

On Improving the Legal System of Domestic Service Industry in China

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ABSTRACT

In the context of the vigorous development of social economy and the remarkable improvement of people's living standards, domestic service industry has become a new sunrise industry in China. However, there are still many problems in China's household service market: lack of effective laws and regulations to regulate the household service market, inadequate management of the household service market, small scale and weak strength, low market access threshold, security risks, imperfect rights and interests protection mechanism, and failure to realize the legitimate rights and interests of domestic workers, etc. This paper mainly studies and analyzes these problems from the legal point of view, and then puts forward the corresponding improvement of the legal program to solve these problems.

KEYWORDS: domestic service, Protection of rights improving the legal system

With the development of economy and society and the growth of people's income, the domestic service industry has developed rapidly. As a new economic growth point of China's service industry, domestic service industry has played an important role in expanding domestic demand, promoting employment, ensuring people's livelihood, and helping the poor while striving to meet the growing diversified and multi-level needs of the people. But at the same time, the domestic service industry is facing many problems that restrict the healthy development of the industry, and the lack of legal system is particularly significant, which needs to be improved urgently.

I. Current Situation and Main Problems of Domestic Service Industry in China

A. Development status of domestic service industry

Firstly, the scale of the domestic service industry continues to expand. The business income of domestic service industry increased from 199.2 billion yuan in 2013 to 344.8 billion yuan in 2016, with an average annual growth rate of 20%.

Secondly, the field of domestic service continues to expand. There are both low-end, middle-end and

high-end domestic service fields. There are not only traditional, but also knowledge and skills and expert management. China's current domestic service involves more than 20 categories and more than 200 kinds of service items, the field is getting larger and larger, and the content is getting richer and richer.

Thirdly, the number of employees and institutions has further increased. The number of institutions increased from 600000 in 2013 to 660000 in 2016, an increase of 10%. The number of employees also increased from 1800 in 2013 to 25.42 million in 2016.

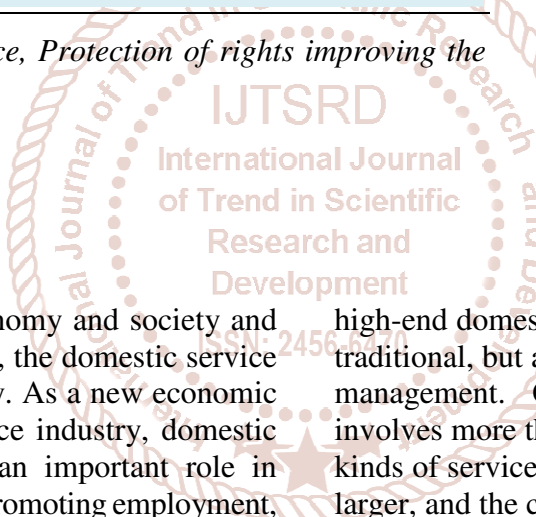
Finally, In recent years, the domestic service industry has entered a stage of rapid development, especially the new mode represented by "Internet +" has had a far-reaching impact on its development. Internet housekeeping enterprise models emerge in endlessly, and the frequency of using housekeeping O2O is between 14% and 19%, which is widely welcomed by the market. Shanghai, Fujian, Guangzhou and other regions have also established a domestic service network platform covering the whole region, and provide services and management through the Internet. Moreover, in the future, "Internet + home economics" will continue to develop and be favored

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by capital. A lot of capital is invested in the domestic service industry, which also promotes its development.

B. Problems in the development of domestic service industry

Firstly, The entry threshold of domestic service personnel is low, and the qualification examination is insufficient. In 2015, the former Ministry of Labor and Social Security promulgated the Regulations on the Recruitment of Technical Workers, which abolished all the professional qualification certificates of 90 occupations designated in the Regulations, including domestic service personnel and other professionals who no longer need to hold certificates. For employers, the lack of effective means of review makes it difficult to ensure the quality of services. In order to obtain contract fees, some illegal intermediaries do not strictly examine the resumes, qualifications and health status of domestic workers in the process of matching employers and domestic workers, and do not take into account the actual needs of employers, which has a very bad impact on the orderly and healthy development of the domestic industry market.

Secondly, The level of industry standardization is still low and the management is chaotic. At present, the standardization level of domestic service industry is still low, and the Hangzhou nanny arson case is one of the typical examples. There are still many deficiencies in the standardization of domestic service industry: employees lack proper information registration and tracking records, domestic service market lacks effective information screening mechanism, domestic service employees are prone to moral hazard in the service process, and the integrity problem is prominent; The self-restraint mechanism of domestic service industry has not yet been established, and the industry lacks a good business environment and standardized and unified management. Moreover, due to the low cost of registration, simple procedures and other factors, a considerable number of merchants enter the market, management level and professional level are also uneven. A large number of domestic service companies are managed in a simple and extensive way, lacking credit investigation, restraint management and professional training for employees. At the same time, the government's lack of regulatory means and inadequate industry regulations still exist.

Thirdly, The comprehensive quality of employees is low, and their legitimate rights and interests are not guaranteed. Most of the domestic workers belong to the rural migrant labor force with high mobility and poor stability, and their education level is relatively

low, mainly in primary and junior middle schools. Except for large domestic service enterprises with their own training institutions, most enterprises have not set up special training departments, and old employees can work directly with new employees after several on-site internships. Most enterprises adopt the intermediary system and do not sign labor contracts with domestic workers, so their legitimate rights and interests are difficult to be guaranteed. Participation in social insurance is also low, with about half of domestic workers not covered by any type of pension insurance and about 10% not covered by any type of health insurance.

II. The inadequacy of the legal system of China's domestic service industry

A. The relevant laws and regulations regulating the domestic service market are not comprehensive enough

So far, the State Council and relevant ministries and commissions have promulgated and implemented some important industry norms and guiding policies. For example, the Ministry of Commerce promulgated the Interim Measures for the Administration of Domestic Service Industry in 2012, but it has the following shortcomings in regulating the domestic domestic service market: (1) it is a departmental regulation with low effectiveness; (2) Although it stipulates that the Ministry of Commerce is responsible for the management of the national family service industry, and is responsible for the supervision and management of the quality of work of service agencies, and for guiding the coordination of contract texts. However, in the actual operation, there will be many places involving people's societies, women's federations and other functional departments. In addition, the corresponding responsibilities cannot be clearly divided, and the content is not comprehensive enough. (3) With the progress of Internet technology, the O2O era of domestic service has arrived. Many once traditional enterprises have begun to establish their own O2O platforms or enter other professional platforms. However, many contents of this method cannot keep up with the pace of the times, lack of corresponding regulations for the intellectualization and informatization of domestic service, and lack of corresponding normative measures for the operation of network platform, which lags behind.

In addition, a small number of cities, such as Shenzhen, Zhengzhou, Beijing and Shanghai, have promulgated and implemented local regulations and industry norms, such as the Regulations on Family Services in Shenzhen Special Economic Zone, the Measures for the Management of Family Services in

Zhengzhou City and the Opinions on Further Promoting and Regulating the Development of Domestic Services promulgated by Beijing in 2017. Although the implementation opinions are relatively detailed, the specific provisions point to more implementation and supervision departments, which easily leads to the situation of multiple policies and unclear powers and responsibilities. All of these can result in reduced operability and lack of binding force.

B. Lack of rights and interests protection mechanism

Domestic workers, as workers, have the right to be protected by basic labor laws, but in the Labor Law and the Labor Contract Law, individuals and families are not employers, so domestic workers who form a legal relationship of domestic service with individuals or families are explicitly excluded from the scope of adjustment of the Labor Law and the Labor Contract Law. The legitimate rights and interests of domestic workers cannot be effectively guaranteed, which will be seriously detrimental to the development of domestic domestic service industry.

Basis "labor law" regulation, laborer ought to rest every week one day above, legal holiday also should let laborer rest appropriately. Many domestic employers may be able to give domestic workers one day off a week, but few domestic workers can rest on statutory holidays. For holidays such as the Spring Festival, the demand for domestic workers is even greater. The shortage of domestic workers often makes them not allowed to return home, otherwise they are likely to default. On the one hand, domestic workers are afraid of the consequences of default, on the other hand, they also consider the time and cost of returning home, so most of them will choose to work in the end. Some domestic workers do not get double pay even if they work on statutory holidays, thus their legitimate rights and interests are seriously damaged.

C. The family service insurance system is imperfect.

Although in the legal relationship of employee-style domestic service, relevant organizations will pay insurance fees such as industrial injury, medical treatment and pension for domestic workers, self-employment and intermediary do not have such treatment. Even the employee-style domestic service legal relationship is difficult to implement the social security for domestic workers.

Firstly, according to the provisions of the Labor Contract Law, the social security policy for employees is five insurance in one. If the social insurance of domestic workers is entirely the responsibility of employee-style domestic service

agencies, the pressure will still fall on each household consumer, and the service agencies will increase their expenditure on domestic workers' insurance costs, which will inevitably increase their service costs to household consumers accordingly. Therefore, whether it is the direct responsibility of domestic service agencies or the family to pay the five insurance fees for domestic workers, the cost is too high for family consumers.

Secondly, most of the domestic workers are rural surplus labor and laid-off workers, and most of them are between 45 and 55 years old. Our country stipulates that social security must be paid for 15 years, and if domestic workers start to pay insurance when they enter the industry, they will not be able to enjoy all the insurance until they retire.

Thirdly, although the state and the government encourage insurance companies to develop more new types of insurance, which has contributed to the emergence of "nanny insurance", according to the survey, few insurance companies are selling "nanny insurance", even if there are similar types of insurance, they generally raise the price, to a certain extent, reducing the number of "nanny-insurance". In addition, "nanny insurance" belongs to the commercial insurance of nanny domestic service, and other types of domestic workers are not included. Because of the special nature of the content of domestic service and domestic workers, it is not enough to rely solely on commercial insurance to resolve risks, and the domestic service industry still needs the strength of social insurance. If we do not solve the social insurance problem of domestic workers, they can only regard domestic service as a springboard in difficult times, and it is difficult to regard it as a real profession, which will eventually make the number of excellent domestic workers in the domestic service industry less and less, and it is difficult to attract high-end talents to join.

III. Perfecting the Legal System of Domestic Service Industry in China

A. To formulate regulations on the management of household services

Although it is a possible choice to include domestic service relations by comprehensively amending labor laws and regulations. However, in view of the complexity of the domestic service relationship, which faces many problems to be solved urgently, and the need to consider the implementation effect of the labor law, it is not yet possible to incorporate the domestic service relationship into the labor law.

Legislators can directly formulate a special national law on domestic service relations, regulate the rights and obligations of domestic service agencies,

domestic workers, consumers, associations and the government as a whole, and comprehensively regulate the protection of domestic workers' labor rights and interests. It includes general provisions, domestic service contracts, working and vacation time, salary, safety and health of living and working environment, employment training, insurance, dispute resolution and legal liability. On the one hand, it can adapt to the rapid development of domestic service industry and market demand, reflect the great importance attached by the state to domestic service industry, and provide reference standards for all parts of the country to implement domestic service laws more effectively. On the other hand, it can also regulate the domestic service industry through the most authoritative means, promote legal compliance and act in accordance with the law, and create a good environment for development.

B. Improve the protection system for the rights and interests of domestic workers

Firstly, Preferential protection of the labour rights of domestic workers. Compared with domestic service companies and domestic employers, domestic workers are in a relatively weak position. Most of them have low educational level, and most of them are laid-off women workers and rural women. The group composed of vulnerable groups is even more vulnerable. Therefore, in the rational distribution of the rights and obligations of all parties in the domestic service relationship, the legitimate interests of domestic workers should be protected.

It is important to protect the working hours of domestic workers. On the premise of following the standard working hour system of the Labor Law, according to the national conditions and the existing domestic service mode, we should formulate the working hour system of domestic workers and the working hours of domestic service relations. Domestic-type domestic workers need to work in the family employer's home every day, so they are occupied more time by the family employer. Legislation can extend the working hours of such domestic workers appropriately. Domestic workers who are not of this type are still in accordance with the general provisions of the Labor Law.

According to "labor law" regulation, laborer has right rest and off, and the person that works overtime in weekend and legal holiday ought to enjoy corresponding overtime pay or fill rest. However, in real life, these periods are the time when household users need domestic workers' services, so it is appropriate to raise the compensation standard or increase other compensation methods. If the home user arranges work for the domestic worker during

the statutory rest period, he or she shall be given compensatory time off or paid 200% of the wage standard. If the period is a statutory holiday, the remuneration is paid by reference to 300% of the standard wage, in accordance with the provisions of the Labour Code.

Secondly, Stipulate the family's duty of safe care. As the actual employer of domestic workers, the family is the master of the actual workplace of domestic workers and the owner of family service facilities, and should be responsible for the safety of domestic workers and have the obligation to take care of their safety. The civil laws of many countries impose a duty of safe care on domestic employers. For example, Article 618 of the German Civil Code stipulates that the employer shall ensure the safety and functional maintenance of the equipment and tools provided by the employer to the employee in order to ensure the personal safety of the employee. Some scholars in our country have proposed that the employer's security obligations should be stipulated in the Civil Code. Whether it is self-employed, intermediary or employee-style domestic service, as the direct employer of domestic workers, the family should fulfill the obligation of safe care. From the perspective of relevant aspects in various countries, the tort liability for breach of these obligations is based on the principle of presumption of fault, that is to say, unless the employer has evidence to show that he has done his duty of reasonable care to the working environment and equipment.

Thirdly, Improve the system of compensation for personal injury of domestic workers. When the service behavior of domestic workers causes personal injury to family members, who should bear the liability for compensation should be analyzed on a case-by-case basis. Self-employment and intermediary cause personal injury to family members, whether or not out of domestic service behavior, the domestic workers themselves should bear the liability for damages, but it is necessary to consider whether the domestic workers are at fault in the occurrence of damage. The author believes that the principle of presumption of fault should be adopted in the compensation for personal injury of family members. As long as domestic workers have no evidence to prove that they are not at fault, they must bear tort liability. As for the personal injury caused by employee-style domestic workers to family members in the domestic service work, the domestic service agencies should be responsible for it. However, in view of the special circumstances of domestic service places, it is extremely inappropriate for domestic service agencies to bear the vicarious

liability for personal injury compensation arising from domestic service. In this case, the responsibility should be confirmed according to whether the domestic workers have intentional or gross negligence subjectively. That is to say, in principle, the liability for compensation for personal injury caused by employee-style domestic workers to family members is borne by domestic service agencies, but if domestic workers have intentional or gross negligence, domestic service agencies have the right to recover from them.

C. Establishment of an insurance system for family services

China's insurance industry has been developing a new type of domestic service insurance. In China's current domestic service market, self-employed and intermediary domestic service can solve the problems of social security for domestic workers and the safety of family property and personnel by purchasing domestic service insurance. As mentioned above, the "nanny insurance" has a lower cost, which is mainly aimed at the situation that domestic workers are injured by accidents during the contract period. Both the insured and the insured of "nanny insurance" are families, so when the family changes the domestic workers, the family of the insured also has the right to apply for the change of domestic workers. If the family purchases the corresponding domestic service insurance, when the domestic workers cause personal injury in the process of domestic service for their own or other reasons, it can reduce the burden of compensation for the loss of the family. However, this kind of insurance belongs to commercial insurance purchased voluntarily. Under the background of low insurance awareness in China, few families buy insurance for the benefit of domestic workers.

No matter what kind of domestic service mode, domestic workers should adopt compulsory social insurance rather than "nanny insurance" to cause personal injury in the service process. If domestic workers are within the scope of social insurance, social insurance can effectively solve the problem even if domestic workers are injured at work. For the subject who pays the insurance premium, it should be distinguished according to different modes of domestic service. For the traditional mode of domestic service, families and domestic workers can share the insurance costs in a certain proportion. This not only decomposes the family's responsibility risk, but also eliminates the worries of domestic workers. As far as the employee-style domestic service mode is concerned, because domestic workers are employees

of institutions, they sign labor contracts and form labor relations, so social insurance is purchased by domestic service institutions for their employees. As long as the personal injury caused by domestic workers during their work meets the conditions of work-related injuries prescribed by law, the domestic service agencies shall be liable for compensation according to law.

D. Strengthen government supervision and industry regulation.

First of all, the government should play an active role in strengthening supervision, strictly restrict the market access threshold of intermediaries and companies in the domestic service industry, and strictly examine their business qualifications and conditions, so that qualified enterprises can be qualified to operate in the market. Secondly, we should formulate relevant policies to increase tax and subsidy support for domestic service industry. Finally, we should unify the industry standards, strictly regulate the operation mode of domestic service institutions, and properly restrict the fierce competition among institutions. Legal recruitment of domestic workers, and the signing of agreements or contracts, efforts to promote the standardization, specialization and standardization of domestic service agencies.

Conclusion

Based on the current situation and basic problems of domestic domestic service and domestic service market, and combined with the institutional deficiencies faced by domestic service industry, this paper puts forward some suggestions to improve the legal system of domestic service industry, in order to effectively regulate and adjust the domestic service industry and promote the healthy development of the industry.

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