

## Legal Protection of Part-Time Employment for College Students in China's Legal Environment

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### ABSTRACT

At present, thanks to the acceleration of China's economic development, the forms of employment in our society are increasingly enriched, especially with more and more part-time employment. For college students, to have part-time jobs in their spare time either on or off campus can not only help reduce their financial burdens, but also enhance their personal qualities, hence becoming very common. However, due to the fact that China's legal system is statutory, and that the legitimacy of part-time employment for college students remains unclear, it is an extrusive problem that college students have their rights being infringed without protection. Therefore, in order to protect the legitimate rights and interests of college students part-time employment, it is very necessary to rethink our legitimacy theory and improve the relevant systems.

### KEYWORDS

College Students; Part-time Employment; Protection; Labor Relations; Service Relations.

Most college students have been at least 16 years old and are able to engage in employment. Currently, part-time jobs are important ways for college students to make incomes and to exercise various abilities. *Higher Education Law of the People's Republic of China*, Article 56 says: College students can participate in social services and work-study activities in their spare time without prejudice to completing their academic tasks, which means the part-time employment for college students is legitimate, therefore cannot be restricted by the university administrators. In addition, part-time jobs, unlike the traditional full-time jobs, ask employees to stay in some particular working environment and to be managed by the employers, which shows their flexibility and non-standard features. Regarding the scope of part-time employment for college students, on one hand, most colleges offer many on campus part-time jobs for their students, often being referred as the 'work-study programs'; on the other hand, a lot of students choose to work off campus in their spare time based on their own interests, which are usually called 'part work, part study'.

The author believes, either on or off campus, it is essentially the same for college students that they participate in some non-full-time employment, therefore it should be called part-time employment regardless. There are a number of common problems for college students part-time employment. For instance, since they are not full-time jobs, the students are not well paid, often even less than the local minimum wage. Another example is that students need to take the risk of harms during work, and the employers normally would only show some little courtesy. Furthermore, the employers of these part-time students never consider to pay their social insurance. All of these problems come down to the misunderstanding of the legal nature of the part-time employment for students. Meanwhile, *Higher Education Law of the People's Republic of China*, Article 56, Paragraph 2

says: colleges need to encourage and support their students to participate in social services and work-study activities, and to provide corresponding guidance and management. College students part-time employment brings new challenges to the college administrators. It is a new topic that they have to face and solve. Above all, in order to offer effective services to those college students with part-time jobs, it is necessary to have an accurate perception of the legal relationship of the part-time employment for college students.

## 1 A rethink on the legal relationship of part-time employment of college students

At present, there is a serious mistake on identifying the theory and practice of the legal relationship of college students part-time employment. It is considered as a type of service relation, to which the *Labor Law of the People's Republic of China* is not applicable. The reason was that in 1995, the former Ministry of Labor of the State Council issued the *Opinions on Several Issues concerning the Implementation of the Labor Law of the People's Republic of China*, in which the Article 12 stated: the work-study activities of college students in their spare time are not considered as employment as no labor relation is established, therefore not necessary to sign labor contracts.

We should start from analyzing the similarities and differences between labor relations and service relations in order to examine the legal relation of college students part-time employment. On one hand, service relation is the legal relationship that two parties of equal representations conclude on a consistance basis, regarding issues such as job content as well as remuneration. It emphasizes on the equality of both parties and on that there is no relationship of subordinate management or obeying commands. On the other hand, labor relation is the legal relationship that the employees complete assigned duties under the command of the employers, and the employers pay according to time spent or amount of work completed. The specific differences between these two types of relations are as follows: first of all, service relation is a type of contractual relationship, which means there is no factor of management and compliance between the demanders and suppliers of labor. The suppliers of labor only need to complete the tasks or to submit the results of their work according to the requirement of the contracts. However, labor relation is in a way of an "unequal" relationship. There exists a management relation containing command and compliance between employees and employers. The employees must accept the leadership and follow the rules and regulations made by the employers. Secondly, in a service relation, the employees complete the work process in their own name instead of working in the name of the labor demander. Also the employees undertake the corresponding leger responsibilities. In contrast, in a labor relation, employees must work in the names of the employers who takes the corresponding legal responsibilities, as the labor is provided by duty. Finally, in a service relation, the employees only need to complete the tasks or to submit the results of their work according to the contracts, which has immediacy, specifically. In a labor relation, the employees are willing to offer service continuously to the employers in order to have stable income resources, therefore making the relation between them and the employers somewhat stable in a certain period of time.

From the perspective of positive law, the *Labor Contract Law of the People's Republic of China* imposes regulations on part-time employment, which integrates employment paid by hours worked (an employee works no more than 4 hours per day and 24 hours per week for a single employer on average) or amount of work completed stably (that is, an employee completes certain amount of work in a fixed number of hours and keeps the rate for a certain time period) into the adjustment range. If college students work par-time for some employers, then it is in full compliance with the provisions of the Labor Contract Law, and there is no problem to identify it as a type of labor relation. Meanwhile, *Rules on Administration of Colleges Students Work-Study Activities*, Article 26

issues that the salary rate of part-time employment off campus should not be lower than the minimum wage made by the local governments or by relevant regulations. It should be determined in consultation with schools and students, and be written in the employment agreement, which is a respond in the side to the nature of labor relation of college students part-time employment. Nevertheless, we must notice the complexity of reality. In practice may there be a possibility of a service relation between college students and their employers. For instance, they may agree that the students will provide the results of their work (often are translation, handcrafts, courseware, etc.), and the employers pay for them. Thus, the situation of college students part-time employment would not be generalized and must be analyzed according to the specific case. If it has the nature of labor relation or service relation, it should be identified accordingly as a labor relation or a service relation, respectively.

Seen from the background 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 of the State Council, the problem was caused by the system which at that time guaranteed college graduates with jobs. If the labor relation of part-time employment for college students was admitted, then their jobs guarantee after graduation would be affected. Of course, Article 12 of the *Opinions* doesn't absolutely recognize the part-time employment for college students as a service relation. Instead, it uses the statement "... is allowed not to sign a labor contract." Therefore, we can see the possibility that college students part-time employment is of labor relation was not completely denied. The Labor Law and Labor Contract Law issued later imposed explicitly that civil servants and soldiers were excluded, but students were not explicitly eliminated, which permitted that the students part-time employment could be a labor relation. If this is the case, then students would be able to enjoy social insurance, minimum wages, and other related benefits. In contrast, if it is a service relation, then the risk will be distributed in accordance with the civil processing contract.

## **2 The categorization analysis of the risk in the part-time employment for college students**

The risk in the part-time employment for college students can be summarized roughly as follows: first is the arrear of payments, which is a relatively simple dispute. One can either request compensations in compliance with the Labor Contract Law (Article 85 issues that If the employers did not pay full remuneration to the employees on time according to the employment contract and national regulations, then they need to pay compensations whose amount is 50% up to 100% of the original payments), or resolve it in compliance with the content of liquidated damages in the Labor Contract Law. Second is the damages undertook during work. If it is a labor relation, then one can enjoy work-related injury treatment; otherwise it needs to be resolved by the specification of the *Civil Code of the People's Republic of China*, that is, a third party is liable for infringement of its own; if it is its own reason, then it should be resolved in compliance with Article 35, namely, if the party of labor suppliers was hurt during working, then both parties need to bear the responsibilities according to their faults, respectively. Meanwhile, one can also refer to the *Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury*: if employees suffered personal injuries while engaging in employment activities, then the employers shall be liable. If the injuries were caused by a third party outside of the employment relationship, then the compensation rights holder can request liability either from the third party or from the employers. *Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury*, Article 5 issues that Where a worker suffers personal damage due to an act of a third party in the

course of helping a worker, he shall have the right to request the third party to bear the liability for compensation and the worker to be helped to make appropriate compensation. After the worker is compensated, he may seek compensation from a third party. Third is the dispute caused by harm to others at work. If it is a labor relation, then according to the *Civil Code of the People's Republic of China*, employers are liable for the harm to their employees due to the implementation of the work. Even if college students are not paid for or were obliged to provide labor work, according to the *Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury*, Article 4, if the helpers who provide free services caused damages during helping activities, the party who gets helped shall be liable. If the person who gets helped explicitly refused being helped beforehand, then he or she is not liable. If the helpers did intentional misconduct or gross negligence, the Court should support the compensation rights holder to request joint liabilities of both the helpers and the people they helped. If it is a contract relation, then the person shall be liable.

Part-time employment for College students is not of a singular nature, but has possibilities of different legal relationships. At the same time, the handling of it cannot be a "one-size-fits-all". We should pay more attention to the role of the contract and emphasize the protective effects of the contract. While signing a contract, people need to clarify their rights and obligations as well as the issue of responsibilities, in order to avoid passive dispute after problems occur. The *Notice of Work Opinions On Further Improving the College Work-Study Program* enacted in 1994 is in many respects unsuitable for the modern situation of college students part-time employment. It cannot effectively offer guidance and help and, to a certain extent, is not conducive to defending students' rights in a timely manner when being infringed. Therefore, the administrators in colleges and universities need to enhance their original management and service mode according to the practice development, and disseminate relevant laws and regulations to remind students to pay attention to related legal issues. Meanwhile, while disputes happen between the students and their employers, they should intervene in time to protect students' interests from being compromised during their part-time employment.

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