

Research on the legal protection of labor rights and interests of college students in post internship

Lao Jinhao¹, Chen Shengying²

¹*School of Marine Law and Humanities, Dalian Ocean University, Dalian, China*

²*Department of Journalism, Liaoning University of Communication, Dalian, China*

Keywords: College students' on-site internship, labor rights and interests, existing problems, legal protection

Abstract: Post practice in colleges and universities is a new talent training mode to increase students' practical operation ability. At present, the law of our country has few provisions on the protection of the labor rights and interests of the students in the internship, and the supply of the legal system is weak, which leads to the difficulty of the students in the employment of the internship. The identity of internship student worker is not recognized, the legal nature of internship contract is denied, which makes the case of infringement of internship student labor rights and interests is very common. This paper consists of four parts. Starting with the concept of post internship, this paper analyzes the current situation of the protection of the labor rights and interests of college students in post internship, and finds out the problems existing in the protection of the labor rights and interests of college students in post internship. First, the lack of legal recognition during the internship. Second, the failure realizes the rights of the labor contract during the internship. Third, the failure to implement the social insurance rights and interests during the internship. Finally, the disconnection between enterprises and schools in many aspects of management. The paper puts forward the countermeasures to improve the legal protection of labor rights and interests of college students during the internship: clarify the labor status of college students during the internship, guarantee the realization of contract rights through legislation, establish and improve the student insurance system during the internship and establish a comprehensive evaluation system of school-enterprise cooperation, so as to improve the labor rights and interests of college students during the internship. It is hoped to ensure that the work of the internship can be standardized and orderly implemented, so that the effect of the internship can be improved, and the professional quality and vocational skills can be comprehensively improved.

1. Overview of post internship

(1) Conceptual analysis of post internship

1.1. The concept of post internship

After students finish basic theory courses, experiment courses and strengthen basic vocational

skills, they are organized by the school to carry out production practice in the employer, so that the students can replace the enterprise employees in specific vocational positions to carry out "real sword and real gun" technical work.

Therefore, the implementation of on-the-job practice is not only the main stage of practical teaching in schools, but also has an obvious role in its teaching.^[1]According to the "Decision of The State Council on Vigorously Developing Vocational Education" issued by The State Council in 2002, the school plans the "2+1" education model, that is, study in school for two years, the third year to the designated enterprise of the major to do internship work, the internship period is 12 months, and the school will arrange employment uniformly after the expiry of the term to solve the students' employment difficulties.

At present, there is no unified definition of post internship in our country, but it can be concluded that post internship has the following characteristics:

(1) The educational and professional nature of the overall arrangement. During the internship, the school, as the organizer, plays an important role in education of students' professional skills and living conditions; During the internship, students, as employees of the enterprise, should strictly abide by the rules and regulations of the enterprise, complete the task according to the requirements of the enterprise, and have a certain degree of professionalism.

(2) The pertinence of skill learning. The internship enterprise is mainly the counterpart of the student's major, and the student's learning in the enterprise echoes the study in school, which can strengthen the basic skills learned in school.

(3) The duality of student identity. During the internship period, the student status is retained in school, and the production labor is carried out in the enterprise as an employee.

1.2. Distinguish the concept of post internship and work-study

Work-study is a paid labor activity organized by the school or individual students to help students. It is called "work-study" in the United States, Japan and other countries. In the work-study, students through individual labor, establish students correct labor concept and consumption concept, develop independence, hard work and other good thinking style; In the practical work to strengthen the theoretical study and practical connection, master a certain production knowledge and labor skills. The remuneration obtained by students through work is used to meet personal living expenses and study expenses. On the other hand, the internship mainly focuses on social practice of basic skills in order to gain better practical experience after entering the society.

Although work-study and post internship can cultivate college students' correct view of labor and ideological style, their starting points and organizers are different.

For the internship, the management mechanism of foreign cooperative education has various forms, and attaches great importance to the communication and coordination between schools and enterprises. Angel in the AModelMentoringProgramforCo - OpStudents pointed out that the cooperative education mainly concentrated, dispersion and the principles of combining centralization and decentralization three ways. Centralized management is mainly the school management, and has a special management organization, by the full-time staff is responsible for the operation;

Decentralized management is based on department management, and the personnel in charge of teaching carry out comprehensive and coordinated operation of cooperative education; The combination of centralized and decentralized management is that the full-time coordinator of the school and the faculty are jointly responsible for the management and coordination. ^[2]In practice, most of the cooperative education management modes in the United States are based on the centralized management of the school, and the decentralized management mode based on the

department is relatively rare. In cooperative education, schools and enterprises should reach an agreement on information sharing, and communication and coordination should be completed under the framework of cooperative education, so as to jointly ensure the smooth development of cooperative education and achieve effective results.

2. Current situation of labor rights protection of college students in post internship

Labor rights and interests refer to the rights that workers enjoy and obtain legal protection in the process of participating in labor. In our country, laborers depend on The working people have a wide range of rights under the law, including the right to social security and welfare. Sickness and old age are unavoidable for every worker. Social security is an objective necessity for the reproduction of labor force. China's Labor law stipulates that labor insurance includes: endowment insurance, medical insurance, work-related injury insurance, unemployment insurance, maternity insurance and so on.

(1) General labor rights and interests of college students on post practice

1) Equal employment rights

College students on post practice enjoy equal employment rights, social insurance and welfare rights, vocational skills training rights and other rights stipulated by law. Laborers shall enjoy equal rights at work. It refers to citizens who are able to work and have the right to employment. Work is the first basic condition for people's life and the source of material and spiritual wealth. The right to work and employment is the right of citizens who are able to work to participate in social work and to secure wages commensurate with their work. The right to work and employment is the basis for citizens to enjoy other rights. If citizens' right to work and employment is not realized, all other rights will lose their foundation.

2) Right to occupational safety and health protection

The right to occupational safety and health protection. The term refers to the right of workers to request their units to provide a safe working environment and necessary labor protection articles to protect their safety and health. Among them, minors and women workers between the ages of 16 and 18, as well as those engaged in toxic and harmful industries, high temperature radiation, underground operations and other special types of work, shall be given special protection of labor safety and health. Taking mechanical and electrical integration as an example, students in colleges and higher vocational colleges have the right to request environmental health and safety of workshops and workshops, labor safety and health education before contact with work, and the notification of relevant matters needing attention during their internship.

(2) The particularity of the labor rights and interests of college students in post practice

1) Enjoy the right to education

The right to education is a right endowed by our Constitution, which is regulated and adjusted by the Education Law and related laws and regulations. Labor right refers to the various rights and interests that workers enjoy in labor according to the provisions of national laws and regulations. From the perspective of worker status, college students should enjoy equal labor rights and interests as the party providing labor during the internship. However, due to the particularity of the status of students during the internship, the labor that students participate in does not belong to the "labor" in the general sense of labor law, so according to the particularity of the internship, the labor rights and interests of college students during the internship are determined.

2) Do not enjoy the right to social security

Although the subject of the right to social security was replaced by "worker" to "citizen" in the Constitution of 1982, the scope of the subject of the right has been expanded. However, during the internship period, college students could not sign a labor contract with the internship unit because

of their status as students in school. At the same time, the student files were still in the school and were not handed over to the human Resources and Social Security Bureau where the internship unit was located, so the internship unit could not handle social insurance for the internship students, and college students could not enjoy the right to social security during the internship period.

3. Problems existing in the protection of labor rights and interests of college students in post-practice

(1) Lack of legal recognition of identity

The identity of college students during the internship is very vague, but because during the internship, college students have not graduated, still belong to the student status, the identity is not satisfied cannot sign a labor contract, so it does not belong to the "Labor Law" standardized adjustment of the worker status. This is the main reason why it is difficult to protect the legal rights and interests of college students during the internship. If the college students during the internship are identified as workers, they should enjoy the same treatment as other workers when participating in the enterprise labor, and the relevant laws should provide the same protection, obtain the due labor remuneration and enjoy the same labor rights. If the internship period is regarded as an extension of the school classroom, and the student status is still a student in school, then the legal rights and interests of college students during the internship period should be protected by the university, and when the rights are damaged, they should claim relief from the university, and other laws should be applied.

(2) Failure to realize labor contract rights

In my opinion, it is difficult for college students to realize their labor contract rights during their internship. The biggest reason is that they cannot sign labor contracts without the status of workers, so how can they realize their labor rights?

1) The legal relationship of internship is not clearly defined.

There are three kinds of definitions of internship relationship in academic circles and judicial practice in China. The theory of labor relations holds that during the internship, students provide paid labor to the internship unit and form a subordinate relationship between management and management with the internship unit. Even if the students have not graduated and have not completely separated from the school, the students have a substantial labor relationship with the internship unit and have the same will to labor relationship.

According to the Labor relations theory, workers in the Labor Law are workers in the narrow sense. Although students have established subordinate relationships between superiors and subordinates, and although they receive labor remuneration through labor, they cannot form labor relations due to their status as students.

According to the theory of educational management relationship, students follow the regulations of school education management before completing their studies, internship is a practical teaching activity of school, and the internship relationship between interns and internship units is established under school education management, that is, the educational management relationship entrusted by contract,^[3]whether it is a dispute in academia or the quality of internship relationship in judicial practice. Whether it is the dispute in academic circles or the nature of the internship relationship in judicial practice, the nature of the current internship relationship cannot be fully defined. However, China's labor law clearly stipulates that this Law applies to the laborers who form a labor relationship with the employing unit.^[4]It can be seen that the current Labor Law has a single application of legal relations, which cannot clearly cover all internship relationships, and internship relationships lack a clear legal definition.

(3) Failure to implement social security benefits

1) Intern status limits the application of social insurance system

The application of social insurance system is restricted by the status of college students in post internship. During the internship period, although the college students are engaged in labor work in the internship unit, the file management and personnel relations of the college students are still in the school and are not handed over to the human resources and social Security Bureau where the internship unit is located, which makes the internship unit unable to apply for social insurance for the college students.

At present, there is no insurance system specifically for internship students in China, and considering the characteristics of internship duration and instability, and considering the special dual identity of internship students, the social insurance system for workers in the Labor Law cannot be directly applied. And the problem of difficult protection of labor rights and interests of college students has not been effectively solved. During the internship, when the rights of college students are infringed, there is no corresponding insurance system to protect them, and the ambiguity of student status and labor relationship makes it impossible for students to realize their due rights.

To sum up, there are still many problems during the internship of college students in our country,

4. Countermeasures to improve the legal protection of labor rights and interests of college students in post practice

(1) Clarify the worker status of college students on post practice

According to the different types of internship, the nature of internship behavior, and the definition of the legal identity of interns abroad, the labor status of college students in China during the internship is clearly defined.

The internship belongs to productive practice, that is, it has specific practice behavior, pays specific labor for the internship unit, forms subordinate relationship with the internship unit and accepts the management of the internship unit. Referring to the "employeism" mentioned in the "Fair Labor Standards Act" of the United States, in which the actual employment relationship is protected by the relevant labor law, and the "laborism" of the United Kingdom, in which labor remuneration is obtained, the formation of labor-management relationship is protected by the labor law. Combined with the characteristics of long term, strong stability and equal pay in the labor, the internship can achieve equal work. In my opinion, college students should be recognized as workers in the Labor Law during their internship, so as to protect their rights and interests during their internship.

(2) Detailed laws to ensure the realization of labor contract rights

1) Incorporate internship agreements into the protection scope of labor contract law Internship agreement is an important communication tool between college students and internship units. In view of the formalization of internship agreement in the past, it is suggested to draw on foreign experience, and the government should formulate corresponding policies and regulations to force the signing of tripartite internship agreement, specify the content of internship agreement, and incorporate it into the Labor Contract Law, so as to legally protect the labor rights and interests of college students during internship.^[5]

The content of the internship agreements shall be clearly defined in the Labor Contract Law, including: first, the detailed information of the three parties shall be clearly defined, indicating the name, address, legal representative or main person in charge of the school and the internship unit, and the name, address and registration number of the internship student; Second, specify the internship period, internship method, position, internship remuneration, internship termination conditions, etc.; Third, enterprises and workers should clarify the liability for breach of contract,

and make clear penalties for violating the content of the internship agreement. For example, in the case of over-deadline internship, the internship unit is required to pay the intern according to the salary of the in-service staff; Fourth, the way to resolve disputes should be specific and clear.^[6]

(3) Improve the insurance system for college students on internship

In view of the above mentioned status restrictions of college students social insurance system to establish and improve the application of student work-related injury insurance system: first, the university does not transfer student related files, for the internship of college students to the relevant labor department for record, does not restrict the establishment of work-related injury insurance. Secondly, enterprises should learn from the dual insurance model of "social security + commercial insurance" in the United States, requiring students to purchase accident insurance, and social security is jointly purchased by schools and enterprises in proportion.^[7] It not only reduces the insurance expenses of enterprises, improves the enthusiasm of enterprises, but also increases the management ability of schools.

The government can reduce the insurance premium and increase the insurance amount in the form of policy subsidies, so as to link the responsibility of schools and enterprises, and reduce the pressure of students' insurance burden at the same time.^[8]

5. Conclusion

During the internship period, college students should have the qualification of workers, and the identity of students and workers is not in conflict, and China's Labor Law should be applied. In the past, the definition of the legal identity and internship relationship of the internship students is relatively traditional, especially the judicial practice directly includes the internship dispute into the civil law adjustment category, so that the current intern labor rights and interests are in a state of lack of protection.^[9] Although there is a big gap between post internship and graduation internship, considering that the traditional internship mode cannot fully cover the current situation of internship and the particularity of post internship, it is necessary to establish and improve the labor rights and interests protection system of post internship students, improve the insurance system during the internship, strengthen the social responsibility of enterprises, and strengthen the rules and regulations of schools. Under the joint efforts of many parties, the effective protection of the labor rights and interests of the students in the post internship can be achieved.^[10]

Although the establishment of special laws and regulations on interns in school is the most effective way to solve the lack of protection of internship rights and interests, the formulation of special laws requires strict procedures such as drafting opinions and auditing, which is complicated and takes a long time, and cannot solve the pressing issues of intern rights and interests at present. Therefore, under the current situation, it is the best way to solve the problem of protecting the rights and interests of interns in school by improving relevant labor legislation supplemented by judicial interpretation, improving relief channels and strengthening social supervision.

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