

The Legitimacy and Realization of "Regulatory Moderation" in Labor Employment

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Abstract

The dual challenges of economic downward pressure and the flexibility of employment forms (such as platform employment) have put forward requirements for dynamic adjustment of the traditional labor law's legal interest structure with "tilted protection" as the core. While adhering to the foundation of the tilted protection concept, it is necessary to adjust its "degree" in response to the times, introduce the strategy of "regulatory moderation", flexibly govern employers' employment behaviors on the premise of protecting workers' basic rights and interests, stimulate market vitality, and help economic recovery and sustainable development. In the future process of labor law codification, it is also necessary to reserve institutional space for "regulatory moderation".

Keywords

Labor employment; Regulatory moderation; Realization path; Legal interest structure; New punishment regulations

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. Interpretation of the Legitimacy of Regulatory Moderation

1.1. Interpretation Based on the "Cost-Benefit" Framework

The "cost-benefit" interpretation tool is applicable to three situations: first, measuring between the benefits that a behavior or system can achieve and the cost of constructing the behavior or system. If the benefit (effect) is greater than the cost (input), then the behavior choice or system construction is feasible and promising; second, when the cost is the same, for different choice schemes, the one with greater benefit is preferred; third, when the benefit is the same, for different schemes, the one with lower cost is preferred. From the perspective of law and economics, during economic difficulties, the survival pressure of enterprises has increased sharply, and the demand for flexible employment has risen. Blindly implementing rigid tilted protection will significantly increase the compliance cost of enterprises, suppress market vitality, and ultimately damage workers' employment opportunities and long-term well-being. Regulatory moderation moderately relaxes employment restrictions and reduces the burden on enterprises, which can more sustainably achieve a win-win situation for labor and capital on the premise of stimulating economic vitality and consolidating the material foundation, in line with the "cost-benefit" measurement logic of optimal efficiency.

1.2. Inspection Based on the "Theory of Justice"

Viewed from the theory of justice, tilted protection is based on the "distributive justice" under the traditional presumption of "capital is strong and labor is weak". However, economic downward pressure and changes in employment forms (such as platform economy) have gradually weakened the traditional dominant position of employers, and in some fields, the power balance has even reversed. Continuing excessive tilted protection at this time constitutes substantial injustice to employers. "Corrective justice" requires adjustment of this imbalance. Regulatory moderation moderately relaxes restrictions on enterprises and reduces their survival pressure, which helps to avoid large-scale layoffs or bankruptcies and protect workers' employment opportunities, in line with the "Pareto improvement" principle—improving the situation of employers without damaging the fundamental interests of workers (such as employment opportunities) and improving the overall social and economic efficiency.

1.3. Analysis Based on the Concept of "Restraint of Public Power"

The concept of restraint of public power requires that the intervention of public power should be cautious. As an intervention of public power in the private domain, labor legislation and law enforcement should reflect more restraint in the period of economic change. When the dominant position of employers is weakened, rigid implementation of strict regulations will aggravate injustice to them. On the premise of

protecting workers' core rights and interests, limited adjustment of the intensity of tilted protection and dynamic realization of regulatory moderation are the inevitable requirements for maintaining the legitimacy and rationality of the exercise of public power.

2. Premise for the Realization of Regulatory Moderation: Adaptive Adjustment of the Labor Law Interest Structure

2.1. Generation of the Original Form of the Labor Law Interest Structure

The original form of the labor law interest structure shows the superiority of workers' legal interests, which originates from the weakness of individuals compared with organizations under the corporate system and aims to overcome the shortcomings of the equal protection of traditional civil law. However, economic changes have deeply shaken the foundation of this structure. The survival difficulties of enterprises have weakened their traditional advantages, and in some new types of relationships (such as high-skilled workers and platform flexible employees), the power balance tends to be equal or quasi-equal. At this time, adhering to rigid tilted protection may not only aggravate the difficulties of enterprises but also endanger the employment stability and welfare of workers in the end.

2.2. Emergence of the Derivative Aspect of the Labor Law Interest Structure

The labor law interest structure needs to derive a new aspect that emphasizes the balanced coordination of labor and employment from the original aspect of single-sided emphasis on worker protection. This derivative aspect does not deny the value foundation of tilted protection but is a phased and strategic adjustment in the period of abnormal economic conditions (such as severe downward pressure and major public crises). Its core is to weaken the rigidity of tilted protection, inject balanced elements into the legislative concept and law enforcement scale, take into account the needs of enterprise relief, and help enterprises tide over difficulties through regulatory moderation, so as to create a broader space for economic recovery and workers' long-term interests. When the economy returns to normal, the legal interest structure can be adjusted back in a timely manner.

3. Key to the Realization of Regulatory Moderation: Determination of the Boundary of the Nature of Employment Behaviors

3.1. At the Level of Illegality

At the level of illegality identification, it is necessary to distinguish between administrative violations and criminal violations. For administrative violations, in the period of economic change, a restrictive interpretation should be based on the logical basis of the national economic order and the order of civil life. Appropriately im-

prove the standards for identifying illegality and narrow the scope of determination. For example, more tolerance should be given to minor and non-malicious violations caused by objective business difficulties. For criminal violations, focus on acts that violate major legal interests and have extremely high social harmfulness (such as forced labor). For the crime of "refusing to pay labor remuneration" in Article 276 of the Criminal Law, it is necessary to strictly distinguish between subjective malicious wage arrears and objective inability to pay (such as cash flow 断裂 (breakdown)). The latter should be extremely cautious in the determination of criminal illegality under the concept of regulatory moderation to avoid the abuse of criminal penalties.

3.2. At the Level of Liability

At the level of liability discussion, the determination of liability needs to fully consider the subjective will of the actor. Under the influence of the epidemic and economic changes, many employers' violations (such as delayed payment of wages) may stem from objective difficulties (such as 锐减 (sharp reduction) in business opportunities and surging costs) rather than subjective intent. At this time, although the act meets the objective elements, the lack of subjective intent elements should block liability. The revised Administrative Punishment Law in 2021 introduced the rule of "no punishment without subjective fault" in Article 33, providing an interface for employers to prove that they have no intent. In practice, the burden of proof should be reasonably allocated (it is appropriate for administrative organs to prove the existence of subjective fault), and the standard of "high probability" should be adopted in the degree of proof. In the period of abnormal economy, the proof requirements can be appropriately reduced to facilitate employers to prove their non-malicious intent and realize the moderation of liability determination.

4. Realization Paths of "Regulatory Moderation" in Labor Employment

4.1. The Mitigation Effect of Labor Policies Is the Primary Path

Law has stability, while policies have flexibility and timeliness. In the face of 突发 (sudden) difficulties (such as the epidemic), temporary labor policies can be formulated to 消解 (dissolve) the rigid control of labor laws under the premise of complying with superior laws. For example, authorize the human resources and social security department to formulate policies in special periods and introduce the system of "suspension of labor contracts". When force majeure (such as epidemic control) causes workers to be unable to provide labor and enterprises to be unable to pay full remuneration, it is allowed to temporarily suspend the performance of labor contracts (both parties' rights and obligations are suspended), exempt enterprises from payment obligations, exclude the exercise of the right to terminate, and resume performance after the obstacles are eliminated. This can not only ease the cash flow pressure of enterprises but also maintain labor relations, which is more in line with the goal of regulatory moderation than mandatory payment or high-cost 解约

(termination).

4.2. The Moderate Turn of Labor Law Enforcement Is Crucial

Administrative law enforcement should uphold the position of regulatory moderation: first, weaken pre-event supervision, reduce approval and filing procedures, implement the "decentralization, regulation, and service" reform, and reduce employers' pre-event compliance costs. Second, practice the restraint of public power in the punishment link. Make full use of the discretionary space 赋予 (endowed) by the broad punishment range commonly existing in the Labor Contract Law and the Regulations on Labor Security Supervision. In the period of economic change, the inner stance of law enforcement officers should incline to the major public interest of restoring economic order. For non-malicious and minor violations, in principle, the lower limit of punishment should be imposed, or more non-punitive measures such as ordering correction should be used.

4.3. The Migration Application of New Punishment Regulations Is an Important Starting Point

The concept of "cautious use of punishment" embodied in the new Administrative Punishment Law should be fully applied to labor administrative punishments. The core is to implement the rule of "no punishment without subjective fault" in Paragraph 2 of Article 33. The key is how to grasp the degree of employers' proof of "no subjective fault" in practice. The civil evidence standard of "high probability" should be adopted. As long as the evidence provided by the employer (such as financial statements and business difficulty certificates) can show to a large extent that its violation is not intentional, it should be determined that there is no subjective fault and exempted from punishment. In the period of abnormal economy, the proof requirements can be appropriately reduced, and the proof procedures can be simplified to effectively reduce the employer's proof burden.

4.4. The Legislative Attention of the Labor Code Is a Long-Term Strategy

The current promotion of labor law codification is an institutional opportunity to implant the concept of regulatory moderation. Codification does not deny tilted protection but, on the basis of adhering to its foundation, moderately amends its excessive rigidity through the exquisite design of legislative techniques, and reserves institutional flexibility for balancing and protecting the reasonable interests of employers and realizing the win-win 共生 (symbiosis) of labor and capital. For example, in the general provisions of the code, clarify the principle of "dynamically adjusting the protection scale in response to the needs of economic and social development", or embed more flexible rule options and exemption situations in the design of specific systems in the special provisions (such as dismissal protection, economic compensation, working hours, and vacations), so as to ensure that the code has the resilience to cope with economic cycle fluctuations while adhering to

the bottom line of worker protection.

5. Conclusion

Facing the challenges of economic downward pressure and changes in employment forms, labor law needs to show necessary institutional flexibility while adhering to the core value of protecting workers' rights and interests. As a strategic adjustment to deal with abnormal economic environments, "regulatory moderation" has a solid legitimate foundation, derived from the efficiency consideration of cost-benefit, the dynamic balance of distributive justice and corrective justice, and the internal requirements of public power restraint. Its realization takes the adaptive adjustment of the labor law interest structure from single superiority to 二元 (dual) balance as the premise, and takes the careful grasp of the boundary of illegality and the determination of liability for employment behaviors as the key. Through the flexible mitigation of labor policies, the flexible turn of law enforcement stance, the cautious application of new administrative punishment regulations, and reserving institutional space in the future compilation of the Labor Code, it is possible to achieve a dynamic balance between protecting workers' basic rights and interests, helping enterprises relieve difficulties, and stimulating market vitality, and finally serve the good law and good governance of economic recovery, social harmony, and labor governance.

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