

Research on China's Special Working Hours Management System Based on the Background of Internet Industry

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Abstract

With the development of economy and society and the gradual growth of the emerging Internet industry, the work pressure of the Internet industry in the transition period is increasing day by day in face of the fierce competition from the same industry in foreign developed countries, the culture of 996 in the Internet industry is gradually rising, which has triggered extensive discussion in the society. This paper focuses on the legalization of the Internet 996 system and the dynamics of Shenzhen City's pilot reform on special working hours management system, discussing the current situation of the special working hours system legislation in China and putting forward relevant suggestions.

Keywords

Internet 996 Culture, Special Working Hours System, Flexible Working Hours System, Labor Law

1. Introduction

In the context of economic globalization and the continuous development of China's economy and society, the gradual growth of domestic enterprises focusing on the expanding development of new Internet science and technology, as well as the fierce competition in the same industry in developed countries abroad, the rise of the 996 working hours system in China's Internet industry has attracted wide social attention in recent years. The 996 working hours system is suspected to be illegal and infringes on the workers' right to rest. For instance, the "996.ICU" project which has caused a social sensation and the recent retrial ruling on the labor dispute between Zeng Meng and Huawei Technology Co., Ltd. is closely related to the overtime culture beyond the legal working

hours. In this paper, I would like to analyze whether the 996 working hours system is legal through the case of labor dispute between Zeng Meng and Huawei Technology Co., Ltd., and explore the dynamic and malpractice of the current special working hours system in China through the interpretation of the documents about the special working hours management system and the administrative examination and approval system reform issued recently by Shenzhen, hoping to put forward reasonable and useful suggestions for improving the special working hours system in China. Additionally, I will introduce flexible working hours systems abroad such as the UK whose relevant law and regulations are historic and scientific, comparing the flexible working hours system with that of China, which will be handful and meaning in reforming and improving the special working hours system in our country.

2. The Case of Labor Dispute between Zeng Meng and Huawei Technology Co., Ltd.

2.1. Zeng Meng and Huawei Technology Co., Ltd.

In labor dispute cases, workers are tend to be in a vulnerable position while companies are always in a strong position, in which case, there are increasing social concern and attention to protecting the vulnerable workers' right. In China, employers are prompt to assert their legal rights through application for arbitration and court action rather than strikes and marches, etc. The labor dispute between Zeng Meng and Huawei Technology Co., Ltd. is a very famous dispute among the Chinese press and the ordinary public since it emerged, and the case has lasted for a long time. Recently, the Guangdong high People's Court has rejected Zeng Meng's retrial application, the reason for which was that 'the Commitment to Become a Struggler' was found to be Zeng Meng's true intention and there was no evidence to prove that the commitment was issued under the circumstance that Zeng Meng was faced with fraud, coercion or taking advantage of the danger of others. The case began in 2018 when Huawei Technology Co., Ltd. considered that Zeng Meng absent from work for three days and dismissed him accordingly. Zeng Meng filed a lawsuit against Huawei Technology Co., Ltd., considering that the Company terminated the employment relationship in violation of the law, and requesting the Huawei Technology Co., Ltd. to pay Zeng Meng compensation, overtime salary, year-end bonus and untaken annual leave salary, totaling approximately RMB 910,000. The focus of the labor dispute between Zeng Meng and the Huawei Technology Co., Ltd. in the labor dispute case is the Letter of Commitment to Become a Struggler, which was handwritten by Zeng Meng when he was employed by the company. Zeng Meng wrote on the letter of commitment that he was willing to give up his paid annual leave and corresponding salary during his employment with Huawei.

2.2. Commitment to Become a Struggler

As for the details of this case, the referee website and various major media have

introduced it rather clearly, so I would like to discuss mainly the Letter of Commitment to Become a Struggler that Huawei Technology Co., Ltd. requires employees to write voluntarily. The main content of the Letter of Commitment written by Zeng Meng is that the pledger understands the fierce competition and cruelty of the industry in which the company is located, and expresses his willingness to work hard and struggle voluntarily for a long time to become a striver, giving up paid annual leave and corresponding salary and other benefits, so as to share the dividends of the company's long-term development. In addition, if the employees who had written the commitment letter left their positions, Huawei company would not be required to pay unpaid annual leave to them. It can be seen from the letter of commitment that in order to share the long-term income of the company, the employees expressed their willingness to automatically give up the year-end bonus, non-mandatory overtime pay and paternity leave, so as to achieve the standard of their own performance assessment and possess the opportunity to obtain the company's dividends, allotment of shares and other benefits. According to the online and offline media reports, it is no coincidence that this kind of letter of commitment is not only a prerequisite for every employee of the Huawei Technology Co., Ltd. before joining the company, but also the "Striver Culture" advocated by the letter of commitment to other Internet technology companies has exerted a significant impact and inspiration in a large scale, with more and more companies starting to encourage employees to take the initiative to work overtime and give up their early company bonuses on their own initiatives, which is obviously unfair. At the same time, 996 working hours system behind this so-called struggle culture has been publicly supported by some domestic famous Internet entrepreneurs as well. For instance, the well-known entrepreneur Liu Qiangdong, who is the chairman of the popular shopping website in China called Jing Dong, said that struggle is truly important for the youth. Meanwhile, another entrepreneur with fame and fortune hold the view that it is chance and luck that young employees have to work as a striver since they could not work that long physically and psychologically during their old age.

3. 996 Working Hours System and Special Working Hours System

3.1. 996 Working Hours System

The "Striver Culture" is a microcosm of the Internet 996 culture actually. With the rapid development of China's economy and Internet technology, the youngsters who are in the mega-city are fully attracted by the promise of high salary and welfare and the broad prospect of China's Internet sector, as well as the intense competition pressure in the industry, thus joining the ranks of most struggles in this section. Meanwhile, recently, an Internet influential word "laborers" has once again pointed to the hot topic to the 996 working hours system.

What is the 996 working hours system and is the 996 working hours system

legal? The 996 working hours system is a provision for working hours In Chinese law, working time refers to the time that workers should engage in labor or work within the statutory limit in order to fulfill his labor obligations (Wang, 2008). The 996 working hours system is a working system in which workers have to work at 9 a.m., leaving at 9 p.m., with a one-hour break (or less) at noon and evening, for a total of 10 hours or more and working for 6 days a week. This system emerged first in the Internet technology industry and is also the most prevalent in that industry.

3.2. Legal Issues of 996 Working Hours under Special Working Hours System

In China, the working hours system is divided into the standard working hours system, non-standard working hours system and the limitation of extended working hour. According to the legal provisions of the standard working hours system, the working hours in the 996 working hours system actually exceed the legal working hours. According to the clear provisions of Article 36 of the Labor Law of the People's Republic of China and the Regulations of the State Council on the Working Hours of Employees, the daily working hours of the employees shall not exceed 8 hours; the weekly working hours shall not exceed 40 hours, and the weekly rest shall be at least one day. According to the law, the employer must ensure that employees have at least 24 hours of uninterrupted break every week. However, the 996 working system provides for workers to work more than 10 hours a day for 6 consecutive days, so the total number of hours per week is calculated to exceed 60 hours, which is a length of time that violates the provisions of China's labor law and related laws and regulations. As for extended working hours, according to the provisions of articles 41 and 44 of the Labor Law, enterprises may extend working hours after consultation with labor unions and workers, generally not more than 1 hour per day. In addition, in the provision of extended working hours under special circumstances, the law requires that the basic conditions of workers' physical health be guaranteed, while the extended working hours shall not exceed 3 hours per day or 36 hours per month. According to the calculation of extended working hours required by laws and regulations, the 996 working system has been implemented so that the total working hours exceeds 48 hours per month, far exceeding the 36 hours stipulated by laws and regulations, despite the fact that the daily working hours are only more than 2 hours, which also violates the limit of extended working hours. A great many scholars have also expressed the view that the 996 working system violates the Labor Law and that the 996 working system violates the workers' right to rest (Ban, 2019).

In addition to the standard working hours system, China also provides for the non-standard working hours system which cannot implement the standard working hours system stipulated by the labor law due to production characteristics, including the system of shortening the working hours system, irregular working hours system and comprehensive working hours system. Although the

non-standard working hours system is more flexible in terms of working hours, the 996 overtime system is still suspected to be illegal according to the calculation methods of these two special working hours systems. One is the special working hours system. In the “Approval Measures on the Implementation of Irregular Working Hours System and Comprehensive Calculation Working Hours System in Enterprises” (hereinafter referred to as “Approval Measures”) issued by the former Ministry of Labor, there are detailed and clear regulations on the special working hours system (Chen, 2017). Among them, the irregular working hours system makes an enumeration of the applicable objects and sets a bottom clause: the employer should protect the right of the workers to have a rest and leave, and when verifying the workload, reference shall be made to the standard working hours system, and flexible working hours shall be adopted. The second is the integrated calculation of working hours system. The comprehensive working time calculation system takes week, month, quarter or year as the cycle, based on the standard working hours system for the comprehensive calculation of working time system. The specific implementation and execution of these two types of special working hours systems need to be approved through the government’s administrative procedures, and the application of the special working hours system is strictly limited in our country. Under the 996 overtime working hours system, overtime work has become a normal work, which is not in line with the characteristics of the special working hours system obviously, and the total working hours of workers under the overtime status exceed the total amount of working hours calculated by the standard working hours. If the Company normalizes the 996 work system without the approval of the administrative department and encourages the overtime culture, at the same time, the part exceeding the total amount of working hours is not recognized as overtime work, and the overtime wages are paid in accordance with the law, which is a violation of the relevant provisions of the Labor Law. In the case of labor contract dispute between Zeng Meng and Huawei Technology Co., Ltd., the overtime wages claimed by Zeng Meng during the first and second trial were due to the company encouraging employees to work overtime on their own initiative without administrative approval. The total amount of overtime work by Zeng Meng was not recognized as overtime by the Company, which was not proved and the court ruled to reject the claim.

4. Reform of Special Working Hours System in Shenzhen

Although in the general perception of academia and society, the 996 working system violates the provisions of China’s labor law and should be considered as illegal in the special working hours system, Internet enterprises and some other industries still try to cover up the fact that employees work overtime with the special working hours system. With the better development trend of several major Internet companies in China in the international market, the call of Internet enterprises to legalize the 996 working system is increasing rapidly. In order to support China’s Internet technology, the government intends to gradually de-

centralize the administrative examination and approval of the special working hours system.

4.1. Delegation of Authority for Administrative Examination and Approval

The main developments are as follows: On August 12, 2020, the Standing Committee of the Shenzhen Municipal People's Congress issued the Draft Regulations on Optimizing the Business Environment in Shenzhen Special Economic Zone for Comments (Shenzhen People's Congress Network, 2020) which emphasized deepening the reform of the administrative examination and approval system, promoting the reform of examination and approval matters by categories, and the draft supports the replacement of the administrative examination and approval method with the management method of solving the problem through post-event supervision or market mechanism. An approval management mode of "less licensing, wider approval and faster access" is introduced in the attachment "Regulations on Optimizing Business Environment in Shenzhen Special Economic Zone (Draft)". We will optimize the start-up and cancellation of enterprises, providing "one-stop" services and "one-network" services, compressing links, handling in parallel and innovating a new systems of simplified procedures for business cancellation, de-listing and mandatory cancellation.

4.2. Special Working Hours Management Reform Pilot

The 996 working system is the concrete performance of overtime culture. There are more and more labor disputes over special working hours arising from overtime work and the Internet field is only one of them. With the development of new emerging occupations such as takeaway, express delivery and e-commerce, the problem will become more prominent and even cause social conflicts. China has attached more and more importance to the reform of special working hours management system in its policy. In order to build the first demonstration zone of socialism with Chinese characteristics, on October 11, 2020, the General Office of the CPC Central Committee and the General Office of the State Council issued an implementation plan for the pilot comprehensive reform in Shenzhen (Xinhua DT, 2020). In this plan, it was mentioned that the labor flow system adapted to the characteristics of mega-cities should be improved and special working hours management system adapted to new technologies, new forms of business and new industrial models should be explored. On October 18, the first batch of authorized items list documents of the comprehensive reform pilot were issued (Central People's Government of the People's Republic of China, 2020). The fourth item in the aspect of market-oriented allocation of elements is to carry out a special working hours management reform pilot, and expand the scope of industries and jobs to which the special working hours system applies. From the above documents, it can be seen that in order to adapt to the social and economic development of our country and the special employment needs of new industries and trades, our government is exploring new labor rules by issuing a

series of normative documents, reforming the administrative examination and approval system step by step, decentralizing administrative approval authority by establishing a pilot.

5. Suggestions on the Reform of Special Working Hours System

The reform of special working hour system in Shenzhen is definitely the first step taken by China's economy and society in order to adapt to the demands of modern new labor positions, which has a huge meaning to both our country and the people. Meanwhile, with the continuous development of express delivery, take-out and other industries, the special working hours system will be widely used in more industries other than the Internet technology industry in the near future, while China's labor benchmark law is still stopping, (Wang, 2016) in order to protect the legitimate rest right of workers in China and avoid the invisible disadvantages and more labor disputes brought by the 996 overtime working system, the current special working hours management system needs to be strengthened and improved, and the construction of a reasonable working hours system needs to be thoroughly sorted out, reflected and compared with:

5.1. Legislative Aspects

Firstly, formulate systematic laws and regulations to promote legal status. At present, The Legal Level of the Approval Measures is much low, and some provisions are vague, so it is rather difficult to specify the object of application in practice, and disputes tend to arise in litigation. For example, in the irregular working system, the document does not have a clear definition of "senior managers". Due to the different provisions of the laws and regulations and the lower level of laws, confusion has arisen in the application of the law. Therefore, based on the consolidation of the regulations on working hours in the Labor Law, the Regulations on Working Hours of Employees, the Approval Measures and the Regulations on the Management of Special Working Hours (Draft for Public Comments) (not formally implemented), it is necessary to formulate systematic relevant laws and regulations and include them into the chapter of the Labor Law, so as to provide a higher ranking and stronger legal support for the special working hours system.

Secondly, scientific reference to the flexible working hours system in the UK. The flexible working system with flexible working hours allows the workers to flexibly and autonomously arrange the specific time of work after completing the prescribed work tasks or fixed length of working hours, which is conducive to guaranteeing the lawful rest right of the workers and safeguarding workers' access to pay and wages in accordance with the law. In the UK, the Flexible Working (Procedural Requirements) Regulations and the Flexible Working (Eligibility, Grievance and Redress) Regulations provide for this system in detail (Flexible Working, 2016). Specifically, they include job sharing, homework, annual hours

and other types (Flexible Working, 2007). The employees have to apply for the right to flexible work independently in writing, and in order to obtain the right, the employees need to meet a series of specific conditions. The system of special working hours in our country mainly adopts the method of enumeration and sets the provision of bottom clause, which is difficult to enumerate comprehensively, and with the economic development and the emergence of new labor positions, the scope enumerated in the original document is far from enough to meet the needs of the current judicial practice. Therefore, in the process of the reform of the current special working hours system, the legislation can also learn from the advantages of the British flexible working hours system, further refine the types of special working hours on the basis of the existing non-standard working hours system, increase the special flexible working methods such as home work according to the characteristics of the new social work posts in our society, and set clear and specific applicable objects.

5.2. Judicial Aspects

In the first place, the power of administrative examination and approval shall be gradually decentralized. Based on the current economic situation in China, the government is suggested to reform the existing system of administrative examination and approval in a steady pace. On the basis of the exploration of the pilot system of special working hours in Shenzhen, the government should expand the scope of application of the special working hours system and gradually delegate the power of administrative examination and approval, and increase their efforts to encourage enterprises to use the special working hours system rationally so as to not only meet the demand for employment in special industries, but also guarantee the legitimate rights of workers.

To be the second, strengthening labor supervision (He, 2017). The decentralization of the power of administrative examination and approval has expanded the autonomy of enterprises, and therefore more strict labor supervision and inspection are needed to ensure the implementation of the system. Enterprises with the independent right of administrative examination and approval should strengthen information connection and communication with the labor supervision department, and strengthen administrative punishment against enterprises that violate the law, such as increasing the amount of fines imposed on enterprises and adding criminal provisions.

6. Conclusion

Handling labor disputes properly and protecting workers' right are conducive to the stable development of the national economy. Although the working hours of the 996 working system beyond the statutory working hours violate the workers' right to rest, which should not be promoted and imitated by various industries, what is rather noticeable is that the application of special working hours system will be more widespread and common in the future under the social background

of rapid economic development and substantial increase of new types of labor positions, Therefore, it is necessary to research on this special labor field, which correlates to hundreds and thousands of employees' valid right who are also citizens in our country or parents in their family. Further improving and updating the legislation on the basis of the existing labor laws and relevant normative documents are important and meaningful in order to adapt to the work needs of enterprises and employers. The government should apply the special working hours management system flexibly, gradually decentralize the administrative examination and approval power, and give the enterprises the independent rights on policies. In terms of management and execution, the enterprise is advised to develop a special working hours management system adapted to the industrial mode and the development of business types. In this paper, I have analyzed the illegality of the 996 working system and put forth some reform suggestions based on the current measures made by the government, which are far inadequate to improve the reform. I would like to keep following the dynamics of the government's reform and research further in jurisdiction and enforcement in the next steps.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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