

The Internet Platform Labor in China: The Rise, Controversy and Policy Trends

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After the rise of Internet platform labor with mobile network technology worldwide, China has taken the lead in the scale and type of platform labor with its information infrastructure and labor resources. Platform labor has also triggered legal controversies, mainly on how to characterize its legal relationship. Based on the diversity of platform labor, it cannot be generalized but should be divided into self-governing platforms and organizational platforms according to their different functions. Autonomous platforms are based on mediation contracts, and platforms only provide transaction media services. Organizational platforms take the platform as the center of labor transactions, including the regular employment of labor contracts and the innovative employment of civil agreements. There are corresponding legal regulations for the intermediary contract and the labor contract, but the legal nature of the innovative form of labor is unclear, and the main dispute is the liability of the service provider for his injuries or damages caused by him to third parties, and there are divergent results in the decisions of local courts. As for this innovative form of employment, rules should be formulated with the vision of the digital era, and existing labor laws should not be applied rigidly but should be classified and adjusted according to the characteristics of platform labor. At present, the focus of institutional development is on the occupational injury protection system for platform workers, while government supervision must be strengthened, the responsibilities of the platform are scientifically defined, and the social risks arising from platform workers effectively controlled.

1. The rise of Internet platform labor in China

Driven by the combination of mobile internet technology and the concept of the sharing economy, Internet platform labor has been on the rise dramatically worldwide since 2014. Platform labor refers to the service or labor provided by labor providers to pay for specific content based on an Internet platform. The first model to develop is the online car booking service represented by Uber, where drivers download the platform app and register for approval to receive car requests from the platform and complete specific delivery services independently.

In this wave of internet technology, China, by its good information infrastructure and widespread use of intelligent terminal equipment, started almost simultaneously with developed countries in the field of platform labor, and rapidly expanded to several social service areas, such as take-out food delivery, online contract driving, city express, etc., and has achieved an advantage over developed countries in terms of business models, types of services and scale of employment. According to the Annual Report on the Development of China's Sharing Economy (2019), the number of participants in China's sharing economy was about 760 million in 2018, and the number of those involved in providing services was about 75 million, up 7.1% year-on-year. The number of platform employees was 5.98 million, an increase of 7.5% year-on-year.¹ The scale of

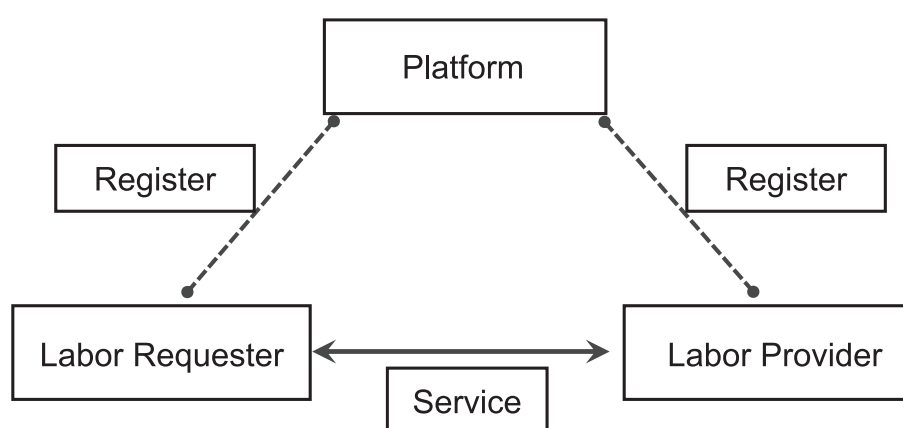
1. Sharing Economy Research Center of the National Information Center and the Sharing Economy Working Committee of the Internet Society of China. 2019. "China Sharing Economy Development Annual Report," 2019 Edition, p. 1.

this employment platform labor is hard to compare with any country.

When the scale reaches a certain level, the forms of platform labor tend to be diversified, and the organizational model of employment also evolves continuously, and China's Internet platform labor has developed a complex form that other countries do not have. The so-called platform labor is not a single pattern but can be divided into different patterns due to differences in platform functions and operation models.

1.1 Autonomous platform

The platform does not directly participate in the labor transaction process, but rather the two parties independently search for partners to contract and reach an agreement, and the platform receives a certain percentage of commission after the labor transaction is completed. The transaction structure of such platforms is shown in Figure 1 below.



Source: Compiled by the author.

Figure 1. The relationships between the platform, labor requester, and provider in an autonomous platform

A typical example of such a transaction model is the well-known Chinese website Zhu Baji. According to the service rules of the website, the two parties to the transaction are the employer and the knowledge worker, and the employer reaches an agreement with a knowledge worker and completes a specific labor transaction through hiring, bidding, comparing manuscripts and other trading methods.² Besides, according to the transaction rules of the website, the platform collects a certain percentage of the technical service fee from the knowledge worker when the transaction is concluded, according to the transaction amount.³ In this model, the platform meets the characteristics of an intermediary, that is, Article 424 of the Contract Law, which stipulates that “an intermediary provides the principal with media services for the conclusion of a contract, and the principal pays remuneration.” The platform is outside the specific transaction behavior, and the subject, price, and period of the labor transaction are all agreed upon by the labor supply and demand parties through negotiation.

2. See Zhu Baji Platform Service Rules, <https://rule.zbj.com/ruleshow-0?pid=158&categoryId=278>, accessed Sept 26, 2020.

3. According to the trading rules of this website, when an order is completed (including partial completion) under the hiring and bidding trading model, for member knowledge workers, Zhu Baji has the right to collect technical service fees from knowledge workers by 2%–20% of the transaction amount according to different membership levels; for non-member service providers, Zhu Baji has the right to collect technical service fees from knowledge workers by 20% of the transaction amount. The technical service fee will not be refunded if there is a transaction dispute or if the negotiation between the two parties involves the report of a refund. See “Trading Rules of the Zhu Baji Platform,” <https://rule.zbj.com/ruleshow-0?pid=430&categoryId=278>, accessed Sept 26, 2020.

By the advantages of information technology, the platform can realize cross-regional and large-scale matching of trading opportunities and integrate the original scattered and local labor supply and demand into a national remote service industry. Even though the scale, time, and space of labor transactions have changed, the nature of the autonomous platform as a mediator has not changed, and its function is to provide an online market and rules to ensure the successful completion of transactions, rather than providing specific content of labor services or participating in individual transactions.

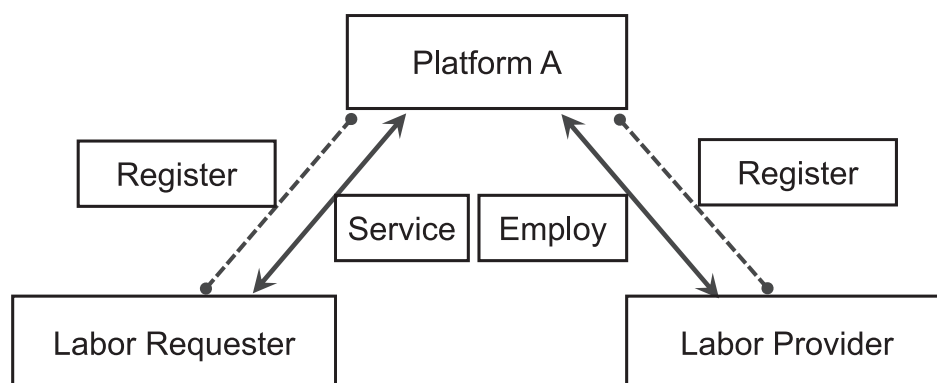
1.2 Organizational platforms

The function of such a platform is to provide labor services of specific content and is essentially an organizer of a certain type of labor transaction. After registering with the platform, the labor demander sends an order for labor to the platform, which then organizes the labor force to fulfill the order. Labor demanders and labor providers do not have direct contracting behavior, both to the platform for the transaction object. In my opinion, the labor platforms with the largest number of employed people in China all belong to the organization-type platforms, such as online car booking, takeaway delivery, same city express delivery, and online contract driving. Depending on how they organize their workforce, these platforms can be divided into the following three categories.

1.2.1 Model A

The platform hires the labor provider directly and enters into a labor contract with it, i.e., the platform is the employer and the labor provider is the worker. The platform receives an order from the labor demander and sends instructions to the laborer through the app. The contractual relationship in this model is shown in Figure 2 below.

There is no difference between the platform under this model as the main body of employment and the regular employer, only the way of a labor organization has adopted the means of information technology, but there is a clear labor contract relationship between the platform and the labor service provider, which belongs to the adjustment of labor law and is not innovative. However, the labor law stipulates that the employer is responsible for several guarantee obligations, such as written contract, termination protection, economic compensation, social insurance, etc., which makes the labor cost of this model high. Therefore, the platform usually adopts this model in the start-up phase.

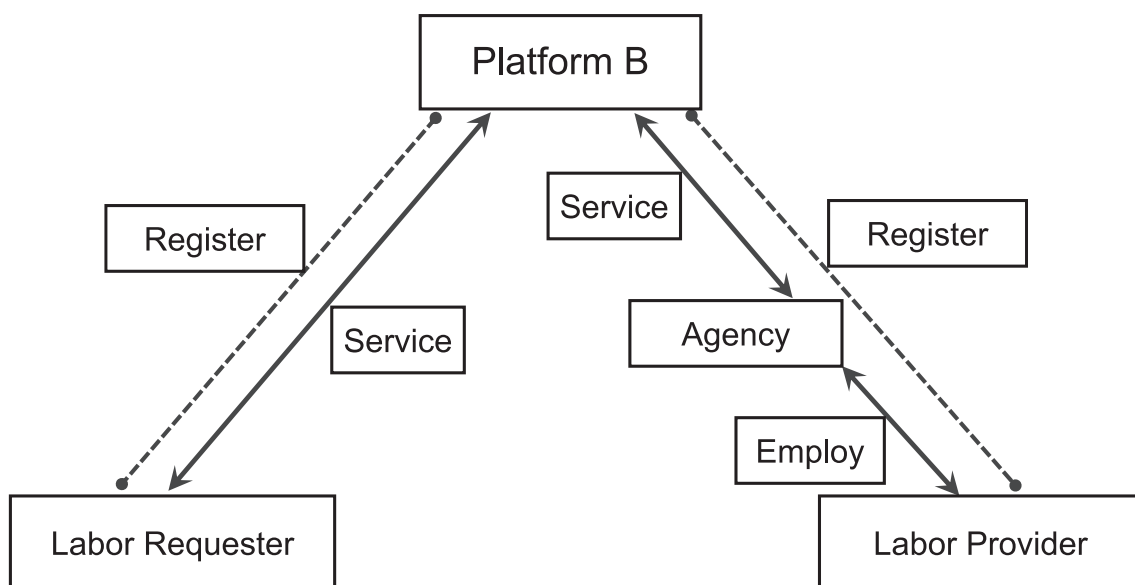


Source: Compiled by the author.

Figure 2. The relationship between the platform, labor requester, and provider under the Platform A model

1.2.2 Model B

The platform outsources the entire business of a specific region. The platform outsources the entire business of a specific region to an agent, who hires a labor provider to perform the work. This model is an evolution of Model A, where the platform is transformed from a direct provider of labor to a contractor, strengthening its position as a labor transaction organizer and improving the efficiency of labor organization and management through its agents. In the process of outsourcing, the platform also transfers the obligations of the employer in the labor related to the agent, who enters into a labor contract with the labor service provider, constituting a labor relationship between the agent and the labor service provider. In this model, the platform collects and processes the orders of labor demanders and assigns them to specific agents according to regions, who organize and manage their workers to provide specific labor services. The contractual relationship under this model is shown in Figure 3 below.



Source: Compiled by the author.

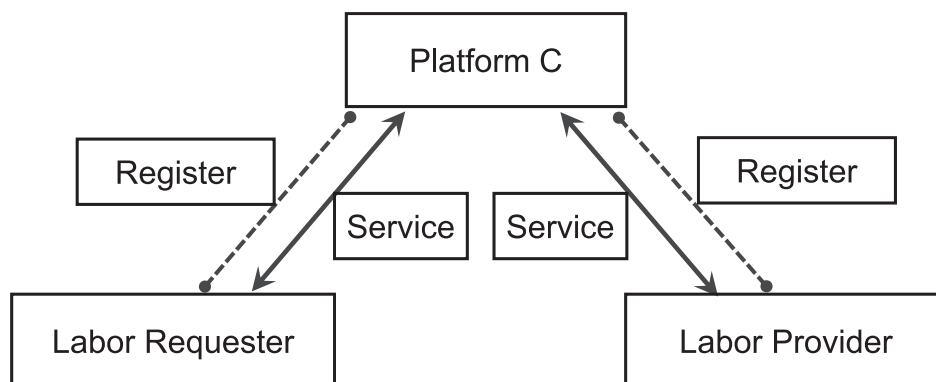
Figure 3. The relationship between the platform, labor requester and provider under the Platform B model

1.2.3 Model C

The labor service provider downloads the platform app and registers, and then becomes the platform's labor service provider after verification; no labor contract is concluded between the platform and the labor service provider; the labor service provider decides independently whether to work, when and where to work; the platform does not provide labor tools and does not carry out daily labor management, but only completes the labor service according to the platform's rules and the format of the contract between the platform and the labor service provider.⁴ The contractual relations under this model are shown in Figure 4 below.

This model is an innovative Internet platform for employment, where labor service providers can use convenient information channels to obtain labor demand orders and use their free time to provide labor services, which is precisely the labor transaction model referred to in the concept of the "sharing economy." There is no direct communication and contracting behavior between the supply and demand of labor services,

4. See Wu Qingjun and Li Zheng. 2019. "Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers' Work," *The Journal of Chinese Sociology* 6(1).



Source: Compiled by the author.

Figure 4. The relationship between the platform, labor requester, and provider under the Platform C model

the platform and labor demand side of the relationship remains unchanged, only the platform and the labor service provider to form a loose cooperation relationship, from the perspective of the contract is to complete the specific labor services for the target contractor relationship, the labor service provider to complete a specific outcome as the consideration for remuneration, the platform is the payer of the remuneration.

However, with the expansion of the business scope of the platform, more and more people are aware of the work autonomy they can enjoy by participating in platform labor, so some of them leave the regular employment organizations and engage in platform labor full-time, such as full-time online car drivers, which is a departure from the “sharing economy” that originally only emphasizes the use of free time to participate in work, and changed to rely on labor orders compensation for means of livelihood “gig economy.”⁵ This makes the original loose cooperation between the labor service providers and the platform from the original loose relationship to a more closely integrated relationship, mainly reflected in the labor service providers’ reliance on the platform income as a source of living.

According to my observation, the platform labor in Europe and the United States are limited to this model, and there are no A and B models mentioned above. In terms of contractual relations, the two models A and B are not innovative but are in essence “conventional employment in Internet clothing,” in which the organization and management of the workforce are still based on the labor contract, and the protection of the rights and interests of the labor providers involved is just a manifestation of old problems such as the lack of implementation of the labor law, which does not go beyond the existing “labor law.” The scope of adjustment provided for by the law does not, of course, constitute a challenge to existing legislation.

What needs to be confronted by law and legal theory is the C model, which is the new model of labor and employment under digital conditions. Given the large scale and complex pattern of China’s employment in the Internet platform, the judiciary and policy-making authorities are actively searching for regulatory solutions that meet the requirements of the information age.

2. Main legal issues of employment on Internet platforms

2.1 Scale of employment in organizational platforms

The major markets for organized platform labor have become dominated by one or more players, and estimates of the number of participants should capture the online car-hailing, chauffeur-driving, same-city

5. See Aloisi, Antonio. 2016. “Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of ‘On-Demand/ Gig Economy’ Platforms,” *Comparative Labor Law & Policy Journal* 37(3): 654.

courier, and food delivery platforms that employ the largest number of people. If you can roughly estimate the number of labor providers employed by these types of platforms, you will be able to make a basic judgment about the size of the platform's labor force. After all, the net chef, net nail, and other market share are very low, the number of participants is very limited, and the net car drivers, chauffeured drivers, Flash Delivery, takeaway riders are the main object of labor relations to identify disputes, but also a typical group with social protection needs.

In terms of net-contractor drivers, according to the statistics of the net-contractor regulatory information interaction platform, as of August 2019, more than 1.5 million net-contractor driver certificates have been issued in various places, and about 2 million drivers provide transport services daily.⁶ In terms of chauffeured drivers, Didi has the largest market share in the chauffeured driver industry, and its National Chauffeured Driver Consumption Report released in 2016 shows that 250,000 drivers have passed various assessments and are officially employed.⁷ In the City Express, the main platform "Flash" website shows that the platform in 2020 has 800,000 Flash Delivery staff.⁸ In the takeaway delivery, according to the Meituan Research Institute report, in 2018 there are 2.7 million riders' delivery orders;⁹ ranked second platform "Hungry" report shows that the platform's Hummingbird Delivery registered riders have reached 3 million.¹⁰ According to the above-mentioned data combined, can roughly estimate the main group of platform labor for 8.8 million. In the past two years, there has been no explosive growth in platform labor, it can be inferred that the scale of platform labor of concern to labor law should not exceed 10 million.

2.2 Main forms of legal disputes in organization-based platforms

From a risk perspective, since the main platform labor is currently related to road transport, the risk of traffic accidents is the greatest risk posed by platform labor, which can lead to damage in two ways: first, when the labor provider itself is injured, and second when the labor provider causes damage to third parties other than itself and the platform, including labor demanders and other third parties, such as road pedestrians.

The question of the contractual relationship between the labor provider and the platform has to be legally clarified, both in terms of the protection of the labor provider in case of his injury and whether the platform is liable for the damage caused by third parties. Under an autonomous platform, the supply and demand of labor are the two parties to the contract, and the platform is the interlocutor, which is not involved in the specific transaction and certainly not responsible for the damages in the performance of labor services, and the aforementioned common types of platform labor are not based on an autonomous platform. Under the organizational platform, both models A and B organize labor based on labor contracts, with clearer legal relationships and clear legal bases.

2.2.1 If a labor provider is injured, the platform or agent, as the employer, shall apply for work injury insurance for the labor provider following article 33 of the Social Insurance Law and article 2 of the Regulations on Work Injury Insurance, and shall apply to the social insurance agency for work injury insurance benefits when the injury occurs; if the platform or agent should have applied for work injury insurance for the labor provider but failed to do so, then, under the Regulations on Work Injury Insurance, article 62(2) of the Tort Liability

6. Beijing Youth Daily. 2019. "Over 1.5 Million Legal Online Taxi Drivers," Aug 29, 2019, http://www.xinhuanet.com/tech/2019-08/29/c_1124934243.htm, accessed Sept 10, 2020.

7. Didi Releases, "National Report on Chauffeured Driving Consumption," <http://www.techwalker.com/2016/0201/3072467.shtml>, accessed Sept 11, 2020.

8. Official website of Flash Delivery, <http://www.ishansong.com/aboutUs>, accessed Sept 11, 2020.

9. Meituan Research Institute. "New Urban Youth: 2018 Delivery Rider Employment Report," <https://about.meituan.com/institute>, accessed Sept 11, 2020.

10. Hungry Hummingbird Delivery. "2018 Takeaway Rider Group Insight Report," <http://www.nbd.com.cn/articles/2018-12-28/1286600.html>, accessed Sept 11, 2020.

Law, after the occurrence of a work-related accident, the platform or agent, as the employer, shall pay the costs related to the work-related injury insurance treatment.

If the labor service provider causes damage to a third party, the platform or agent, as the employer, shall be liable for the damage compensation for the worker's official acts, according to Article 34(1) of the Tort Liability Law, if the employer's staff causes damage to others by performing their work tasks, the employer shall be liable for the tort. In practice, part of the agent's management is not standardized, did not enter into a written labor contract with the labor provider, then the court by examining the agent's command management of the labor provider, that the two constitute a labor relationship, the agent is liable for damages to third parties.¹¹

2.2.2 C model of legal application is a divergence. The author through the "decision documents network" to 2014–2019 platform labor dispute case judgment to search, combing found that the court on the platform and labor service provider contract between the characterization of the two types of opposing views of the judgment.

The first type of judgment holds that labor service providers and online platforms constitute labor relations, or employment relations. The number of such judgments is relatively small, all of which are personal or property damages occurring during the performance of labor services, a few of which are caused by the labor service provider itself, and most of which are caused by the labor service provider to third parties' personal or property damages. The court determines the legal relationship between the labor service provider and the platform to determine the subject of liability, and the main points of investigation include the labor service provider engaging in the business of the platform, accepting the management of the platform, and being bound by the relevant system, and the payment of labor remuneration by the platform. Different courts have used different concepts of the contract of employment,¹² contract of service,¹³ and contract for service,¹⁴ to qualify the contractual relationship, and some courts have not explicitly defined the relationship, but using only the descriptive concept of "staff" and "performance of duties."¹⁵

The courts have taken two routes of analysis in such decisions: first, they have relied on the elements listed in the Notice on Matters Relating to the Establishment of Labor Relations issued by the former Ministry of Labor and Social Security (Ministry of Labor and Social Security [2005] No. 12) to determine labor relations, confirming that labor relations are the responsibility of the platform as the employer.¹⁶ Second, the minority courts have not determined labor relations, by alternative concepts such as "labor," "employment," "staff," "performance of functions," etc., as long as they can be introduced into the Code of Civil Procedure. Article 34 (1) of the Tort Liability Law, which states that "if a staff member of an employing unit causes damage to another person in the performance of his or her work, the employing unit shall be liable in tort," holds the platform responsible, which means that it can complete the task of adjudication of attribution of liability

11. See Changchun Nanguan District People's Court (2017) Ji 0102 Civil Judgment No. 223, Hefei Luyang District People's Court (2017) Wan 0103 Civil Judgment No. 5604, Hefei Luyang District People's Court (2018) Wan 0103 Civil Judgment No. 2653, Hefei Luyang District People's Court (2017) Wan 0103 Civil Judgment No. 5604, Shanghai Qingpu District People's Court (2016) Hu 0118 Civil Judgment No. 13396.

12. See Beijing Haidian District People's Court (2017) Beijing 0108 Civil Judgment No. 53634, Chongqing Fifth Intermediate People's Court (2017) Chongqing 05 Xing Final Administrative Judgment No. 351.

13. See Xi'an Intermediate People's Court (2017) Civil Judgment No. 11374 of Shaanxi 01 Min Final.

14. See Shanghai Pudong New Area People's Court (2014) Pu Min Yi (Min) Chu Zi No. 37776 Civil Judgment, Guangzhou Intermediate People's Court (2017) Yue 01 Min Final No. 13837 Civil Judgment, Shanghai Railway Transportation People's Court (2017) Shanghai 7101 Min Final No. 621 Civil Judgment, Shanghai Railway Transportation People's Court (2017) Shanghai 7101 Min Final No. 617 Civil Judgment, Tianjin Second Intermediate People's Court (2017) Tianjin 02 Criminal Final No. 62 Criminal Judgment.

15. See also Hangzhou Intermediate People's Court (2017) Zhe 01 Min end 4425 Civil Judgment, Shanghai First Intermediate People's Court (2017) Hu 01 Min end 10822 Civil Judgment, and Shanghai Minhang District People's Court (2017) Hu 0112 Min end 12313 Civil Judgment.

without extending to the labor law system, and can avoid other safeguard matters based on labor relations.¹⁷

The second type of ruling holds that the platform does not constitute a labor relationship with the labor service provider. There are a large number of such judgments, including two types: one is a rare case where the labor service provider petitions the court to determine the labor relationship to obtain protection for labor rights and interests, such as work injury relief,¹⁸ the other is a more frequent case where the performance of labor services causes personal injury to a third party, and the court determines the contractual relationship between the platform and the labor service provider for attribution.¹⁹ The court relied on the characteristics of the labor service provider's work, including its right to decide whether to work, as well as the time and place of work, and the income from work is not remuneration for labor; the platform does not provide the tools of labor, does not have management, domination or mandatory constraints on the labor service provider does not meet the characteristics of subordination, the two parties do not constitute a labor relationship. Therefore, the platform does not assume the employer's obligations under labor law to the labor service provider and is not liable for any third-party damages caused by the labor service provider.

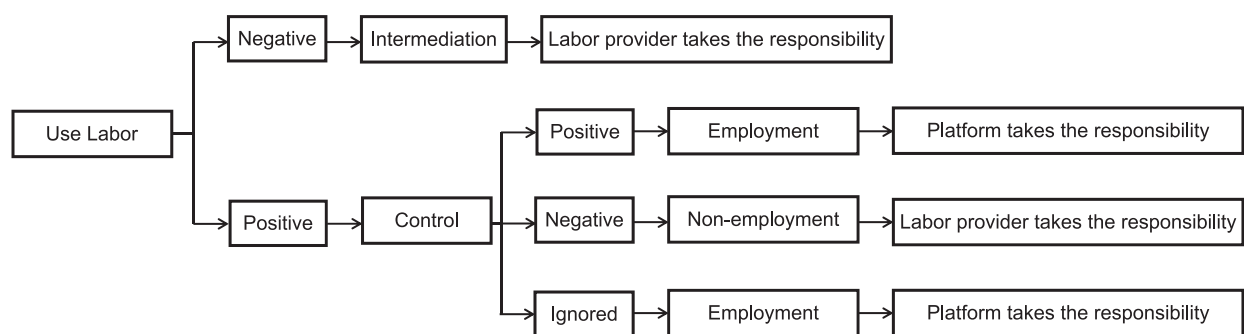
While denying the labor relationship, some courts further analyzed the nature of the contract, pointing out that the online platform is engaged in intermediary services by providing information, and the relationship between it and the labor service provider is an intermediary contract.²⁰ Besides, in cases in which the third party claimed damages, a few courts did not take the labor relationship as the starting point, but directly identified the online platform as an intermediary based on its behavior and functions.²¹

16. The Notice on Matters Relating to the Establishment of Labor Relations is the basic basis for the judicial determination of labor relations in China. Article 1 of the Notice stipulates that a labor relationship is established if the employer has not concluded a written labor contract but, at the same time, the following circumstances are present: 1. the employer and the worker meet the main qualifications stipulated in-laws and regulations; 2. the labor rules and regulations formulated by the employer following the law apply to the worker, and the worker is subject to the labor management of the employer and engages in remunerated labor arranged by the employer, and 3. the employer and the worker meet the main qualifications stipulated in-laws and regulations; and 4. the worker is subject to the labor management of the employer and engages in remunerated labor arranged by the employer. The work provided by the worker is part of the employer's business.

17. For example, in a case where the platform was found to be in an "employment relationship" with a labor service provider, the court stated: "The workplace, working hours and monthly remuneration for labor are all factors to be taken into account in determining whether a labor relationship exists between the parties, but they do not prevent the establishment of an employment relationship between the parties." See the Guangzhou Intermediate People's Court (2017) Civil Judgment No. 13837; in another case in which the labor service provider was found to be "performing its duties," the court, after ruling that the platform was liable to the injured third party, stated that the platform and the labor service provider "were what kind of legal relationship has nothing to do with the personal injury compensation dispute involved in this case, and the parties may deal with it separately based on the agreement." See Shanghai No. 1 Intermediate People's Court (2017) civil judgment No. 10822 of Shanghai 01 Minzhong.

18. See Beijing Shijingshan District People's Court (2016) Beijing 0107 Civil Judgment No. 4021, Anhui Province Chuzhou City Intermediate People's Court (2017) Anhui 11 Civil Judgment No. 938, Shandong Province Weihai City Intermediate People's Court (2017) Lu 10 Civil Judgment No. 1858, Jiangsu Province Wuxi City Liangxi District People's Court (2017) Su 0213 Civil Judgment No. 8149, Beijing Third Intermediate People's Court (2018) Beijing 03 Civil Judgment No. 5233, and Shanghai Second Intermediate People's Court (2019) Shanghai 02 Civil Judgment No. 755.

19. See Nanjing Gulou District People's Court (2015) Gumin Chuzhi Civil Judgment No. 7340, Shanghai Hongkou District People's Court (2016) Hu 0109 Min Chu No. 22401, Shanghai Pudong New Area People's Court (2016) Hu 0115 Min Chu No. 81742, Beijing Xicheng District People's Court (2017) Jing 0102 Min Chu No. Civil Judgment No. 32348, Beijing Dongcheng District People's Court (2017) Jing 0101 Civil Judgment No. 6586, Beijing Xicheng District People's Court (2017) Jing 0102 Civil Judgment No. 10084, Beijing Fengtai District People's Court (2017) Jing 0106 Civil Judgment No. 14428, Wuxi City Liangxi District People's Court (2017) civil judgment No. 8149 of Su 0213 Minchu, civil judgment No. 187 of Qingdao Licang District People's Court (2017) civil judgment No. 187 of Lu 0213 Minchu, civil judgment No. 7604 of Tianjin Hedong District People's Court (2017) civil judgment No. 7604 of Tianjin 0102 Minchu, civil judgment No. 1322 of Nanjing Gulou District People's Court (2017) civil judgment No. 1322 of Su 0106 Minchu; Nanjing Qinhuai District People's Court (2017) Su 0104 Civil Judgment No. 937, Nanjing Xuanwu District People's Court (2017) Su 0102 Civil Judgment No. 5396, Shanghai Pudong New Area People's Court (2017) Shanghai 0115 Civil Judgment No. 25255; Shanghai Pudong New Area People's Court (2017) Shanghai 0115 Civil Judgment No. 25257 Judgment, Shanghai Jing'an District People's Court (2017) Hu 0106 Civil Judgment No. 8770, Shanghai Xuhui District People's Court (2017) Hu 0104 Civil Judgment No. 8948, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Civil Judgment No. 1626, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Civil No. 1046 Civil Judgment, Beijing Xicheng District People's Court (2018) Beijing 0102 Minchu 4883 Civil Judgment.



Source: Compiled by the author.

Figure 5. The court's reasoning logic for platform labor

Combining the above two types of decisions, the courts have developed a variety of decision logic for cases with essentially the same facts, as shown in Figure 5.

3. Academic debate on the legal aspects of platform labor

What kind of control does the Platform exert over the service provider and does that control prove the subordination of the labor relationship? This is the source of the argument. The opposite of platform control is the autonomy of the labor provider, which constitutes a contradiction between the two poles. From the existing literature, one side emphasizes control, arguing that platform control is a new type of control under the condition of information to prove the establishment of labor relations; the other side emphasizes autonomy, arguing that labor service providers have autonomy different from that of workers in labor relations, thus arguing that labor relations are not established. In this debate, at least we can establish that platform labor is different from conventional labor relations in terms of the basic characteristics of “control and autonomy,” then we should review our way of answering the core question of “what is platform labor” and clarify how we are discussing it.

3.1 The myth of “control” and “autonomy”

The fact of platform labor is clear in the study, and the two most legally significant points of concern to the researcher are: on the one hand, the platform controls the service process of the labor provider through scoring mechanisms and data collection, and on the case of online car service, “the way the driver completes the work and the working environment is controlled by the scoring mechanism. The scoring mechanism implies a shift in supervisory authority and conflict.”²² On the other hand, labor providers enjoy a high degree of autonomy in deciding whether to work, when to work, and where to work, which is not possible under conventional labor relations.

20. See Shanghai Pudong New Area People's Court (2016) Shanghai 0115 Civil Judgment No. 81742, Jiangsu Province Wuxi City Liangxi District People's Court (2017) Su0213 Civil Judgment No. 8149, Shandong Province Qingdao City Licang District People's Court (2017) Lu0213 Civil Judgment No. 187, Tianjin City Hedong District People's Court (2017) Tianjin Civil Judgment No. 7604, Nanjing Xuanwu District People's Court, Jiangsu Province (2017) Su 0102 Civil Judgment No. 5396, Shanghai Pudong New Area People's Court (2017) Shanghai 0115 Civil Judgment No. 25255, Shanghai Jing'an District People's Court (2017) Hu 0106 Minchu 8770, Shanghai Xuhui District People's Court (2017) Hu 0104 Minchu 8948, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Minchu 1626, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Minchu Civil Judgment No. 1046, Beijing Fengtai District People's Court (2017) Jing 0106 Minchu 14428, and Beijing Xicheng District People's Court (2018) Jing 0102 Minchu 4883.

21. See Nanjing Gulou District People's Court, Jiangsu Province (2015) Civil Judgment No. 7340 of Gumin Chuji, and Nanjing Qinhuai District People's Court, Jiangsu Province (2017) Civil Judgment No. 937 of Su 0104 Minchu.

22. See Wu Qingjun and Li Zheng. 2019. “Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers' Work,” *The Journal of Chinese Sociology* 6(1).

3.1.1 Scholars who focus on “control” argue for a labor relationship between the platform and the labor provider. For example, Professor Chang Kai points out that “any operation of the workers on the platform is within the scope of the procedures set by the Internet enterprise, and it can be said that the Internet enterprise is giving work orders and work instructions to the platform workers all the time, and the Internet enterprise is also giving work orders and work instructions to the platform workers all the time. Workers in the economy are subject to stricter personality discipline than the direct surveillance in traditional enterprises.”²³ Researcher Zengyi Xie also argues that “compared to traditional labor relations, in a sense, the control of platform companies over their workers has increased rather than decreased.”²⁴

Another view is that platform control over labor providers is weaker than in conventional labor relations, with the result that the subordination of labor providers is consequently weakened. To describe this state of affairs, the existing literature has developed the concept of “atypical labor relations,” and Associate Professor Zhang Sufeng, in her study of online car booking, suggests that “an atypical labor relationship is formed between the software operator of a private car and the driver of a private car in which the subordinate attributes are weakened and the nature of the employment relationship is ambiguous.”²⁵ Professor Tian Silu argues that flexible employment forms such as shared labor on online platforms weaken subordination, “for example, practitioners provide services based on the instructions of user companies or online platform companies, which have the characteristics of partial subordination, in the middle realm of employment and self-employment.”²⁶

3.1.2 Scholars who focus on “autonomy” argue that there is no labor relationship between the platform and the labor provider. Among them, Professor Yu Ying points out that “since labor providers can control the time and intensity of work by themselves, the subordination of their personality is very weak. The platform does not control wages, and the economic subordination is relatively weak. In addition, at this time the labor provider is even more not subordinate to the corporate system, and has not been incorporated into the corporate organization, the organization’s subordinate attributes are also more difficult to comply with, and do not meet the requirements of the theory of subordination.”²⁷ Ban Xiaohui argues that platform labor is “the task-based employment of the gig economy,” and “the feature that labor providers are controlled by platform enterprises is not obvious.” The continuation of the employment relationship, the blurring of the personal subordination of the employment relationship, the weakening of the organizational subordination of the employment relationship, and the lowering of the economic subordination of the employment relationship.”²⁸ Associate Professor Lou Yu is even more direct in pointing out that “the way workers participate in economic life and receive remuneration has also changed fundamentally, they are no longer employees in the employer’s organization, but have evolved into self-employed people working with platform companies.”²⁹

3.1.3 Summary. The sticking point in the existing discussion, where no consensus has emerged, is whether the platform’s control over the labor provider is stronger or weaker than the employer’s control over the worker in a conventional labor relationship. The answer to this question determines whether the labor provider has the

23. Chang Kai and Zheng Xiaojing. “Employment Relationships or Cooperative Relationships: An Analysis of the Nature of Employment Relationships in the Internet Economy,” *Journal of Renmin University of China*, No. 2, 2019.

24. Xie Zengyi. “Identification of Labor Relations of Internet Platform Workers,” *Chinese-Foreign Law*, No. 6, 2018.

25. Zhang Sufeng. “The Atypical Employment Issues in the Operation of ‘Special Vehicles’ and its Regulation,” *Journal of East China University of Political Science and Law*, No. 6, 2016.

26. Tian Silu. “The Subordinate Labor Theory in the Era of Industry 4.0,” *Law Review*, No. 1, 2019.

27. Yu Ying. “The Recognition of Sharing Economy Employment Relationships and its Legal Regulation: Taking the Understanding of the Current Domain of the ‘Sharing Economy’ as a Starting Point,” *Journal of East China University of Political Science and Law*, No. 3, 2018.

28. Ban Xiaohui. “The Labor Law Regulation of Task-Based Employment under the Gig Economy,” *Law Review*, No. 3, 2019.

29. Lou Yu. “The design of social insurance system for new employment form groups,” *China Medical Insurance*, No. 1, 2020.

subordination of the worker under the labor relationship, and if the platform control is stronger, then it should be clear from the existing subordination theory that the problem of platform labor is also a problem of enforcement of existing subordination rules; if the platform control is weaker, leading to “fuzzy employment,” then. Should the existing subordination doctrine and criteria be amended to include platform workers in labor law adjustments? Or should a separate safeguard mechanism be structured according to the characteristics of the Platform’s workforce? So, no matter how you ask the question, there is no way around the “must do” from the property.

3.2 Subordinate criteria

3.2.1 The first view is that we should adhere to the existing subordinate criteria, “the traditional concept of labor relations and judgment criteria are flexible and adaptable, not entirely obsolete, but can still be accommodated in the network platform labor relations.”³⁰ The first view is that we should adhere to the existing subordinate criteria, “the traditional concept of labor relations and the criteria for determining them are highly flexible and adaptable,” and that “the traditional concept and criteria for determining them are not completely outdated and can still accommodate employment relationships on online platforms,” “the existing problem is that in the face of new forms of labor relations,” “directly applying the existing legal provisions will face the problem of adaptability,” and the corresponding response is that “we should adhere to the criteria for determining labor relations in the following areas.³¹ Based on the standards and the corresponding labor legislation, appropriate adjustments should be made in accordance with the characteristics of the platform and the platform’s employees.”³² It can be seen that this view is based on a stronger control of the platform’s employment, in line with the existing subordinate criteria.

3.2.2 The second view is that the criteria for recognizing labor relations should be relaxed by revising the dependent attribute theory. For example, Professor Wang Quanxing believes that “based on the principle that labor relations are dependent and continuous employment relations, we should explore the index series for recognizing atypical labor relations based on some organizational dependent attributes, external economic dependent attributes, and continuity recognizes ‘internet workers’ with a certain degree of subordination and continuity as atypical labor relations” and selectively applies the means of labor law protection.³³ Professor Tian Silu points out that “even if the practitioner does not have human subordination when economic subordination is deemed to exist, legal provisions consistent with the purpose of the labor contract can be applied more broadly and provide a certain level of legal protection corresponding to that degree of subordination.”³⁴ It can be seen that this view is based on the fact that the degree of control of platform employees is weak, and it is difficult to identify labor relations according to the existing subordination standard, so by amending or relaxing the standard, the purpose of applying labor laws can be achieved, and by positioning “atypical labor relations,” the labor law protection of platform employees is different from that of conventional labor relations.

30. Xie Zengyi. “Identification of Labor Relations of Internet Platform Workers,” *Chinese-Foreign Law*, No. 6, 2018.

31. Chang Kai and Zheng Xiaojing. “Employment Relationships or Cooperative Relationships: An Analysis of the Nature of Employment Relationships in the Internet Economy,” *Journal of Renmin University of China*, No. 2, 2019.

32. Fan Wei. “The Dilemma of Rights Protection for Internet Platform Employees and the Analysis of Their Judicial Decisions,” *China Human Resources Development*, No. 12, 2019.

33. Wang Quanxing and Wang Xi. “Labor Relations Identification and Rights Protection of Online Contract Workers in China,” *Jurisprudence*, No. 4, 2018.

34. Tian Silu. “The Subordinate Labor Theory in the Era of Industry 4.0,” *Law Review*, No. 1, 2019.

3.2.3 The third view is that we should adhere to the existing subordinate criteria to identify labor relations, and since platform labor does not meet the current standards, it is not a labor relationship, and a new type of legal relationship should be created. According to researcher Ban Xiaohui, the object of adjustment of labor law should be changed from the traditional “labor relations” to “work relations,” and “the subjects of employment who personally provide labor services in the status of economic dependence should be included in the scope of protection of labor law. It is not included in the adjustment of the labor law, but is guaranteed in terms of wages, hours and social security.”³⁵ According to Professor Yu Ying, “a third model of employment relations—gig relations—is established in the middle of the labor relations and labor relations, which is not included in the adjustment of the labor law, but is guaranteed in terms of wages, working hours and social security.”³⁶

3.3 Recent academic developments

On September 26, 2020, the Institute of Law of the Chinese Academy of Social Sciences held an academic seminar on “Legal Protection for Workers in New Employment Forms,” which was attended by all major domestic labor law scholars, most of whom believed that labor law is not suitable for adjusting the platform labor of the organization-based platform C model and that a relatively independent normative system should be explored.

I maintain that the challenge to platform labor is not the labor law, but the dichotomy of “dependent labor-independent labor.” The so-called “labor dichotomy” refers to the fact that the current law divides various types of labor payment activities into “dependent labor” and “independent labor,” and that the labor law regulates the “dependent labor” and “independent labor.” Labor relations with the content of “subordinate labor” emphasize the inequality between workers and employers; civil law regulates civil relations with the content of “independent labor” based on the equality of the two parties, including employment, entrustment, contracting, custody and so on. There are many forms of labor law in China. And because China’s labor law has formed an independent development path in history, it has never been united with the civil law, so the two have developed into their independent legal departments, and the “dependent labor” and “independent labor” are also separated into two parallel fields.

Under this dichotomy, the characterization of labor relations determines the level of protection of the rights and interests of the parties, and the only two options of labor law and civil law form a “bipolar” either labor relations that are adequately protected by a large number of peremptory norms, or civil relations that are difficult to guarantee due to the lack of peremptory norms. It is under this legal framework that platform labor emerged, and the system, the judiciary, and the doctrine have tried to respond to the “choice between the two,” but have been unable to come up with a circumspect answer.

In my opinion, the fundamental reason for the difficulty of explaining platform labor from the perspective of labor law is that the starting point of platform labor is the contract for service, which can be viewed as the result of the socialization of the contract for service. As a fundamental characteristic of the contract for service, a contractor is required to perform services independently and deliver a specific result. The other contractor does not interfere with the contractor’s labor process, and it is not often imagined that the contractor will primarily serve a single contractor. For example, in the social division of labor formed by industrialization in Germany, there were a large number of people who provided ancillary processing or services to the factory. As early as the nineteenth century, there was already “a manufacturer of ballpoint pens who, after producing the parts, delegated the assembly work to several families.”³⁷

35. Ban Xiaohui. “The Labor Law Regulation of Task-Based Employment under the Gig Economy,” *Law Review*, No. 3, 2019.

36. Yu Ying. “The Recognition of Sharing Economy Employment Relationships and its Legal Regulation: Taking the Understanding of the Current Domain of the ‘Sharing Economy’ as a Starting Point,” *Journal of East China University of Political Science and Law*, No. 3, 2018.

Under this production structure, those who provide ancillary processing or services to the factory are unconsciously integrated into the social division of labor, and as contractors, although they are still remunerated for the delivery of a specific product, the fact that their main remuneration for their subsistence comes from having a specific contractual counterpart makes this long-standing contract a guarantee of their right to subsistence, and thus the right of the State to individual subsistence. The obligation to guarantee is linked. At the same time, this type of contract, as part of the social division of production, does not exist in isolation but shapes a population that depends on it for its livelihood. Although this group of people is not as large as the group of employees, it is an important group that cannot be ignored and requires social protection, both as a unit of labor in the socialization of production and as part of the social community. Accordingly, the contract between the contractor and the plant has been socialized, and the performance of that contract is not simply a private event between the subjects of the contracting relationship but is infused with social elements. As a result of this process of socialization, the contractor's independence in the contract is gradually lost and, by attaching economic subordination to the contract, the contractor also becomes the employee-like person.

The platform uses work as the new form of the employee-like person in the network environment, which is essentially the scattered, individually occurring, labor content of the contract, through the network technology to quickly upgrade to a social service form. The common take-away food delivery and city courier are distinctive features of the contracting, even if it is an online car or a driver, as a delivery contract, also belongs to the contracting. Based on this point of view, platform labor is a contract for the contractor (labor provider) to perform specific labor results to a third party other than the contractor (platform), and the labor results are agreed upon between the contractor and the third party, so the contract of employment also stipulates the way and standard for the contractor to perform the labor results to the third party, which is the appearance of behavior factor. The right to evaluate the results of the services performed by the contractor (the provider) is partially transferred to a third party (the customer), but the final evaluation is still made by the contractor (the platform), i.e., the contractor (the service provider) is rewarded or punished based on the evaluation of the third party (the customer) by the contractor (the platform). Since the contracting relationship is continuous over a while, the performance of the contractor's services and the evaluation of the third party have an impact on the consideration and the contracting opportunity, and this impact has been objectified as "platform points," which I believe can be included in the "economic subordination." This is to be understood in the context of the "platform credits." As a result of the closer economic integration between the "platform points" and the platform, labor service providers are more willing to comply with the platform's pricing mechanism and service standard requirements, their independence as contractors is weakening, and their need for social protection is intensifying. It can be seen that labor providers have become an integral part of the social division of labor in the Internet era, with a clear need for social protection, but also because of the efficiency of online matching, which allows them to connect with a large number of unspecified third parties (customers), and the socialization of contracting is deepening with the efficiency of the internet era.

4. Policy trends for the platform labor

Against the backdrop that the development of the Internet platform labor model is maturing and the exploration of the rule of law has touched on the substance of such issues, the General Office of the State Council issued the Guiding Opinions on Promoting the Normative and Healthy Development of the Platform Economy (Guo Ban Fa [2019] No. 38) (hereinafter referred to as the Guiding Opinions) on August 8, 2019, which can be described as comprehensively defining various issues of the platform economy from the height of top-level design, particularly capturing the focal issues of platform labor and indicating the direction of

37. See Hromadka, Wolfgang. 1997. *Arbeitnehmerbegriff und Arbeitsrecht: Zur Diskussion um die 'neue Selbständigkeit'*, 11 NZA, S. 569–573.

development of the future system, including.

4.1 Existing labor law norms are not rigidly applied to platform workers, but rather are categorized and adjusted according to the characteristics of platform workers. As stipulated in Article 2(1) of the Guiding Opinions, “For those that can be seen accurately and have already formed a good momentum of development, the appropriate regulatory model should be tailored by category, avoiding the use of old methods to manage new business forms; for those that cannot be seen for a while, a certain ‘observation period’ should be set up to prevent them from being controlled to death at once.” Accordingly, the autonomous platforms and organizational platforms A and B models, which have a clear contractual nature and legal basis, can be tailored to the corresponding regulatory models.

At the level of local practice, Chengdu City issued the Implementation Opinions on Promoting the Participation of Employees in New Economy and New Businesses in Social Insurance, which classifies the forms of platform labor into full-time, part-time, labor dispatch, labor outsourcing, and civil agreement, and requires the employing entity to assume corresponding obligations according to the contractual relationship between it and the employees. This policy direction is precisely in line with the differences between different models of organizational platforms, and does not mix up platform labor, but focuses on distinguishing the two models of organizational A and B from model C. The forms of labor that fall within the scope of regular labor relations are adjusted according to the existing labor law, while the innovative models that cannot be included in the adjustment of the labor law are first included in the civil agreement, which precisely reflects the idea of “avoiding the old way of managing the new industry.”

4.2 The system for safeguarding occupational injuries of platform workers is the focus of current system construction. Based on the causes of platform employment dispute cases, it can be found that the proportion of cases in which the labor service provider directly requests to recognize the labor relationship is very low when no damage is caused by the accident, but after the accident, which party should bear the consequences of the damage is the focus of the dispute, and the different understanding of the responsibility for the damage can form the differences in the ideas of court decisions. Therefore, occupational injury protection for platform employees can be said to be the crux of the current legal problem, and whether or not the labor relationship can be recognized makes the solution of this problem dilemma.

Against this background, the Guiding Opinions goes beyond the existing thinking and arguments, and looks at this issue out of the dual legislative framework of civil law and labor law, and addresses the issue of occupational injury protection for platform workers as an independent issue, and proposes a two-step approach to solving the problem: the first step is to protect labor service providers of platform workers utilizing commercial insurance. “The platform is encouraged to spread the risk by purchasing insurance products to better protect the rights and interests of all parties.” This approach has been adopted by many platforms to play the function of protection, for example, the Meituan platform deducts 3 yuan from the rider’s first order labor fee that day, to ensure accident insurance.³⁸ The second step is to focus on the future and build a special social security system, which is stipulated in Article 5(1) of the opinion, “to closely study and improve social security policies for employees of platform enterprises, such as employment and flexible employment, to carry out pilot projects on occupational injury protection, and to actively promote a universal insurance plan to guide more platform employees to participate in insurance.” From this provision, it can be seen that the policy level integrates platform labor and flexible employment, and to adapt to the trend of flexible and flexible labor methods in the future, the construction of the social security system is the main focus, and in addition to the

38. Meituan Crowdsourced Rider Labor Agreement.

guarantee mechanisms provided by the civil law and labor law, the construction of an integrated social safety net is built, and the “universal insurance scheme” is taken as the system.

The direction of development is to go beyond the established model of risk-sharing between the parties to a specific transaction and to spread occupational risk throughout society. It can be expected that this institutional development will not only further promote the development of platform employment and other forms of flexible employment, but will also facilitate the shift to a dual legislative framework of “independent labor” and “subordinate labor,” with a view to the development of other forms of employment beyond current institutional protection of the form of labor, to move from the existing dualistic legislative framework to a multi-level network of legal protection.

4.3 Strengthening the government’s supervisory responsibility, scientifically defining the responsibilities of platforms, and effectively controlling the social risks arising from platform labor. As mentioned above, the current social risk of platform labor is mainly the risk of traffic accidents, which covers labor service providers, labor demanders, and the general public. Besides, there are also other types of risks, such as the risk of personal safety and security of passengers of online contracted vehicles and the risk of personal information protection of platform clients, but from the perspective of judicial practice, the risk of traffic accidents constitutes the largest proportion of social risks.

As to how to prevent and control the risk of traffic accidents arising from the employment of platform workers, one viewpoint is to advocate strengthening the responsibility of the platform, because labor service providers, under the pressure of the platform, generally and frequently violate traffic rules, thus increasing the risk of traffic accidents, and the conclusion is to strengthen the supervision of the platform. On the one hand, the algorithm of the platform, if the platform based on the algorithm to the labor provider to set the completion of the order is too short, then the government should intervene to correct; on the other hand, we should see that the labor provider to complete the order as a source of income, even without the platform to set the time pressure, it will still in a certain period to complete the order as much as possible. If the traffic law enforcement department fails to investigate and deal with such violations promptly, it seems a “rational” choice to reduce the cost of delivery time by breaking the traffic law. It is impossible to require the platform to constantly supervise a large number of labor service providers in a wide range of areas, and the result is that the government’s supervisory responsibility is not consolidated, the platform management responsibility cannot be realized, and the social risk accumulates and accidents are more likely to occur. Therefore, Article 2(2) of the Guiding Opinions stipulates that “the corresponding responsibilities of the platform in terms of protection of workers’ rights and interests shall be clearly defined, and the supervision and law enforcement responsibilities of government departments shall be strengthened, so that the regulatory responsibilities that should be borne by the government shall not be transferred to the platform.”

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