

Critical Thinking & Academic Writing

Project paper

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Get Ready for Rush Hour: Legal Protection for Couriers in China

Food delivery service is booming in China. With the development of Internet technology and the popularisation of mobile phones, instead of ordering and enjoying food at restaurants, more and more people choose to order food online through food delivery platforms such as Meituan and Ele.me. In 2018, more than 406 million Chinese have ordered food through apps, which was an increase from 340 million in 2017 (China Internet Network Information Centre, 2019). Data says that there are over 350 million couriers working for food delivery platforms (Chen & Sun, 2020), which means food delivery service allows a huge amount of people living in rural China to find jobs and earn their livings in cities. However, problems have occurred with the development of food delivery service. Under the high pressure from platforms, couriers have to sacrifice their safety – an important legal right for labourers – for their income. Therefore, to better protect the legal rights of couriers, our Labour Law needs to be further refined in several aspects, consisting of clear clarification of the currently vague labour relationship between food delivery platforms and couriers; restriction on platforms' strict inner regulations for couriers; and the formation of a labour union to support couriers.

In a case in Shanghai in 2017 (Tang, 2019), Food Delivery Platform *A* farmed out delivery work to Company *B*, to which Courier *C* provided his work. However, there was neither a formal contract between *A* and *C* nor between *B* and *C*. As a result, when a labour dispute occurred, *C* couldn't ask for his legal rights such as double salary compensation and bonus payment. It is not just a single case. Instead, it is a common situation for couriers and such cases are occurring more and more frequently. Couriers are no doubt dedicated to their job and deserve equal treatment as a labourer. However, reality shows that there is still very much to do in regulating labour relationship between couriers and platforms.

A clear labour contract between the courier and the food delivery platform is the most important evidence in labour protection. However, since the recruitment of couriers is mainly carried out through the Internet, compared with the traditional labour relationship, the labour relationship between couriers and the food delivery platform is rather vague (Tang, 2019). In traditional labour relationship, in most cases, there is a bilateral relationship between labourer and company. In food delivery service, although couriers seem to work for food delivery platforms, the actual legal employers are mainly transit platforms, which is a platform that provide service for couriers to register their personal information, and for food delivery platforms to upload orders from customers. Couriers and order information will be automatically matched by the transit platform. Due to the complexity of the relationship and the mobility of labourers, there is usually no

formal labour contract for the courier, making it difficult to confirm the labour relationship and provide labour protection in the court. To solve this problem, administrative regulations require food delivery platforms to provide couriers with pension insurance and medical insurance. However, the protection of workers is an overall system, in which pension insurance and medical insurance account for only a small part. To this extent, there is an urgent need for a revised version of the Labour Law. The new Internet-based labour relationship should be defined as a formal labour relationship in law as the traditional one.

Clarifying the relationship between couriers and food delivery platforms as the first step in forming a formal labour relationship, restrictions are needed to prohibit the platform from strictly fining couriers for little mistakes. In cities such as Beijing and Shanghai, the total income of couriers is about RMB 5,000, which is far below the local average (Ma, 2017). Despite the low wages, couriers also face strict internal platform rules, including fines for delays, bad comments from customers, and spilling dishes (Lai, 2020). Under such high pressure, breaking the rules and being fined are inevitable for couriers, which means that their income will be far less than RMB 5,000. Unlike traditional work, the rules in food delivery services are on the edge of the law, which makes it difficult to determine whether the rules of platforms are illegal. This shows the lagging nature of our Labour Law. The Labour Law, which has been promulgated for more than 20 years, cannot adapt to the new labour modes and newly developed work. Australian Labour Law can be a perfect model for us. In Australia, couriers' job is much more relaxing and easier. The time limit is almost 1.5 times as long as that in China, while the fining from platforms is not such easy because their Labour Law has a strict and detailed restriction for fining labourers (Veen, Barratt & Goods, 2020). As for our domestic Labour Law, especially in the field of food delivery service, although it is not unrealistic to set fixed work time and rest time, it is reasonable to set a standard for platforms fining rules. For example, Labour Law can limit the penalty ceiling, or require the food delivery platform to set a starting point for the penalty, and couriers can only be fined after a certain number of violations of rules.

Besides taking action to restrict the platforms from exploiting couriers, it is vital that couriers have sufficient methods to protect their own legal rights. Currently, due to the decentralization nature of food delivery service, couriers are hard to associate with each other (Feng, 2018). Therefore, there is no labour union for couriers in Chinese food delivery service. According to Labour Law, labour union is an indispensable organisation, which builds a bridge between enterprises and labourers (Fan, 2020). A single labourer is hard to communicate and negotiate with an enterprise equally, while an organised labour union has the ability to do so. Hence, it is vital for labourers to unite together. However, another tricky problem is that most couriers are unaware of the importance of labour union and are incapable of forming a labour union by themselves. To deal with this problem, the government and non-profit organisations should make joint efforts in educating and helping couriers building up their own labour union. It will be also very helpful if we learn from some western countries where labour unions are well-developed. In Australia, if couriers are under unreasonably high pressure, labour union will step in and negotiate with the platform or even sue the platform on behalf of the courier (Veen et al., 2020). By doing so, the passive position of couriers will be effectively improved and platforms will bear more pressure.

There are also suggestions that laws and regulations should take control of the algorithms of platforms (Veen et al., 2020). However, algorithms themselves are not where the problem is. Based on the same algorithm structure, a platform can create a system in which sacrifice couriers to fully satisfy customers' requirement, while it can also create a balanced system in which both customers' requirement and couriers' safety and labour rights are ensured. The real problem is how platforms deal with the current tension between couriers and customers in a better way than simply putting pressure on couriers. Also, scholars suggest banning the transit platforms to limit the transfer of labour relationship from food delivery platforms to transit platforms (Tang, 2019). Theoretically, it is a good means to clarify the labour relationship between couriers and food delivery platforms. However, transit platforms play an important and irreplaceable role in current food delivery service. Simply banning them will cost too much, which may lead to a decline in the service quality and even grand unemployment. Instead, creating a clear clarification in Labour Law for the new Internet-based labour relationship costs little but is able to solve the problem effectively. Therefore, it is unrealistic to put suggestions above into practice.

Our Labour Law is in an urgent demand to be amended to fit the new-rising Internet-based labour relationship such as food delivery service. A clear clarification of such labour relationship is only the first step, which needs to be supported by restrictions on using strict inner rules to exploit labourers and the formation and function of a labour union. However, there is a deeper problem behind the labour relationship. As mentioned before, although being a courier is a job of great danger, there are still more and more people from rural areas eager to get the job. Reasons behind the phenomenon are complicated. Usually, researchers believe that the political and economic structure in local society is a decisive factor in a country's labour mode (Veen et al., 2020). There is still a large gap in the development of urban China and rural China. More working opportunities and more chances to live a better life are provided in city. Couriers are only a miniature of a bigger picture of people from rural areas striving to survive and improve their lives in city. As the urbanisation continues, has our food delivery service been ready for the rush hour?

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