Journal of Commercial Law Review
2025, VOL. 9, NO. 4, 81-86
DOI: 10.47297/wspjclrWSP2516-249716.20250904

Legal Analysis of Retroactive Payment and Recovery of Employee Basic Pension Insurance Premiums

Yue Hou

Chengdu University of Technology, Chengdu, Sichuan, 610000, China

ABSTRACT

The retroactive payment and collection of employee basic pension insurance premiums are critical measures for safeguarding fund security and protecting employees' pension rights. This paper analyzes the legal framework governing these practices based on the Social Insurance Law, the Provisional Regulations on the Collection of Social Insurance Premiums, and other relevant statutes. It integrates practical interpretations from documents such as the 2016 Ministry of Human Resources and Social Security Circular No. 132 and the 2022 Administrative Supervision Measures for Social Insurance Funds. The analysis systematically examines the subjects, objects, and content of the legal relationship in employee basic pension insurance, clarifying the distinction between retroactive payment (where the liable party voluntarily makes up the 2022 Administrative Supervision Measures for Social Insurance Funds, systematically analyzes the subjects, objects, and content of the legal relationship in basic employee pension insurance. It clarifies the distinction and causal relationship between supplementary payment (where the debtor voluntarily makes up the payment) and recovery (where the administrative authority enforces collection). The paper addresses academic disagreements regarding supplementary payment disputes ("labor dispute theory," "administrative dispute theory," and "social insurance dispute theory") and recovery disputes ("administrative penalty theory," "administrative coercive measure theory, " and "administrative order theory"), ultimately concluding that supplementary payment constitutes a social insurance dispute while recovery constitutes an administrative order. Social Insurance Dispute Theory" versus the "Administrative Penalty Theory," "Administrative Compulsory Measures Theory," and "Administrative Order Theory" for recovery disputes. The analysis ultimately leans toward characterizing supplementary payments as social insurance disputes and recovery as administrative orders. By analyzing current issues such as regional inconsistencies in substantive rules for supplementary payments, procedural disconnects, misaligned responsibilities in enforcement authority for recovery actions, and inadequate enforcement measures, this study proposes improvement pathways—including unified standards for supplementary payments and optimized collaboration mechanisms for recovery actions—to provide legal support for resolving employees' rights protection challenges and strengthening social insurance fund oversight.

KEYWORDS

Employee basic Old-age insurance; Social insurance premium retroactive payment; Social insurance premium recovery; Legal relationship

1 Defining Elements of the Legal Relationship in Employee Basic Pension Insurance and Related Provisions on Retroactive Payment and Collection

1.1 Elements of the Legal Relationship in Basic Employee Pension Insurance

1.1.1 Subjects of the Legal Relationship in Basic Employee Pension Insurance

As the core pillar of the social security system, the basic employee pension insurance serves as both a crucial foundation for "stabilizing employment and safeguarding people's livelihoods" and a key institutional arrangement for addressing population aging. By 2022, China's pension insurance coverage had exceeded 1 billion people, with annual fund revenues and expenditures reaching 13 trillion yuan. The quality of its operational system directly impacts the retirement security of hundreds of millions of employees. The subjects of the basic employee pension insurance legal relationship are the parties who participate in the insurance and enjoy the rights and obligations associated with it. The subjects of the basic employee pension insurance legal relationship can be categorized into four types: First, the insurer, which refers to the social insurance administration agency established by the labor and social security administrative department in accordance with the Provisional Regulations on the Collection of Social Insurance Premiums; Second, the policyholder, namely the three-party contributors: the state, the employer, and the employee (including flexible workers); Third, the insured persons, namely the workers, who are the beneficiaries of the basic employee pension insurance. Fourth, the beneficiaries, who are the inheritors of the insured persons' or employees' individual account assets.

The legal relationship of the basic employee pension insurance refers to the relationship between the insured unit and the insured person. The policyholder and the insured person must fulfill their contribution obligations to the insurer. If eligible, the insurer pays insurance benefits to the insured person. Therefore, employees are not only the subjects of contribution obligations but also the beneficiaries of pensions, while employers are solely the subjects of obligations.

1.1.2 Object of the Legal Relationship in the Basic Pension Insurance for Employees

The object of the legal relationship in the basic pension insurance for employees is the entity to which the rights and obligations within this relationship are directed. The object of the legal relationship encompasses both the subject of the action and the object itself. The action refers to the policyholder's act of purchasing insurance, the premium payment by the policyholder and insured person, and the various service activities provided by the insurance company to the policyholder, insured person, and beneficiary. Provisions regarding participation and premium payment are stipulated in various laws and regulations. For instance, Article 16 of the Provisional Regulations on the Collection of Social Insurance Premiums specifically outlines the insurer's service obligations. The "objects" primarily refer to the two forms of pension insurance: the "entry" and "exit" stages. The supplementation and recovery of pension insurance funds are crucial not only for safeguarding the pension funds at the "entry" stage but also for ensuring the full payment of benefits at the "exit" stage and the insurance entitlements of the insured and beneficiaries.

1.1.3 Content of the Legal Relationship in Basic Employee Pension Insurance

The content of the legal relationship in the basic employee pension insurance system is primarily reflected within this legal framework. Within the social insurance legal relationship, the policyholder's primary obligation is to pay basic pension insurance premiums, constituting a legal duty. The insured's entitlement to pension benefits is contingent upon the policyholder's fulfillment of this payment obligation. If the policyholder complies with statutory premium payment requirements, the insured gains the right to claim basic employee pension insurance benefits upon reaching the statutory retirement age, ceasing employment, and meeting specified contribution duration conditions. While fulfilling their relevant duties, insurance companies also bear the responsibility of safeguarding the security of the basic pension fund. Consequently, the rights and obligations of all parties involved in the legal relationship of the basic employee pension insurance exhibit characteristics of asymmetry. The contribution obligations of individual workers are closely linked to the statutory accumulation system (e.g., accumulating 15 years of contributions upon reaching the statutory retirement age).

1.2 The Relationship and Distinction Between Retroactive Payments and Recovery

1.2.1 The Connection Between Retroactive Payments and Back Payments

With China's rapid economic development, the country has become the nation with the largest population covered by the basic employee pension insurance system. Currently, the payment capacity of the basic pension insurance fund has reached unprecedented levels. However, instances of employers refusing to pay or defaulting on contributions persist. This has given rise to the need for both retroactive payments and recovery of contributions. The logical relationship between these two measures is as follows: default creates a legal obligation for retroactive payment. If the employer fails to pay within a reasonable period, the administrative authorities will initiate recovery proceedings after the deadline has passed. Retroactive payment and recovery reflect a causal relationship: recovery is the cause of recovery, and recovery is the result of recovery. When disputes arise over retroactive payment or recovery, retroactive payment procedures should be processed first. If the employer is unable or refuses to pay, recovery may be pursued.

1.2.2 Distinction Between Supplementary Payment and Recovery

1.2.2.1 Different Legal Relationships

From the perspective of the constituent elements of legal relationships, retroactive payment constitutes a form of contract fulfillment by the debtor, falling under the category of continued performance of obligations. In judicial practice, when employees request retroactive payment of basic pension insurance, the People's Court shall support such requests provided they are well-founded, comply with legal provisions, and serve to safeguard employees' right to subsistence and facilitate insured persons. Recovery refers to the administrative action taken by a specific administrative body against entities that fail to pay social insurance premiums within a stipulated period, constituting a compulsory safeguard measure for the social insurance contract.

1.2.2.2 Different Subjects

The basic employee pension insurance fund is primarily contributed by three parties: employers, employees, and the state. Contributions to the social pool and employee individual accounts are made by employers, while contributions to individual accounts are made by employees. Flexible workers contribute to both accounts. Recovery, however, is a compulsory measure against employers with long-term arrears who fail to make supplementary payments.

1.2.2.3 Different Fund Accounts or Nature of Funds Targeted

Reimbursement refers to contributions to both the social pooling fund and the employee individual account funds, while recovery only involves the social pooling fund and the employee individual account funds.

1.2.2.4 Different Statutes of Limitations Apply

Contributions constitute a special civil contractual relationship. Failure by the contributing entity to pay basic employee pension insurance premiums should be regarded as an extension of a debt payment relationship. Recovery, however, is an administrative command relationship. Therefore, regarding the application of the statute of limitations, recovery should be subject to private law limitations, while recovery should be subject to public law limitations.

2 Legal Issues in the Retroactive Payment and Collection of Basic Employee Pension Insurance Contributions

2.1 Legal Issues in the Retroactive Payment of Employee Basic Pension Insurance Premiums

2.1.1 Significant Regional Disparities in Substantive Rules and Confusing Application

China has yet to establish uniform national substantive regulations for retroactive contributions. The fragmentation of local policies has led to significant disparities in the conditions, scope, and standards for retroactive contributions, triggering practical disputes. For example, Huai'an City previously tacitly allowed unemployed workers from former state-owned (collective) enterprises to make lump-sum retroactive payments for any period of arrears. However, following the issuance of Document No. 132 [2016] by the Ministry of Human Resources and Social Security in 2016, local policies were urgently tightened, restricting the start date for retroactive payments to January 2001. This resulted in some workers missing the opportunity to make retroactive payments due to policy transition issues. The rules for flexible employment workers are even more chaotic. Xiamen explicitly prohibits cross-year retroactive payments, while some regions only allow back payments for contributions missed within the past 12 months. Other areas make exceptions for local residents, creating disparities that violate the principle of fairness in social insurance. Additionally, the calculation of contribution bases lacks uniform standards. Some regions use the average annual wage of the year in question, while others base contributions on current wage levels. This disparity results in vastly different retroactive payment amounts for identical contribution gaps, sparking dissatisfaction among contributors.

2.1.2 Poor Procedural Coordination Traps Workers in a Cycle of Rights Protection

Resolving arrears disputes involves labor arbitration, civil litigation, and administrative procedures, yet the lack of effective coordination mechanisms forces employees to "run around multiple agencies and file repeated lawsuits." When Li from Changsha applied for arbitration over his former employer's social insurance arrears, his case was dismissed on grounds of "exceeding the age limit." His subsequent lawsuit was rejected under the principle of "double jeopardy." When he turned to the social insurance department for relief, the administrative process stalled due to the employer's refusal to cooperate, creating a rights protection dilemma where "arbitration is not accepted, courts refuse to file cases, and administrative procedures are difficult to process." More critically, conflicts arise from differing statutes of limitations. The one-year arbitration deadline fundamentally conflicts with the long-term nature of social insurance back payments. Some employees lose their right to win cases due to exceeding the arbitration time limit, yet administrative back-payment procedures lack clear initiation pathways. For instance, Li from Jiangsu submitted a back-payment application in August 2016 but missed the policy window period due to the HRSS department's delayed processing. The dispute was only resolved in 2023 through prosecutorial oversight.

2.2 Legal Issues in the Recovery of Basic Pension Insurance Contributions

2.2.1 Misalignment of Authority and Responsibility Creates Enforcement Vacuum

Under the Provisional Regulations on the Collection of Social Insurance Premiums, provincial governments independently designate social insurance premium collection agencies. This has resulted in multiple models nationwide, including "collection by social insurance agencies," "collection by tax authorities," and "dual-agency collection," where ambiguous delineation of responsibilities severely impedes collection efficiency. In regions where tax authorities handle collection, while they possess robust fund oversight capabilities, they lack social insurance audit authority and cannot verify the authenticity of labor relationships or the basis for arrears. Social security agencies possess audit authority but lack enforcement tools like mandatory deductions or account inquiries. This disconnect traps numerous delinquency cases in a "no authority to investigate, no means to enforce" dilemma. Practical issues include "multiple enforcement agencies," where labor security departments and tax authorities simultaneously pursue collections in some regions. This wastes administrative resources, burdens employers with redundant inspections, and actually reduces cooperation in recovery efforts.

2.2.2 Statute of Limitations Disputes and Insufficient Enforcement Measures Hinder Recovery Effectiveness

The most prominent contradiction in the recovery process is the chaotic application of statutes of limitations. The two-year inspection statute of limitations stipulated in the Regulations on Labor Security Supervision conflicts with the administrative collection nature of social insurance recovery. Some enforcement agencies abandon recovery efforts citing the two-year statute of limitations, while judicial practice explicitly states that "social insurance arrears recovery is not subject to the two-year limitation period." For instance, a court ordered a company to fully repay over a decade of unpaid social insurance contributions plus late fees. This divergence between enforcement and judicial interpretations leads to inconsistent recovery standards. Simultaneously, enforcement mechanisms exhibit significant shortcomings. For employers facing bankruptcy or engaging in malicious asset transfers, existing seizure and detention measures prove difficult to implement effectively. Furthermore, there is a lack of accountability mechanisms targeting legal representatives. During the pandemic, a Chongqing catering company owed 1.2 million yuan in social insurance contributions. Although it reached an agreement for installment repayment, the lack of clear standards for waiving late fees resulted in inconsistent handling of similar cases. This not only harmed the interests of the fund but also raised questions about fairness.

3 Improving Rules for the Recovery and Collection of Employee Basic Pension Insurance Contributions

3.1 Refining the Rules for Arrears Payment

3.1.1 Substantive Rules for Arrears Payment

Improvements to substantive repayment rules focus on establishing uniform standards and clear boundaries to resolve regional disparities and application confusion. Based on the Social Insurance Law and relevant documents, a nationally unified repayment list is established: Employers may repay unpaid, underpaid, or omitted contributions regardless of duration, with late fees fully borne by the employer. Individuals enrolled before July 2011 who remain short of 15 years of contributions after a 5-year extension retain eligibility for one-time lump-sum repayment. Special groups such as educated youth sent to the countryside and personnel from restructured state-owned enterprises may use original archives to calculate retroactive contribution periods. Contribution bases shall be calculated based on the "historical accuracy" principle. For employer retroactive payments, the base shall be the employee's actual wage in the year of arrears, capped at 300% of the local average wage and floor at 60%. The unified formula is: "Retroactive Base × Employer Contribution Rate × Number of Retroactive Months." Flexible employment personnel may make retroactive contributions regardless of household registration, with a maximum one-time contribution period of 15 years and no earlier than the local social security implementation date. If an individual discovers their employer failed to enroll them after making flexible employment contributions, the employer must cover the legally mandated portion, while the individual may apply for a refund or offset of their paid contributions based on records. National legislation abolishes local restrictions on retroactive contributions to ensure policy uniformity.

3.1.2 Procedures for Arrears Payment

Refined procedures focus on streamlining workflows and interdepartmental coordination to facilitate employee rights protection. Drawing from Shenyang's model, a joint platform involving tax authorities, human resources departments, and social security agencies implements "single-window acceptance with categorized resolution": enrollment and benefit disputes are handled by HR departments, contribution calculations by tax authorities, while cross-departmental disputes trigger joint review. Clear documentation lists and processing timelines are established: employers applying for arrears exceeding one year must submit labor contracts and wage statements; those over three years require arbitration awards or employee affidavits. Social security agencies implement a three-tier processing system ("processing, review, approval") with a total timeline capped at 20 working days. An "online-offline integrated" channel is created, enabling online applications, document uploads, and progress tracking via government service platforms, while preserving physical windows for elderly populations. Following Nanning's practice, retroactive payment applications are exempt from the two-year statute of limitations under the Labor Security Supervision Regulations, with only late payment penalties subject to ordinary litigation timelines. A dispute diversion mechanism has been established: clear-cut employer arrears cases are transferred to tax authorities for compulsory collection after social security verification, while labor relationship disputes are directed to arbitration, with outcomes directly routed to processing agencies. A unified national ledger tracks progress.

3.2 Refining Recovery Rules

3.2.1 Substantive Recovery Rules

Refinement of substantive collection rules centers on clarifying responsibilities and unifying standards to resolve issues of chaotic administration and imbalanced discretion. Fully implement the tax authorities' comprehensive collection model, clarifying that tax authorities are responsible for determining contribution bases, collecting arrears, and enforcing penalties, while social security agencies focus on enrollment registration and benefit calculation. Solidify the "integrated collection and administration" mechanism to eliminate collaboration barriers. The employer is designated as the sole responsible party for recovery. Even if an employee voluntarily withdraws from coverage, the employer remains liable for full back payments and late fees. The employee only reimburses the employer for the individual contribution portion advanced by the employer, as demonstrated in a Shanghai case where an employee reimbursed the company for advanced social insurance payments. Penalty standards are detailed: Late fees are charged at 0.05% per day and cannot be passed on to employees; fines are tiered—under 100,000 yuan with voluntary rectification incurs a 1x fine, while over 500, 000 yuan or malicious concealment faces the maximum 3x penalty. Establishment of a Credit Punishment and Exemption Mechanism: Nine categories of misconduct are included in the social insurance credit blacklist for joint disciplinary actions. For example, a Shandong enterprise had its loan application rejected due to tax credit issues stemming from social insurance underpayment. For non-intentional underpayment, credit can be restored by making the arrears payment within the specified period and completing regulatory training. Clarification that historical arrears collection is not subject to time limits, referencing relevant rulings that emphasize social insurance audits fall under administrative collection and are not subject to the two-year statute of limitations for investigations.

3.2.2 Recovery Procedure Rules

Refined collection procedures establish a "closed-loop, multi-departmental coordination" system to enhance operational efficiency. Drawing from Fuding's "pre-emptive prevention, real-time coordination, post-incident recovery" model, an information-sharing platform connects human resources, taxation, courts, and public security agencies. Monthly synchronized data pushes enterprise individual income tax filings, labor relations, and household registration cancellations. For instance, criminal judgment notifications identify insured individuals involved in criminal cases to mitigate compliance risks. Collaborative responsibilities are clearly defined: Tax authorities initiate recovery upon detecting anomalies in cross-referenced data; social security agencies provide enrollment information; courts prioritize case filing and enforcement for non-compliant entities; and public security assists in verifying individual details and investigating insurance fraud crimes. Establish a four-stage standardized process: "Case Filing – Investigation – Demand – Enforcement." During the filing stage, verify delinquency within 5 business days and initiate proceedings immediately upon confirmation. In the investigation stage, require employers to submit employment contracts and other materials within 15 days; cases involving arrears over three years require arbitration awards. During the demand stage, notify parties via "written notice + SMS" of repayment deadlines and consequences. In the enforcement stage, directly deduct payments from capable entities; for incapable entities, seize assets and apply for court auction. Optimized relief channels allow employers to appeal recovery decisions within 60 days for administrative review. Enforcement continues during review, though suspension may occur for obvious calculation errors. Flexible enforcement grants first-time, minor violators a 15-day rectification period; full compliance waives penalties (e.g., an e-commerce firm had its double penalty waived after repayment), balancing enforcement with business development.

4 Conclusion

Refining the system for retroactive collection of basic pension insurance contributions is a systemic endeavor balancing employee rights protection, corporate compliance costs, and fund security. Current operational challenges—including fragmented substantive rules, procedural disconnects, and misaligned enforcement responsibilities—stem fundamentally from ambiguous legal definitions and inconsistent policy implementation. Solutions require dual efforts: legislative unification and mechanism optimization. At the substantive level, national legislation should eliminate regional disparities in arrears collection, clarify the penalty tiers for recovery, and define standards for punishing dishonest conduct. Procedurally, a cross-departmental coordination system integrating "tax collection—social security audit—court enforcement" must be established to streamline the "arbitration-enforcement linkage" pathway for employee rights protection. Only by embedding arrears collection rules within the overall social insurance framework—upholding the statutory nature of "mandatory contributions" while accommodating differentiated needs of flexible workers and special groups—can the vicious cycle of "policy conflicts—enforcement chaos—difficulties in workers' rights protection" be broken. Future efforts should further refine timeliness rules and enhance flexible enforcement measures, driving the system's transition from "compliance enforcement" to "rights protection." This will ultimately achieve a win-win outcome for employees' pension rights, corporate operational vitality, and the sustainability of social security funds.

References

[1] Feng Zheqin. Analysis of the Cost-Effectiveness of Retroactive Pension Contributions [J]. Journal of Handan Vocational and Technical College, 2025, 38(01): 20-23+80.

[2] Chen Yuyan. Social Insurance Recovery and Compliance Recommendations for Insurance Field Staff [J]. Shanghai Insurance, 2025, (02): 26-29.

[3] Xiao Na. Differentiated Application of Statute of Limitations for Social Insurance Premium Recovery [J]. Journal of Minxi Vocational and Technical College, 2024, 26(02): 26-31.

[4] Ming Li. Should Enterprise Portion of Pension Insurance Contributions Paid by Individuals Be Credited to Personal Accounts? [J]. China Social Security, 2024, (01): 77.

[5] No. 23. Recovery of Overpaid Social Insurance Benefits [J]. China Social Security, 2023, (10): 39.

[6] Lü Xia. Our Province Recovers 924 Million Yuan in Pension Insurance Funds from Retroactive Payments [N]. Gansu Economic Daily, 2023-03-29(001).

[7] Practices and Insights from Weifang City's Recovery of Fraudulently Claimed Pension Benefits [J]. Shandong Human Resources and Social Security, 2022, (09): 52-53.

[8] Pu Meihe. Optimizing Recovery Mechanisms to Ensure Pension Insurance Implementation [J]. Human Resources, 2022, (16): 74-75.

[9] Bian Wanli. Beware of Pension Scams When Using Agents to "Make Up for Missed Pension Contributions" [N]. 21st Century Business Herald, 2022-08-10(007).

[10] Shaxian District Urban and Rural Residents' Social Pension Insurance Center in Sanming City Implements Multiple Measures to Recover Fund Arrears [J]. Employment and Security, 2022, (07): 9.

[11] Zhang Hui. Impact of the Administrative Penalty Law on Administrative Actions for Social Insurance Premium Recovery [J]. Shandong Human Resources and Social Security, 2022, (03): 26-27.

[12] Tang Renqiu. Legal Issues in the Statute of Limitations for Social Insurance Premium Recovery [D]. Southwest University of Political Science and Law, 2021.

[13] Yuan Junyu. Research on the Statute of Limitations for Social Insurance Premium Recovery under the Tax Collection Model [D]. East China University of Political Science and Law, 2021.

[14] Zhai Qian'er. Research on the Issue of Retroactive Payment of Basic Pension Insurance Premiums for Enterprise Employees [D]. Central China Normal University, 2021.

[15] Xiang Chunhua. Can Employers Be Required to Make Retroactive Contributions for Pension Insurance Before Joining the Pension System for Government Agencies and Public Institutions? [J]. China Social Security, 2021, (04): 67.

[16] Cao Dandan. Research on Improving the Mechanism for Retroactive Payment of Basic Pension Insurance for Employees [D]. Anhui University, 2021.

[17] Huang Jiaxi. Reflections on Issues Related to Policy-Based Retroactive Payments for Enterprise Employees' Basic Pension Insurance [J]. Employment and Security, 2021, (01): 28-30.

[18] Pu Dansong. Approaches and Recommendations for Improving the Audit and Recovery Mechanism for Urban and Rural Residents' Pension Benefits [J]. Today's Wealth, 2020, (23): 153-154.

[19] Tian Mengmeng. Legal Foundations and Implementation Strategies for Tax Authorities' Recovery of Social Insurance Contributions [J]. Contemporary Jurisprudence, 2020, 18(04): 73-82.

[20] Wang Yarong. Legal Analysis of Retroactive Collection of Employee Basic Pension Insurance Contributions [D]. Lanzhou University of Technology, 2020.