perspectives. By examining the additional compensation rules, this paper aims to shed light on practical issues in China's labor law system, such as conflicts between legal norms at different levels, incoordination between labor law enforcement and judicial practice, and unclear objects of judicial interpretation. It is hoped that these insights can contribute to perfecting China's labor law system and enhancing the governance efficiency of labor law.

References

- [1] Thomas Rouhette, "The Availability of Punitive Damages in Europe: Growing Trend or Nonexistent Concept," *Defense Counsel Journal*, Vol.10,2007.
- [2] Carol Abdelmesse, "Why Punitive Damages Should be Awarded for Retaliatory Discharge Under the Fair Labor Standards Act," *Hofstra Labor & Employment Law Journal*, Vol. 21, 2004.
- [3] Vargo J F, "The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice," *Inquiry A Journal of Medical Care Organization Provision & Financing*, Vol.4,1993.
- [4] Shinyashiki Emiko, "Changing Circumstances in Contracts of Employment, Contract Law, and Employment Legislation in English Law," *Hosei Gakkai (Institute for Law and Politics) Kyushu University*, Vol. 88, 2022.
- [5] Geng Q, "Analysis of punitive damages in the context of economic law based on the singular value analysis method," *Applied Mathematics and Nonlinear Sciences*, Vol. 9, 2024.
- [6] Nicholas S, "THE NORTH BRITON NO. 45 AND THE DOCTRINAL ORIGINS OF EXEMPLARY DAMAGES," *The Cambridge Law Journal*, Vol. 82, 2023.
- [7] Virginia Brow, "Revisiting the Public Policy Exception to the Employment-at-will Doctrine Following *Thibodeau v. Design Froup One Architects*: Applying an Ethic of Care Analysis," *Connecticut Public Interest Law Journal*, Vol. 3, 2004.
- [8] Michael Kittner, Thomas Kohler, "Conditioning Expectations: The Protection of the Employment Bond in German and American Law," *Comparative Labor Law & Policy Journal*, Vol. 21, 2000.