

Research on the Legislative Countermeasures of Political Service Industry in Our Country

Tan Qiuxia

Ji Nan University, Institute of Politics, Jinan, Shandong, China

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Abstract: In my country, the domestic service industry is a sunrise industry that eases employment pressure and has huge market demand. The protection of the rights of domestic workers, the maintenance of consumer rights and interests, the distribution of rights and responsibilities of the three parties in domestic management, the regulation of domestic service, and the disorder of competition in the domestic service industry all require legislation to respond. On the basis of analyzing the legal relationship of domestic service, this article combs the current legislation of our country, puts forward the specific legislative countermeasures on the basis of the idea of domestic service legislation.

1. Introduction

In the context of a demographic dividend decline, a reduction in working-age population, and the rapid arrival of aging, and the liberalization of the two-child policy, many families face the dual pressures of “seniorization” and “childcare”. The orderly and healthy development of the domestic service industry is related to the sense of well-being, happiness and social harmony and stability of hundreds of millions of people. At present, the domestic service industry presents two types of contradictions: one is the contradiction between “supply in short supply” and “supply is not in demand” for domestic workers; the other is that the rights of domestic workers are repeatedly violated and abused, child abuse, and even the elderly are poisoned. “Nanny” contradicts the rights of employers. The protection of the rights of domestic workers, the protection of consumer rights and interests, the distribution of rights and responsibilities of the three parties in domestic management, the regulation of domestic service, and the disorder of competition in the domestic service industry all require legislation to respond. Through special legislation, the country's experience in developing domestic service industry can be fixed in the form of legislation. It not only protects the people's livelihood, but also regulates the industry, and helps achieve the goal of high-quality development of the domestic service industry.

2. Analysis of the Legal Relationship of the Domestic Service Industry

At present, there are three types of legal relations in the domestic service industry, namely, the “direct employment” model, the “intermediary” model, and the “employee” model. The “intermediary” model and the “employee” model both involve domestic service companies and employers. 1. The legal relationship between the three parties of domestic work. In the “employee style” model, the three legal relations are reflected as follows: domestic workers and domestic companies are labor relations, and between domestic companies and employers are labor relations. There is a legal relationship between employers and domestic workers. In the “employee system” legal relationship of domestic service, although the domestic worker and the domestic company belong to the labor relationship, the main body of employment is separated from the employer, which is different from the labor dispatch.

In the “intermediary” model, an intermediary contract legal relationship has been formed between the employer and the domestic service introduction agency and the domestic worker and the domestic service introduction agency, which is specifically adjusted by the “Contract Law”, but the relationship between the employer and the domestic worker has not yet been established. It is

clear that in judicial practice, some courts have determined that both parties are in a labor relationship, while others are considered to be an employment relationship, and there are also disputes in academia.

Different views on the legal relationship between the “direct employment” parties in judicial practice also exist in the labor service relationship and the employment relationship. We analyze the nature of the legal relationship between employers and domestic workers in the “direct employment” and “intermediary” models by analyzing both the “direct employment” and “intermediary” models.

2.1 Labor Relations

Some scholars believe that the relationship between domestic workers and employers is a labor relationship in the family field. The work of domestic workers provides pure labor. Although the employer has some dominance and control over domestic workers, because the work is temporary, the relationship between the two parties is loose. When the purpose of a domestic service is achieved, the relationship between the two parties is also declared to end, which is a typical labor service relationship. This doctrine ignores the de facto affiliation between domestic workers and employers. It is also unreasonable to stipulate the responsibility mechanism for domestic workers who have relatively weak economic strength to bear the risk responsibility alone.

2.2 Contract Service Relationship

In judicial practice, some courts believe that the contract between domestic workers and employers is a service contract. For example, in the case of Nanjing Hong Kong citizen Zhu Hong hiring a nanny, the court ruled on the service contract. Article 7 (4) of the “Minutes of Provincial Civil Trial Work Symposium 2001” of the Jiangsu Provincial Higher People's Court stipulates that: between persons engaged in domestic service and those who receive services, they shall generally be deemed as The service contract relationship does not use the employer's liability. If the working environment and conditions provided by the service recipient are not inappropriate, the service personnel shall not be liable for compensation for damages suffered during the work process. The judge in this case believed that, in the domestic service, the service activities undertaken by domestic workers did not enable the receiving employers to obtain other benefits from the services. Moreover, domestic workers only had to complete the tasks assigned by the employer, and the two parties lacked affiliation, so Establish a service contract relationship, but this doctrine is clearly unfavorable to domestic workers in a disadvantaged position.

2.3 Employment Relationship

As for how to determine the relationship between domestic workers and employers, at present most of the academic circles in our country believe that the two constitute an employment relationship. The employment relationship means that the employee provides labor services to the employer under the control of the employer, and the employer pays remuneration to form a relationship of rights and obligations. The employment relationship is established on the basis of the contract between the employer and the employee. The employment contract can be oral or written. The employment relationship has the following characteristics: (1) There is a affiliation relationship between the employee and the employer. Employee control, command, and supervision by the employer is the foundation of the employment relationship. In an employment relationship, the employer is the person who controls the behavior of others, and the employee is only the person employed by the employer to complete a certain job. When employees complete such work, they obey the employer, obey the supervision and guidance of the employer, and the employer provides the employees with labor conditions; (2) the rights and obligations of both parties in the employment relationship are that one party provides labor services and the other party pays; (3) employees Should be selected by the employer. Employees can be selected by the employer himself or selected by the employer with authorization.

In domestic service work, domestic workers often stay in the employer's home, the employer provides the workplace, labor tools, food, etc., and the employer arranges the specific tasks of domestic workers. The domestic workers are under the control of the employer according to their

prescribed time Completion of tasks, under its control to complete household chores such as cooking, grocery shopping, laundry, etc.; domestic workers provide employers with labor services to complete a series of tasks or purposes, the employer will pay the domestic workers according to the agreement; the employer can The domestic worker terminates the employment contract under the agreed circumstances, and the employer selects other personnel.

The author agrees with this view that the establishment of the employment relationship is closely connected with the dependency of domestic workers and employers. Domestic workers often have the characteristics of dependency in the process of participating in domestic service: (1) The employer can unilaterally determine the work of domestic workers Labor conditions such as time, location, specific types of work tasks, etc. The job of domestic workers is in the employer's home, the working environment is relatively closed, and the work content is mainly to do housework; (2) The employer has the right to punish domestic workers. Satisfied domestic workers can propose the termination of the contract; (3) The employer has a considerable degree of autonomy over the domestic workers' labor remuneration, which has a certain "value" with respect to the labor provided. Hu Dawu, an associate professor at Southwest University of Political Science and Law, believes that domestic work has inherently vulnerable characteristics. In fact, the personal relationship between "master and servant" determines the high dependence of domestic workers on their employers; they lack the right to speak in terms of work content, methods and time; they are easily forced to work. In addition, the "island nature" of interpersonal communication, the female dominance of domestic workers, and the majority of peasants' domestic workers determine the vulnerability of domestic workers. This "vulnerability" is also a concrete manifestation of the domestic worker's personality and economic dependency.

3. The Status Quo of the Legislation of My Country's Political Service Industry

In recent years, in order to promote the healthy development of the domestic service industry, the State Council and relevant ministries have issued a series of policy documents. The industry authorities have formulated a number of standards that clearly define the establishment of the main body, service processes, and service skills. However, due to the lack of sufficient legal basis for the domestic service industry, most of the existing standards have recommended standards and low coercive power. The regulatory role of the industry is relatively limited. After more than 20 years of development in China's domestic political service industry, there is still no comprehensive special legislation that comprehensively regulates the development of the domestic service industry. The current Ministry of Commerce's "Interim Measures for the Administration of Family Service Industry" is currently the only one in China. To standardize the development of domestic service industry regulations. However, this method is mainly applicable to the regulation of the "employee system" of domestic service mode, but not applicable to the "employment system" and "intermediary system" of domestic service. This obviously greatly restricts its regulatory effectiveness. In general, the provisions of this method are too general and principled, and the content is relatively rough, and as the regulations of the ministries and commissions, the scope and intensity of their regulations are greatly restricted, and it is difficult to fully meet the needs of the development of our country's political service industry.

Although the "Labor Contract Law" provides some domestic workers with labor law protection, it is only applicable to domestic workers with an employee system. There is no authoritative data on the proportion of domestic companies implementing employee systems. As far as Jinan is concerned, there is no one. The liability for fault identified in Article 35 of the Tort Liability Law passed in 2009 puts domestic workers at risk of being responsible for the consequences of occupational injury.

In order to promote the healthy development of the domestic service industry, in recent years, the State Council and industry authorities have intensively issued a number of regulatory documents, and Shanghai, Hangzhou, Shenzhen, Nantong and other places have issued local regulations, which have promoted to a certain extent. The development of the domestic service industry has also made useful explorations for the central legislation. The formulation of special laws and regulations for

the housekeeping service industry has become an important issue for the realization of specialization, standardization and healthy development of the housekeeping industry. The domestic academic and practical circles have formed a preliminary consensus on formulating special laws for the domestic management industry that meet China's actual needs.

4. The Basic Idea of the Legislation of My Country's Political Service Industry

Special legislation in the domestic service industry should adhere to the basic concept of “balance of interests” among domestic workers, domestic enterprises, and consumers, and follow the three basic principles of voluntary equality, honesty and trustworthiness, and safety and convenience. In terms of the regulatory model, according to the current development status of our country’s political industry, a mixed regulatory model of “industry” and “behavior” is adopted. In terms of the structure and content of the legislation, the framework of “general rules” and “sub-rules” should be followed. While strengthening the pertinence and enforceability of the design of legal norms, it is also necessary to pay attention to the systemic and coordination among various parts of the content.

5. Legislative Countermeasures for the Political Service Industry in Our Country

As the regulations of the State Council, the domestic service industry legislation should start from the perspective of industry management, system guarantee, industry guidance, and industry norms.

5.1 The Legal Nature of the Relationship between the Three Parties

In a domestic management company that implements an “employee system,” it is clear that there is a labor relationship between domestic workers and domestic management companies. As far as domestic service is concerned, the difference between the form of employment and the general form of formal employment is its greater flexibility. Due to the irregular nature of the domestic service relationship, the application of the law should also be different. As a non-standard labor relationship in the form of informal employment, there must be room for free negotiation for the parties in the application of labor standards (such as working hours, wages, social insurance, working age, etc.), but it must be limited. Under the “direct employment type”, the relationship between domestic workers and employers is an employment relationship. Under “intermediary”, the employer and the intermediary company are in an intermediary relationship, and the employer and the domestic worker are in an employment relationship. The domestic company performs daily management of the domestic worker as an employer. relationship.

5.2 Market Access for Domestic Enterprises

Market access is an important starting point for standardizing and guiding the development of the industry and is the key to the healthy development of the housekeeping industry. At present, there is basically no entry threshold for the political industry in our country. Behind the appearance of the hot market, the industry is chaotic. One is to raise the entry threshold for domestic business enterprises. Huge market demand, superimposed by the encouragement of the state, a large number of domestic business enterprises came into being. The unevenness of domestic service enterprises disrupts the order of the domestic service market to a certain extent and affects the healthy and orderly development of the domestic service industry. The second is to establish the entry threshold for the domestic work market. There is no unified market access standard for domestic workers, and those with criminal records, credit taints, and infectious diseases are excluded, and dynamic adjustments are established. The cultural quality and skill level are handed over to the market.

5.3 Social Insurance for Domestic Workers

The implementation of the “employee system” for domestic management enterprises is not only to solve the problem of wages on behalf of wages, but also to gradually solve the problem of

synchronized social security for mobile and scattered domestic workers. The collection of social insurance premiums for employee-based domestic management companies is urgently needed to be resolved. A domestic management company that implements an employee system should design a work injury insurance system for flexible employees for workers who are not suitable for establishing labor relations. For a large number of “intermediary system” problems of domestic social work social security, it is necessary to draw on the new theory of separation of labor relations and social insurance relationships, and to give domestic workers who establish labor relations with employers much-needed social insurance rights. What is urgently needed to be solved is work injury insurance. . According to the characteristics of the industry, the rights and obligations of the parties shall be stipulated, and then the rights and obligations of the family service organization, the family employer, the family service practitioner and the domestic service industry association shall be separately stipulated.

5.4 Talent Guarantee for the Housekeeping Service Industry

The professionalization of housekeeping services and the healthy development of the housekeeping service industry are inseparable from professionals. The talent guarantee for the development of the housekeeping service industry not only depends on a complete housekeeping education system, but also requires enterprise training and professional certification systems. In view of the chaotic phenomenon of home economics training and the phenomenon of multiple heads of issuing agencies, regulations are made on legislation to provide a legal basis for the standardization and standardization of the home economics industry.

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