

Legal Regulation Suggestions for Protecting the Labor Rights and Interests of Food Delivery Riders under the Food Delivery Platform Model

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Abstract: This paper explores the issue of protecting the labor rights and interests of food delivery riders. Firstly, it analyzes their diverse and complex employment forms, including exclusive delivery, crowdsourced delivery, and the illegal form of individual industrial and commercial households adopted to evade liabilities. Secondly, it points out three core rights and interests dilemmas: infringement of rest and leave rights, lack of social security and insufficient commercial insurance coverage, and difficulty in safeguarding rights due to irregular labor contract signing. Finally, it puts forward legal regulation suggestions, including improving the supervision of rest time and leave protection, clarifying the platform's obligation to pay social security and promoting the popularization of commercial insurance, and strengthening the substantive determination of labor relations and contract supervision. These measures aim to protect the rights and interests of food delivery riders and promote the healthy development of the platform economy.

Keywords: Food Delivery Riders; Labor Rights and Interests; Legal Regulation Suggestions; Platform Employment; Determination of Labor Relations

1. Introduction

In recent years, with the rapid development of social economy and internet technology, China's food delivery industry has grown significantly. As of December 2023, the number of online food delivery users in China has reached 545 million[1]. Meanwhile, the number of food delivery riders has increased sharply. The demand for practitioners in the life service sector has been further released, with over 12 million registered online delivery riders on various platforms in China[2]. However, this group faces numerous challenges in labor rights protection:

unclear standards for determining labor relations, ambiguous definition of the legal relationship between internet platforms and food delivery riders, widespread overtime work, inadequate protection of rest and leave rights, insufficient coverage of the social security system, and difficulties in work-related injury claims. Existing research on protecting the rights and interests of flexible employees in the platform economy is still insufficient, failing to fully cover the special needs of food delivery riders. Targeted research is urgently needed to provide support for rights protection.

This paper is based on the results of online questionnaires and offline field interviews. Offline data were collected through on-site visits to places where food delivery riders gather, such as shopping malls and restaurants, to comprehensively and objectively reflect the real employment forms and practical dilemmas of food delivery riders. It clarifies the current situation of their labor rights and interests and deeply analyzes the causes of rights violations, providing practical references for improving relevant policies, regulating platform employment, and enhancing the level of rights protection for food delivery riders.

This paper first elaborates on the research background and significance, then analyzes the current situation and existing problems of labor rights protection for food delivery riders based on survey data, and subsequently puts forward targeted legal regulation suggestions. The purpose is to protect the legitimate rights and interests of food delivery riders, promote social fairness and justice, guide the healthy and sustainable development of the platform economy, and realize the unification of economic and social benefits.

2. Analysis of the Employment Forms of Food Delivery Riders Based on Food Delivery Platforms

2.1 Characteristics of the Employment of Food Delivery Riders under the Platform Economy Model

2.1.1 Complexity of labor subjects

The vigorous development of the platform economy is profoundly transforming the labor organization model worldwide and has become an important driving force for current social and economic development.[3] Initially, food delivery platforms directly recruited riders through platform self-employment or labor dispatch, forming a relatively single labor subject. With the expansion of business scale, the subjects involved in the employment of food delivery riders have broken through the scope of traditional single employment relations, showing the complex characteristics of multiple interweaving. The core subjects include food delivery platform enterprises, regional distribution service providers, individual industrial and commercial households, registered riders on crowdsourcing platforms, and labor dispatch units. The division of rights and responsibilities among various subjects is ambiguous. Platforms achieve indirect management through algorithmic control, while distribution service providers are responsible for daily scheduling. Some food delivery riders establish cooperation with platforms by registering as individual industrial and commercial households, forming multiple nested relationships such as "platform - service provider - rider" and "platform - individual industrial and commercial household - rider". This leads to difficulties in defining the identity of labor subjects, laying hidden dangers for subsequent rights protection.

2.1.2 Contractualization of employment agreements

To reduce employment costs, improve recruitment efficiency, and evade the legal constraints of traditional labor relations, platforms generally adopt non-standard labor contract agreements to establish employment relations. In practice, most agreements signed between platforms and food delivery riders are civil contracts such as Cooperation Agreements and Service Agreements, rather than labor contracts. The content of the agreements focuses on task delivery standards, remuneration settlement methods, and liability for breach of contract, deliberately weakening personal subordination clauses. Even if some exclusive delivery riders sign contracts with outsourcing

companies, labor contracts are often replaced by "service agreements", obscuring the nature of labor relations through clause design. As a result, food delivery riders find it difficult to claim statutory rights and interests such as social security and overtime pay in accordance with labor laws. Offline surveys and interviews in Liaoning, Anhui, Chongqing and other places confirm that the social insurance coverage rate of food delivery riders in some areas is still low.

2.1.3 Weakening of economic subordination

Different from traditional employment relations where workers are completely dependent on employers for labor remuneration, the economic subordination of food delivery riders shows a weakening trend. The remuneration of food delivery riders is mainly calculated based on the number of delivered orders, distance, and favorable rating. The piece-rate payment model gives them a certain degree of autonomy in income. Some riders can register on multiple platforms to accept orders, further reducing their economic dependence on a single platform. However, this weakening is superficial. Platforms indirectly control the actual income level of food delivery riders by setting delivery unit prices, subsidy rules, and penalty mechanisms through algorithms, forming an economic dependent relationship of "formal autonomy but substantive control".

The food delivery industry has the advantages of low entry threshold, flexible working hours, and considerable income, thus attracting a large number of young and middle-aged laborers. However, due to adverse factors such as low professional identity and limited personal development space, food delivery work is regarded by most workers as a transitional employment choice. Food delivery riders face boring work and high intensity, resulting in poor stability of the professional group and high overall mobility.

2.1.4 Superficialization of civil equality

The occupation of food delivery riders has many adverse factors such as poor working environment, high risk, lack of social security benefits, and strong mobility. As migrant workers, this group has entered cities and works and lives there, but in fact, cities only regard them as economic actors. Institutionally, they are not granted other basic interests similar to urban residents, and socially, they are excluded from urban social circles and cultural activities[4]. Cooperation agreements signed between food

delivery platforms and riders often use "equal civil subjects" as expressions, emphasizing voluntary cooperation and independent termination of contracts between the two parties, creating a superficial appearance of civil equality. However, in actual employment, to improve user experience, platforms give users the right to arbitrarily evaluate, allowing customers to "control" food delivery riders. Nevertheless, the "unfeeling" platform systems and some customers put food delivery riders in a difficult position[5]. Relying on technological advantages and market monopoly status, platforms formulate unilaterally dominated standard clauses. Food delivery riders lack the ability to negotiate and can only passively accept the agreement content. Platforms achieve comprehensive control over the labor process through algorithmic scheduling, positioning monitoring, reward and punishment rules, and other means. Food delivery riders must strictly abide by requirements such as delivery time limits and service standards. This personal subordination forms a sharp contrast with the superficial appearance of civil equality, and essentially still has the core characteristics of labor relations. The equality in legal form hides significant inequality in rights protection.

2.2 Common Employment Forms of Food Delivery Riders

2.2.1 Self-operated form

In the early stage of the food delivery industry, some catering enterprises recruited delivery staff themselves, forming a "merchant self-operated" model. Riders are directly employed by merchants, with relatively clear labor relations and complete social security and other benefits[6]. The self-operated form is an employment model where food delivery platforms directly hire food delivery riders. Platforms sign labor contracts with food delivery riders as employers, establishing standard labor relations. Under this form, food delivery riders accept direct management from platforms, must abide by attendance systems, service standards, and reward and punishment rules formulated by platforms. Platforms pay social insurance in accordance with the law, provide labor remuneration not lower than the local minimum wage standard, and guarantee rest and leave rights. The advantage of the self-operated form is clear labor relations and adequate protection of food delivery riders' rights and interests, but

the labor cost of platforms is relatively high. At present, it is only adopted in a small number of core cities or key areas.

2.2.2 Crowdsourced form

The crowdsourced form is an employment method where platforms absorb social idle labor to participate in delivery through crowdsourcing models. Food delivery riders register as crowdsourced riders through platform APPs and sign Crowdsourced Service Agreements with platforms. Under this form, food delivery riders have a high degree of autonomy, can independently choose working hours, delivery areas, and the number of orders, and do not need to abide by fixed attendance systems. Remuneration is settled per order, mostly on a daily or weekly basis. Platforms mainly conduct order matching and reward and punishment management through algorithms, and do not assume the obligation to pay social insurance. The two parties form a civil service relationship. The crowdsourced form is flexible and efficient, reducing the employment costs of platforms, but the rights and interests of food delivery riders are weakly protected. It is difficult for them to obtain effective relief in case of risks such as work-related injuries and traffic accidents.

2.2.3 Outsourced form

The outsourced form is an employment model where platforms outsource the entire delivery business to third-party distribution service providers (outsourcing companies), and outsourcing companies establish labor or service relations with food delivery riders. Platforms sign Delivery Service Outsourcing Agreements with outsourcing companies, clarifying the delivery scope, service standards, and fee settlement methods. Outsourcing companies independently recruit and manage food delivery riders, and are responsible for daily scheduling, training, and salary payment. To reduce costs, some outsourcing companies do not sign formal labor contracts with food delivery riders or pay social insurance. Under this form, platforms transfer employment liabilities through outsourcing. When the rights and interests of food delivery riders are infringed, they often face the dilemma of mutual shirking between platforms and outsourcing companies, making it difficult to safeguard their rights.

2.2.4 Exclusive delivery form

The exclusive delivery form is currently the most mainstream employment model in the food delivery industry. Usually, platforms cooperate

with regional distribution service providers, which set up exclusive delivery teams to provide delivery services for specific areas. Exclusive delivery riders sign labor contracts or service agreements with service providers, accept strict management from service providers, and must abide by fixed working hours, delivery routes, and service standards. Platforms indirectly control riders through service providers and participate in formulating delivery standards and reward and punishment rules. The income of exclusive delivery riders is relatively stable, including basic salary, performance bonuses, and order commissions. However, some service providers have problems such as deducting wages and failing to pay social insurance. Moreover, due to dual management, it is difficult to determine liability when riders' rights and interests are infringed.

2.2.5 Individual industrial and commercial household form

The individual industrial and commercial household form is an employment method adopted by some platforms to evade labor relations liabilities, inducing or requiring food delivery riders to register as individual industrial and commercial households and sign Cooperation Agreements with platforms as individual operators. Under this form, platforms claim that the two parties have a cooperative relationship between equal civil subjects and do not need to assume the statutory obligations of employers. However, in fact, food delivery riders still need to accept algorithmic control and service standard constraints from platforms, and the subordination of the labor process has not changed. Registering as an individual industrial and commercial household is only a formal requirement. This form violates the substantive requirements for determining labor relations, is an illegal employment form to evade laws, and seriously infringes on the labor rights and interests of food delivery riders. In case of labor disputes, it is difficult for food delivery riders to obtain relief in accordance with labor laws.

3. Current Situation and Existing Problems of Protecting the Labor Rights and Interests of Food Delivery Riders

Article 3 of the Labor Law of the People's Republic of China stipulates that workers shall enjoy the rights to equal employment and choice of occupation, obtain labor remuneration, rest and vacation, receive labor safety and health

protection, receive professional skills training, enjoy social insurance and welfare, submit labor dispute resolutions, and other labor rights stipulated by law. However, in real life, these rights of food delivery riders have not been effectively protected. Their working environment is extremely risky. The diverse and complex employment forms have led food delivery riders to fall into the predicament of insufficient protection in multiple core labor rights and interests, among which the following three problems are the most prominent.

3.1 Protection of Food Delivery Riders' Rest and Leave Rights

Articles 36, 38, 44 and other provisions of the Labor Law clearly stipulate the standard working hours, rest and leave, and overtime pay systems. They clearly require a working hour system where workers work no more than eight hours a day and no more than forty-four hours a week on average. Employers shall ensure that workers have at least one rest day a week. If it is necessary to extend working hours for special reasons, the extended working hours shall not exceed three hours a day and thirty-six hours a month under the condition of ensuring the health of workers.

However, for food delivery riders, the platform's "piece-rate payment" model forces them to take the initiative to give up rest to make a living, and no reasonable mandatory rest mechanism has been set up, which has seriously affected the health rights of food delivery riders. According to our surveys and field interviews, they work an average of 12 to 13 hours a day. Not to mention having at least one rest day a week, they only have 2 days of annual leave to arrange by themselves, and some food delivery riders even have no right to rest and vacation for half a year. Most food delivery riders do not take leave on statutory holidays such as New Year's Day, Mid-Autumn Festival, and National Day. On the contrary, these holidays are peak periods for food delivery services, and food delivery riders must work more than usual. In addition, since the food delivery service is concentrated during meal times, most food delivery riders cannot eat on time. Due to long working hours and irregular eating times, the health of food delivery riders is vulnerable to damage over time.

The characteristics of the express delivery/food delivery industry, such as irregular work rhythm and poor working environment, make it difficult

to rest on time. These lead to irregular rest for couriers/food delivery riders, and long-term irregular rest can lead to psychological diseases such as overwork, fatigue, and insomnia[7].

3.2 Purchase of Social Insurance and Commercial Work-related Injury Insurance for Food Delivery Riders

The Social Insurance Law clearly stipulates that employers shall pay social insurance premiums for their employees in accordance with the law. The smoothness of insurance claims is directly related to the vital interests of riders and even the healthy development of new employment forms[8]. However, the ambiguity in the determination of labor relations has excluded most riders from this protection. Since most riders are not recognized as "workers" in labor relations, platforms and distributors have no legal obligation to pay "five insurances and one fund" for them. At present, the main form of protection is that platforms or distributors purchase commercial personal accident insurance or commercial work-related injury insurance for riders. However, such commercial insurance has many problems: limited protection coverage, harsh claim conditions, riders having to bear part of the premium themselves, and possible gaps in the insurance period. In case of major accidents, the compensation from commercial insurance is often insufficient to cover all medical expenses and long-term living costs, putting riders and their families in trouble. On December 21, 2020, 43-year-old Ele.me food delivery rider Han Wei collapsed and died while delivering his 33rd order in the afternoon. The cause of death was sudden cardiac death. After the tragedy, Han Wei's family contacted Ele.me, but was told by the platform that Han Wei had no labor relations with the platform. The platform could compensate 2,000 yuan out of humanitarianism, and the rest of the claim items should be paid by the insurance company. The insurance company mentioned by the platform is China Pacific Insurance Company, and the specific insurance product is a travel personal accident insurance for which food delivery riders pay 3 yuan a day as the insurance premium for the working day. According to the electronic insurance policy on the day of the accident, the premium was only 1.06 yuan. That is to say, of the more than 1,000 yuan paid annually as insurance premium, only more than 300 yuan was used for premium expenses, and the rest was

deducted by the platform. The insurance period was the working day, and the relevant insurance compensation was only 30,000 yuan. Wearing Ele.me's uniform and subject to Ele.me's control, this is a case of a 43-year-old middle-aged man, and also a microcosm of thousands of ordinary families[9].

3.3 Signing of Labor Contracts or Cooperation Agreements by Food Delivery Riders

The situation of contract signing is directly related to the qualification of legal relations. At present, there are mainly four models:

3.3.1 No contract or agreement signed

This exists in some irregular small platforms or in the early stage. The rights and interests of riders are completely in a "naked" state, which poses great risks to food delivery riders.

3.3.2 Signing cooperation agreements / contracting agreements

Under the current mainstream model, platforms require practitioners to register and sign cooperation agreements instead of labor contracts. The agreements are elaborately designed to exclude labor law obligations, transfer risks to riders, thereby evading labor relations, not paying social insurance, and restricting riders to deduct wages in a disguised form or extend working hours.

3.3.3 Signing business cooperation contracts

Similar to cooperation agreements, but emphasizing that both parties are independent commercial cooperation subjects, with certain legal protection.

3.3.4 Signing labor contracts

This only exists in a very small number of self-operated riders, which can provide comprehensive legal protection.

The key problem is that although many exclusive delivery riders are substantively subordinate in their work, they sign cooperation agreements. As a result, when labor disputes occur, they need to go through complex and lengthy labor arbitration and litigation procedures to "confirm labor relations". The threshold and cost of safeguarding rights are extremely high, which they generally cannot afford.

4. Legal Regulation Suggestions for Protecting the Labor Rights and Interests of Food Delivery Riders

4.1 Establish a Legal Protection Mechanism for Food Delivery Riders' Rest and Leave Rights

4.1.1 Improve the supervision system for working hours of platform employment

It is suggested that legislative organs or human resources and social security departments issue special regulations to conduct flexible but clear-bottom-line regulation on the working hours of platform employment. For example, the concepts of "maximum continuous working time limit" and "daily mandatory rest time" can be referred to. The platform system should set a mandatory offline function. When a rider continuously accepts orders online for a certain period of time (such as 4 hours), the system should force him to rest for 20 minutes. When the cumulative online time per day reaches the upper limit (such as 12 hours), the system should stop dispatching orders. At the same time, technical means should be used to monitor the total working hours of riders to provide certain data support for supervision.

4.1.2 Improve the protection of food delivery riders' statutory leave and subsidy rights

Clearly include platform workers who meet specific subordination standards in the scope of protection of labor standard laws, and grant them the right to rest on statutory holidays. Those who work on statutory holidays should enjoy overtime pay in accordance with the provisions of the Labor Law. At the same time, human resources and social security departments should work with industry competent departments to clearly include new employment form workers such as food delivery riders in the scope of special labor protection subsidies such as high-temperature subsidies and night shift subsidies, and require platforms to clarify them in enterprise rules and regulations or agreements.

4.2 Improve the Collaborative Protection Mechanism of Social Insurance and Commercial Insurance

4.2.1 Clarify the legal obligation of platform enterprises to pay social insurance

The core is to solve the problem of "determining labor relations". We can learn from the concept of "quasi-workers" in some European countries. For riders who meet the three elements of "accepting labor management from platforms, engaging in designated work, and obtaining labor remuneration", platform enterprises shall be forced to assume the corresponding

obligation of paying social insurance. In particular, work-related injury insurance should be taken as the bottom line of occupational injury protection, and a mandatory insurance participation model of "single insurance type, low rate, and wide coverage" should be implemented. Platforms should act as the insured subject to ensure that riders can receive timely and effective treatment and compensation in case of occupational injuries.

4.2.2 Promote the popularization of commercial work-related injury insurance for food delivery riders

Before the full coverage of work-related injury insurance, the supplementary role of commercial insurance should be encouraged and standardized. Regulatory authorities can guide the insurance industry to develop exclusive commercial insurance products for new employment form workers with low premiums and comprehensive coverage. At the same time, platform enterprises should be required to purchase such insurance for all riders who accept orders under their umbrella, and bear the premium as an operating cost without passing it on to riders. Establish data connection between platforms, insurance institutions, and social security institutions to ensure rapid claim settlement after accidents.

4.3 Clarify the Standards for Determining Labor Relations and the Contract Supervision System

4.3.1 Strengthen the application and determination standards of labor relations in platform employment

Comprehensively consider the work intensity of riders and improve the implementation temperature of platform algorithms. Reasonably determine the number of orders and delivery time limits. Platforms can reasonably determine assessment factors such as the number of orders, on-time rate, and online rate through methods such as "algorithmic averaging", and appropriately relax delivery time limits to avoid excessive pursuit of speed[10]. When hearing relevant cases, judicial organs and labor arbitration institutions should adhere to the principle of "substance over form", penetrate the surface of various "cooperation agreements", and conduct a comprehensive judgment from three dimensions: "personal subordination", "economic subordination", and "organizational subordination". For exclusive delivery riders

who accept daily management from platforms or distributors, abide by work discipline, have relatively fixed working hours, whose income includes basic salary or guaranteed minimum income, wear unified uniforms, and use platform-designated equipment, it should be inclined to determine the existence of labor relations.

4.3.2 Establish a labor contract filing and agreement content review mechanism

Market supervision and management departments and human resources and social security departments should establish a joint review mechanism to conduct standard clause review on various employment agreements used by platforms and cooperative enterprises, and clean up and punish "overlord clauses" that exclude the main rights of workers and exempt platforms from legal obligations. At the same time, an employment contract filing platform can be set up, requiring platform enterprises to file contracts with riders who have management relations with them, so as to facilitate supervision departments to grasp employment status in real time and implement dynamic supervision.

5. Conclusion

As an important group of new employment form workers, the protection of food delivery riders' labor rights and interests is not only related to the livelihood and dignity of tens of millions of riders, but also to the healthy and sustainable development of the platform economy and the realization of social fairness and justice. At present, under the diverse and complex employment forms, the protection dilemmas faced by food delivery riders in core rights and interests such as rest and leave, social insurance, and labor contracts expose the insufficient adaptability between traditional labor legal regulations and new employment forms. To solve these problems, it is necessary to break through the traditional constraints of "determining labor relations" and build a legal protection system that balances the flexibility of the platform economy and the bottom line of workers' rights and interests. By improving the supervision of working hours and the system of rest and leave rights, clarifying the platform's obligation to pay social insurance and coordinating commercial insurance protection, and strengthening the substantive determination standards of labor relations and contract

supervision, a solid legal barrier can be built for food delivery riders. Only in this way can food delivery riders obtain the due protection of their rights and interests in their busy work, enable the platform economy to develop steadily in a standardized manner, and ultimately realize a win-win situation for workers' rights and interests, enterprise development, and social harmony.

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