

A Brief Analysis of the Legal subject Qualification and Rights and Interests Protection Countermeasures of University Students' Part-time Jobs from the Perspective of Labor Law

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Abstract. At present, college students part-time is a kind of common social phenomenon, widespread law, but because of the lag of the law, part-time college students laborer legal subject qualification is not clear, with the unit of choosing and employ person labor relations between fuzzy, eventually led to the part-time labor rights and interests by different levels of college students, and because of the absence of the law, their basic rights and interests can not be effectively guaranteed. How to solve a series of problems caused by it. This paper analyzes and explains the current legal context from the perspective of legal theory, to make the legal subject qualification of punishing students for part-time jobs more clear and closer to the scope of "Labor Law". To effectively protect the legitimate rights and interests of college students, it puts forward ideas and suggestions from the legal level.

Key words: Labor law; legal relations; college students; labor rights and interests; internship type.

1. Introduction

For college students, part-time jobs can promote the improvement of their practical ability, such as innovative thinking, universal adaptation, subjective initiative, and so on, thus laying a foundation for their future "graduation employment". At present, under the influence of the domestic "Internet +" concept, China's economic structure is gradually transforming, and "part-time jobs" are also gradually tending to be diversified, random, and short-term. And under the push of the market economy in our country, the widespread popularization of higher education, making college students "part-time" has become a kind of social phenomenon "special", the "special" in the current college students' main body of the policy, the law is not perfect circumstances, even "part-time job" caused many social problems, among them, The most important problem is the dispute between part-time students and part-time units, and the main aspect of the problem is that the labor rights and interests of part-time students are violated to varying degrees, and it is difficult to protect their rights. With the accumulation of problems, the weak position of students in "part-time" is gradually highlighted. The reason for this problem is that there is a blind spot in the legal relationship between students and their units so that their labor rights and interests can not be effectively guaranteed. Therefore, this paper aims to study the legal subject qualification of part-time college students, to effectively protect the legitimate rights and interests of part-time students, to provide a superficial legal basis.

2. Status quo of part-time jobs of College students in China

2.1 Current Legal Situation -- "Absence of current Legal Context"

At present, because of the 2008 "labor contract law of the People's Republic of China (hereinafter referred to as the "labor law ") law did not stipulate in the concept of the "workers", detailed positioning, in which "workers" as to the identity of the connotation and denotation not clear, therefore in the judicial practice for a definition of "workers" and "the laborer" becomes vague, In addition, article 12 of the Opinions on Several Issues concerning the Implementation of the Labor Law of the People's Republic of China issued by the former Ministry of Labor in 1995 (hereinafter referred to as the Opinions) stipulates: In school student uses after-school time work-study program, do not regard obtain employment, did not establish labor relation, can not sign labor contract. Caused

in the form, by the unit of choose and employ persons hire the college student that pays labor for it, does not exist labor relation with the unit of choosing and employ persons however in essence, do not belong to "labor law" the category that adjusts. It can be seen that due to the absence of laws, college students' part-time activities cannot be effectively guaranteed. When their legitimate rights and interests are damaged, college students can only seek relief through the "Contract Law", "Tort Liability Law" and other civil laws.

2.2 Academic Disputes -- "Yes/No is prohibited by law"

(1) First of all, it can be clear that part-time is a way to get remuneration through labor, and the original intention of part-time refers to other positions in addition to their jobs. Therefore, some scholars think, for college students, because their job is to learn, if it becomes the main part-time job, its study earnestly the job with other positioning takes some students not academically "conscientious", workers' identity and student identity conflicts will lead to "no more harm than good". Given the qualification of laborers, some scholars put forward the proposal that "students do not have the labor value of laborers", and therefore part-time students should not be protected by labor law. What is more, some people point out that beneficial college students who live on campus do not have obvious social value and therefore cannot bear the obligations and responsibilities stipulated by the labor law. Such arguments discourage students from taking part-time jobs on the legal level. However, some scholars have made a distinction between the interpretation of laborers, which should be divided into laborers in the broad sense and laborers in the narrow sense. Laborers in the broad sense include college students with complete civil capacity, who have the right to work, so the labor contract signed should have legal effect.

(2). It is not against the law for college students of legal working age to obtain remuneration through legal social services, which confirms the legitimacy of college students as labor subjects from the perspective of labor rights and labor ability. In addition, it can be seen from the above that the Labor Law does not exclude college students from the scope of the subject of the labor law, and according to the provisions of the Opinions, only work-study behavior does not belong to employment. College students outside the part-time behavior, are still in the "labor law" within the scope of protection. This paper supports and affirms that college students have the legal qualification of laborers and meet the conditions of becoming laborers. Part-time college students shall acquire the legal qualifications of laborers. Expand the discussion below.

3. Discrimination against legal qualifications

3.1 Clarify the concepts of "part-time job" and "work-study"

Due to the absence of the law, the special concept is not clear, college students' part-time jobs in the "Labor Law", "opinions" cannot be qualified, in judicial practice, 'college students' part-time jobs' have been labeled after the infringement of personal rights and interests has become a stumbling block to block rights protection. The cause of the current situation is that college students' part-time behavior should be different from the "work-study" category concept, which has been sweeping into the category of 'work-study', coupled with the high school students' work-study management method "(hereinafter referred to as the "method") "work-study students their work content and the form to the school authorities unified organization and management", Because college students' part-time jobs are private behaviors, they are excluded from the measures. As a result, college students part-time jobs, into the "method", "opinion" two regardless of the zone, neither by the school's management protection and can not seek relief from the "labor law". The author thinks that we should strictly distinguish "part-time" and "work-study", according to the spirit of "method", summing up the following characteristics of work-study: 1. Subject to the unified organization and management of the school. Students get legal remuneration through labor. Work and study belong to social practice. And "part-time" is a form of employment, in terms of working hours, and weekly working hours are

not more than 24 hours. It can be seen that "part-time job" and "work-study" are quite different in concept and semantics, and should be distinguished in judicial practice.

3.2 The definition of legal qualifications from the perspective of Labor Law

The spirit of labor Law is to protect the legitimate rights and interests of workers from infringement, adjust labor relations by law, establish a harmonious and stable socialist market, and promote economic development and social progress. According to the Government Work Report released by The State Council in 2020, universities and local governments should provide continuous employment services for college students. While college students' part-time jobs can provide excellent practice opportunities for college students. College students can get rid of textbooks, recognize reality, and find the gap between themselves and others. This benign promotion can lay a solid foundation for re-employment after graduation. In labor for a price at the same time on the road of the practice of "labor law" as a fundamental law to the protection of laborers' rights and interests the escort for college students, to make good "learning - employment", positive role since the "labor law" did not explicitly rule out college students' main body qualifications if the rights and interests are violated when college students part-time, "labor law" by extension, will inevitably harm the employment enthusiasm of college students. In addition, it should be noted that a large number of students taking part-time jobs by going out is a common situation, why students do not choose the provisions of the "method", under the unified management of the school "work-study"? In this paper, the author makes objective analysis and conjecture: 1. The school lacks the corresponding perfect "work-study" mechanism in this aspect. 2. Due to various subjective and objective factors, college students lack communication with schools about "work-study". It can be seen that if relevant matters can be established and improved to promote communication between school students when "work-study" meets the needs of students, part-time jobs will not become the current mainstream. Since most students do not choose to "work-study", and then "methods", "opinions" on the grounds of negative identification of the identity of college students have a biased understanding of the law, and improper use of the significance of the suspicion of law.

4. Demonstration of legal qualifications

4.1 Spiritual attributes

(1) Consistent with the spirit of the Constitution

According to Article 42 of the Constitution of the People's Republic of China, Chinese nationals have the inalienable right to work and the right to obtain the corresponding remuneration, which is the core of the labor right protected by the Constitution. Therefore, college students of Chinese nationality should enjoy the right to work and the right to obtain remuneration. As one of the basic principles of labor law, the labor rights of college students should be supported.

(2) Inherit the spirit of higher education

Under the guidance of China's higher education, according to article 56 of the newly revised Higher Education Law, it is pointed out that students can participate in social activities and work-study labor in their spare time without delaying their studies. At the same time, analysis of the Measures shows that the document aims to cultivate students' self-reliant, innovative and entrepreneurial spirit. But the university student's part-time job is the thing that kills many birds with one stone. The student can experience the social practice, but also can harvest from it, cultivate an individual spirit, thus achieving the cultivation goal of higher education.

5. Embody the internal and external spirit of labor Law

5.1 Inner spirit:

"labor law" is the method of the protection of laborer, whether students have "labor law" the main body qualifications, whether it is within the category of the laborer, whether to have the subject qualification of the laborer, according to the evaluation standard of "labor law" consider whether the subject has the right to work and labor behavior ability. According to this, the author analyzes as follows: First of all, workers in the legal sense have the following characteristics: reach the legal age, can work, are a natural person, under the management of the employer to engage in social labor to obtain the corresponding remuneration. It can be seen that the law does not deprive college students of their rights as laborers. Secondly, as Chinese citizens, college students are engaged in legal labor as members of society. As long as their age and health meet the requirements and they are legally engaged in labor work, they should enjoy rights and assume corresponding obligations. Then subjected to the "labor law" adjustment. In addition, when used by the unit of choosing and employing persons to work for college students, it essentially already exists with the unit of choosing and employ person labor relations, is hiring college students and the actual unit, the length of employment, skilled, there are differences between the work efficiency, but also is only "interest", does not affect the labor relationship between college students with the unit of choosing and employ persons, The legal subject qualification of college students still conforms to the inner spirit of labor Law.

5.2 Extrinsic spirit

The basic principles of labor law run through labor law and reflect the essence and spirit of labor law. As one of the laws that embody the principle of private law, it is a violation of the equality principle of labor law for college students with external conditions to be denied the qualification of laborers because of their status. In accordance with the principle of equality, college students shall enjoy the same rights as laborers.

6. The practical significance of recognizing legal qualifications

6.1 Meeting the needs of the socialist market economy

Realizing and safeguarding workers' rights and interests is one of the essential requirements of the socialist system. Under the rapid development of the social economy, to conform to the development trend of the socialist economic system, relevant laws are gradually improved and adjusted, while China's socialist economic structure is constantly changing. The increasing number of college students will become an indispensable part of China's socialist economic structure, and the solution to the problems they face in practice will surely make China's socialist economic system get a more comprehensive development. The external characteristics of the diversified forms of employment and the diversified forms of labor subject brought by college students' "part-time jobs" are an important embodiment of the comprehensive development of the socialist market economy system.

6.2 To ensure the healthy development of college students and promote the quality of employment

At present, things that are not conducive to the healthy development of college students often arise, mostly because employers excessively pursue economic interests, do not pay attention to industry norms, and put the interests of college students at the end of the line, regardless of the consequences of the violation of laws and disciplines, and even seriously endanger the personal and property safety of college students. Employers, taking advantage of their relative dominant power, treat college students as cheap labor and squeeze them at will. A variety of adverse factors will just contact with the society of college students have psychological resistance, a variety of psychological diseases

accompanied, which is contrary to the concept of cultivating social college students supported by society.

6.3 Strengthen the formation of college students' concept of safeguarding their rights and interests, and promote legal construction

It makes clear the subject qualification of college students, which means that college students qualify as laborers. It provides a guarantee whether they seek relief from judicial organs or litigate through clarifying labor relations. From now on break, college students seek relief from difficulties. No one can find it, no one can help the predicament. By using the "tools of law" to build themselves, students have formed a force of "rule of law construction" in society, contributing to the cause of rule of law construction.

6.4 Provide foundation and guarantee for legalization of relevant industries

In China, there are a large number of people who need part-time jobs. Therefore, laws and regulations should be issued regarding the phenomenon of "part-time jobs". At the same time, regulatory departments should cooperate to make it develop in a benign direction and more in line with the development of The Times. Affirming the subject qualification of college students is an innovation and a beginning. After affirming the main body qualification of college students, the power and obligations of employing units will be more clear, so that the position management department's comprehensive management of employing units is more advantageous, but also make the "part-time" form of employment more orderly, legal. In addition, the provisions for other part-time workers can also be drawn from the main qualification of college students to obtain legal ideas.

7. Certification solution path

7.1 To solve the lag of the law, adjust the concept of meaning

At present, China's law does not prohibit college students from taking part-time jobs, and the only document that guides college students to take part-time jobs is the opinions issued by China's Ministry of Labor in 1995. So far, it has been 27 years. The contents of the articles are too general and narrow, and even related to employment. For the current market economic system, whether college students are in a "work-study program" or "part-time job", there is no attribute significance of employment. In addition, they "did not establish labor relations, can not sign a labor contract." Ambiguous attitude, giving college students part-time unit of choosing and employing people is a hu"imagination". These disadvantaged students expounder the market environment, but also for the dispute settlement body does not accept part-time college students' rights and interests are violated the relief after the request to provide the basics but does not deny the essence of college students' "opinions" "labor law" the legal subject qualification, The law should be set up with a clear direction and firm attitude, without the possibility of being "distorted". It can be seen that the regulation of 27 years ago shows a serious lag and is in urgent need of adjustment or improvement.

7.2 Clear classification standards and unify policy documents

For the legal documents regulating college students' part-time jobs, both the labor department and the education department are involved in the establishment, and even the Ministry of Finance is involved. After the Ministry of Labor issued the "Opinions" in 1995, the ambiguous provisions made people have doubts. In 2007, the Ministry of Education and the Ministry of Finance issued the "Measures" to introduce the concept of a "work-study program", which did not explain the ambiguity of the "Opinions" (for college students to use the nature of after-school labor for supplementary explanation), A new concept of college students working in their spare time was put forward, and even the responsibility of school management was added. Such a provision, there will be college students legitimate labor for "work-study program", and to have the organization of the school

management, college students' other labor behavior is not within the legal scope of the meaning. The author believes that the laborer is a legal concept, the work-study program is not a legal concept, on the premise of not clearing the legal concept, should not be free to put forward the concept of reduced scope. The final result is that labor security agencies and arbitration agencies have differences in the application of the law, which eventually leads to more prominent problems. In addition, the Labor Law drafted by the Ministry of Labor in 2008 stipulates that employers and workers establish labor relations from the date of employment, which is equivalent to the opinion in 1995 was declared invalid because of its provisions not to sign contracts with college students as workers. The "method" to give school too wide and 2007 control of the conflicts with the "labor law", also for normal college students is the full capacity for civil acts, students' instinct to properly handle the labor and the school can detect by learning outside part-time students of academic status, no organization and management students the necessity and actuality of Labor. It can be seen that standards need to be clarified as soon as possible, and policy-making among various departments needs to be discussed and unified.

7.3 Timely updating the meaning of laws and expanding the scope of protection

To respect the law of historical development trend, from the mentioned above "opinion" and "labor law" in 1995, college students signed labor contract conflict, covered with "labor law" the scope of subject qualification is dynamic, age in progress, in the development of society, as a safeguard social harmony and stability of legal norms, and responsibility especially for college students who are going to work, it is more important. The establishment of college students' labor security mechanism and the improvement of relevant legal provisions are not only the realistic needs of protecting college students' labor groups but also the inevitable requirements of making full preparations for the future changes in China's market economic system.

7.4 Transform the functions of universities and expand the space for students' reasonable autonomy

As mentioned above, it is the regulation of higher education in China that students' growth is managed by schools, but schools should show the spirit of higher education in the process of managing students. While schools give students degrees, providing students with education and negative behavior of the administrative attribute, the school strengthening the management of students is understandable, but for students through labor for a price, private behavior, the school should not be interference, but out of school for students management obligation, should ensure that the student personal and property safety, the students will eventually grow after leaving the campus, Blindly relying on "closure" is ineffective, but will limit the development of students. Schools can carry out part-time legal lectures to enhance students' awareness of prevention; Provide part-time job opportunities to ensure the security of part-time jobs; register and manage the flow of students' part-time jobs, and put forward suggestions and countermeasures for students, to achieve the purpose of colleges and universities to exercise management functions.

8. Suggestions

The establishment of the subject qualification of college students can refer to labor relations. The author has the following argumentation ideas

8.1 Discrimination of "behavior" theory

A part-time job refers to a job that is held concurrently in addition to one's job. The law does not expressly prohibit students from taking part-time jobs. On the contrary, as mentioned above, college students have the subject qualifications to take part-time jobs. There are three types of part-time jobs in the current situation: 1. Part-time jobs for students oriented to practice and self-improvement. 2. Students' voluntary part-time activities for profit. 3. Part-time jobs for students with the goal of employment. Compared with employment, the part-time job has gradually become a way of life and

behavior pattern of college students. Part-time behavior is usually in the form of flexible part-time and hourly wages. Its remarkable characteristic also China-Africa full-time job type corresponds to labor law, so the author thought that can adjust the time limit for part-time through legislation, definition and so on, on the one hand, to curb unit of choosing and employ persons the exploitative labor, on the other hand, the problem of security in its capacity as college students, The aim is to promote part-time employment.

8.2 Establishing an objective evidence system

As long as college students with labor rights and labor ability have a substantial labor relationship with the employer, it can be proved that they have the relevant relationship, legal labor, and both parties have the same free expression of will. At this time, judicial organs and social organizations should evaluate the evidence from an objective perspective.

8.3 Citing the general theory of the civil law system (subordinate theory).

The cognizance of the relation between college students with the unit of choosing and employing person labor can refer to the civil law "properties" said, the unit of choosing and employ persons and person to person or property of the subordinate relationship between dependent as the judgment standard, when college students meaning according to the unit of choosing and employ persons to complete the related social service activities, even if their labor form has difference with normal use, also can accord with laborer's identity and obtain with this corresponding reward can identify its existing labor relation.

8.4 Reference "informal" employment system to establish a flexible employment system suitable for college students

As college students' part-time work has some characteristics of "part-time work", it is also one of the characteristics of part-time work as informal employment, namely "informal" employment, but the establishment of this system is related to a series of issues in the labor law, for example, minimum wage protection, labor contract writing, The interest distribution of laborer and unit of choosing and employ persons belongs to the problem of the category of labor rights and interests. As mentioned above, if the relevant labor law system for college students is established through legislation, but due to their unique status and considering the differences between their labor behavior and formal labor, the law cannot force all the regulations applicable to workers to be applied to college students. Only through the establishment of a flexible system to pursue the group and formal workers, does labor law adjustment of social relations to form a harmonious and stable balance. However, considering the objective weak position of college students in social industry, there should be the most basic standard of labor rights and interests for college students, which is the reasonable appeal of college students as laborers, and also accords with the basic spirit of the Labor Law.

9. Summery

The constitution of our country enforces the right of labor for its citizens. As the basic right of citizens, the right of labor should be taken seriously in the protection of its citizens. As is known to all, laborers are the foundation of economic society. College students' part-time job is a test of college students' social adaptability, but also a test of employers' management ability. The relationship between college students and employers reflects the social and economic order. The labor status of part-time college students has also become a microcosmic reflection of the steady development of the social and economic system. "People's livelihood is diligent, diligent or not. We should respect the value of labor from the legal point of view, give equal respect and protection to workers, and establish the subject qualification of part-time college students, which can not only effectively protect the labor rights and interests of part-time college students, but also reflect the spirit of socialist rule of law in our country.

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