

Analysis of Difficult Issues in the Conclusion and Validity of Labor Contracts—Based on a dual perspective of judicial practice and normative application

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Abstract

The legality and clarity of the validity of labor contracts are core prerequisites for defining the rights and obligations of employers and employees and resolving labor disputes. Based on relevant norms of the *Labor Contract Law* and the *Civil Code*, and combined with typical judicial cases and labor law theory, this paper systematically analyzes four core and difficult issues in full-time employment: the determination of the validity of oral contracts, the liability for breach of the obligation to inform before contracting, the determination of the validity of contracts with unqualified parties, and the judgment of the validity of standard clauses. It reveals that the root of the disputes lies in the principled nature of legal norms, the differences in judicial standards, and the complexity of employment practices. The study proposes that legislation should refine the boundaries of the validity of oral contracts and clarify the scope and responsibility of notification before contracting; the judiciary should issue guiding cases to unify adjudication standards; and enterprises should strengthen compliance management to form a collaborative governance system of "legislation-judicial - enterprise" to achieve fairness and justice in labor relations and ensure the healthy development of the labor market.

Keywords

Labor contract formation, Determination of labor contract validity, Oral labor contract, Obligation to inform before contract formation, Standard clauses.

1. Introduction

As the legally binding document of labor relations, the legality and validity of labor contracts directly determine the boundaries of the rights and obligations of both employers and employees. According to the "2024 Statistical Bulletin on the Development of Human Resources and Social Security" issued by the Ministry of Human Resources and Social Security, labor dispute arbitration institutions at all levels across the country handled 4.257 million cases in 2024, representing an increase of over 62% in three years. Among these, 32% of the disputes stemmed from flaws in the contract formation process, such as the failure to sign a labor contract, making it the second leading cause of disputes after unpaid social security contributions. ^[1]While this data does not directly cover all types of disputes concerning the validity of labor contracts, combined with the characteristics of judicial practice such as "disputes over 10% concerning double wages for non-signed contracts" and "frequent disputes over the legal status of the parties involved," it confirms that disputes related to the conclusion and validity of labor contracts remain a core and difficult aspect of current labor dispute resolution. Their complexity and difficulty of resolution are significantly higher than traditional dispute types such as work-related injury benefits. Although the *Labor Contract Law of the People's Republic of China* (hereinafter referred to as the *Labor Contract Law*) dedicates a chapter to the conclusion and validity of labor contracts, in practice, issues such as "ambiguous

validity of oral contracts," "unclear boundaries of the obligation to inform before signing a contract," "conflicting characterization of contracts with unqualified parties," and "difficulty in determining the validity of standard clauses" highlight the stark contrast between the principles of legal norms and the differences in judicial rulings. For example, regarding "full-time employment without a written contract," some courts have recognized the validity of oral contracts and supported claims for double wages, while others have denied the validity of the contract on the grounds of "formal illegality," only recognizing the de facto labor relationship .^[2] From a theoretical perspective, labor contracts possess both "private law contractual nature" and "social law mandatory nature": on the one hand, the autonomy of both employers and employees must be respected; on the other hand, state intervention is needed to correct the employer's dominant position. This dual nature makes the formation and validity determination of labor contracts more prone to disputes. From a practical perspective, the rise of new business models such as platform employment and flexible employment has further given rise to new issues such as "the validity of electronic contracts" and "contract determination under multiple labor relationships," posing adaptation challenges to traditional rules. This article, combining current legal norms, typical judicial cases, and academic theories, systematically reviews four core and difficult issues in the formation and validity determination of labor contracts, analyzes the root causes of disputes, and proposes solutions from three dimensions: legislative improvement, judicial uniformity, and corporate compliance , aiming to provide a reference for practice.

2. Basic Framework for the Conclusion and Validity Determination of Labor Contracts

2.1. Core Concepts and Legal Basis

The "conclusion" of a labor contract refers to the process by which an employee and an employer reach an agreement on establishing a labor relationship and clarifying their rights and obligations. It requires three key elements: consistency of intent in "offer and acceptance," fulfillment of the legal obligation to inform, and adherence to written form (except for part-time employment). According to Article 7 of the Labor Contract Law, an employment relationship is established between an employer and an employee from the date of employment. Employers must maintain an employee roster for future reference .^[3] Therefore, the "date of employment" is the legal marker for the establishment of an employment relationship. However, the conclusion of a labor contract may precede, coincide with, or follow the commencement of employment, resulting in three models: "contracting before employment," "contracting simultaneously with employment," and "employment before contracting." Significant differences exist in the validity of the contract and the allocation of responsibilities under these different models .

The determination of the validity of a labor contract requires adherence to the dual standards of Article 26 of the Labor Contract Law and Article 143 of the Civil Code^[4]: First, the parties must be qualified (the employee must possess the capacity for labor rights and conduct, and the employer must be qualified as an employing entity); second, the expression of intent must be genuine (there must be no fraud, coercion, or taking advantage of another's distress); third, the content must be legal (it must not violate mandatory provisions of laws and administrative regulations, nor exempt the employer from legal responsibilities); and fourth, the form and procedure must be legal (full-time employment requires a written form, and clauses regarding probation periods and non-competition agreements must meet legal requirements) .^[4] The validity of a labor contract can be categorized as valid, invalid, or partially invalid. The rule that "partial invalidity does not affect the validity of other parts" (Article 27 of the Labor Contract

Law) is the most widely applied in practice, particularly applicable to handling defects in probation period clauses, standard form clauses, and other supplementary clauses.

2.2. Theoretical Support: The Value Orientation from Formal Justice to Substantive Justice

2.2.1. Tilt Protection Theory

The core difference between labor law and civil law lies in "correcting the imbalance between labor and capital"—the advantages employers have in economic strength, information access, and negotiation power can easily lead to labor contracts that are "equal in form but unequal in substance." For example, employers may use standard form contracts to exempt themselves from social security contributions or conceal occupational hazards through vague disclosures. Therefore, the law needs to protect workers through mandatory provisions (such as written requirements and minimum wage standards). Article 82 of the Labor Contract Law, which stipulates "double wages for failure to sign a written contract," compels employers to standardize their contract signing practices by increasing their responsibilities .^[5]

2.2.2. Fact-first theory

When a labor contract has formal defects, such as the absence of a written contract but actual employment occurs, the law recognizes the existence of a "de facto labor relationship," and the rights and obligations of the employee are determined with reference to the written contract. This theory stems from the legislative purpose of "protecting workers' right to subsistence"—even if the contract is incomplete, as long as the worker has provided labor, they should receive corresponding protection, preventing employers from denying the labor relationship and evading responsibility on the grounds of "no written contract . "

3. Four Major Difficult Issues and Judicial Disputes Regarding the Conclusion and Validity of Labor Contracts

3.1. Difficult Issue 1 : Determining the Validity of Oral Employment Contracts in Full-Time Employment

Article 10 of the Labor Contract Law clearly states that "a written labor contract shall be concluded when establishing a labor relationship," while Article 69 allows for oral contracts for part-time employment. However, it does not explicitly stipulate the "validity of oral contracts in full-time employment," leading to two major points of contention in practice:

3.1.1. The validity of oral contracts in the "employment first, contract later" scenario

If an employer and employee reach only an oral agreement within one month of the start of employment, without signing a written contract, is the oral agreement valid? For example, in the labor dispute case between Wang and a construction company, the company did not sign a written contract with Wang after he joined the company, only verbally agreeing to a monthly salary of 8,000 yuan. Three months later, the company defaulted on his wages, and Wang sued to claim an employment relationship. The court of first instance held that "oral contracts are invalid because they violate the requirement of a written form, and only acknowledged the de facto employment relationship." The court of second instance, however, held that "written form is only a requirement of evidence, and oral contracts are effective from the date of employment," ultimately supporting Wang's wage claim .

The root of the dispute lies in the differing understandings of the "nature of the written form": those holding the "invalidity theory" believe that a written form is a "condition for the formation" of a labor contract, and without it, the contract is invalid; those holding the "validity theory" believe that a written form is a "condition for evidence," used only to define rights and obligations, and does not affect the validity of the contract ^[6]. In judicial practice, the "validity

theory" has gradually become the mainstream, but if an oral agreement violates mandatory provisions (such as being below the minimum wage standard), even if the contract is deemed valid, the compensation must be made up according to the statutory standard.

3.1.2. The burden of proof dilemma in verbal agreements throughout the entire process

To reduce management costs, some small and medium-sized enterprises (SMEs) in industries such as catering and retail often use verbal agreements with full-time employees throughout their employment cycle. In the event of a dispute, employees must prove the employment relationship through indirect evidence such as payroll records, attendance sheets, and work permits. For example, in the case of "Zhang v. a fast-food restaurant labor dispute," Zhang could only provide unmarked WeChat payroll records and could not provide attendance records. The court rejected his claim for confirmation of an employment relationship due to "insufficient evidence." This predicament stems from the principle of "whoever asserts must prove," and key evidence such as attendance sheets and job descriptions are often held by the employer, making them difficult for employees to obtain.

3.2. Difficult Issue Two: Determination and Liability for Breach of the Duty to Disclose Before Contracting

Article 8 of the Labor Contract Law stipulates the obligation of both employers and employees to disclose information upon entering into a contract: "Employers shall truthfully disclose the job content, working conditions, work location, occupational hazards, safety production conditions, remuneration, and other information that employees request to know; employees shall truthfully explain the basic information directly related to the labor contract." However, two major controversies exist in practice:

3.2.1. Scope and Boundaries of the Information Obligation

First, does the employer's obligation to disclose information include "the company's operating status" and "career advancement paths"? For example, in the labor dispute case between Li and a technology company, the company hired Li because "there is room for promotion in the position." After joining the company, Li discovered that there was no promotion mechanism and claimed that the company had violated its obligation to disclose information. The court held that "promotion paths fall within the scope of the company's autonomy in business operations and are not legally required disclosure content," and rejected Li's claim. Second, does the employee's obligation to disclose information include "marital status" and "birth plans"? For example, in the labor dispute case between Zhao and a sales company, the company terminated Zhao's contract on the grounds that Zhao had concealed her "pregnancy plans" upon joining the company. The court held that "birth plans are not directly related to the sales position, and the employee has no obligation to disclose them," and ruled that the company's termination was illegal.^[7]

3.2.2. The application gap of liability for pre-contractual negligence

Article 500 of the Civil Code stipulates liability for pre-contractual negligence, such as malicious breach of contract under the guise of entering into a contract. However, the Labor Law does not explicitly address its application in the conclusion of labor contracts. In practice, when an employer violates its obligation to inform, resulting in losses for the employee (e.g., an employee resigns due to a misunderstanding of job duties and incurs unemployment losses), or when an employee conceals information, causing losses to the employer (e.g., forging a professional qualification certificate leading to a project accident), can liability for pre-contractual negligence be applied? For example, in the case of "Sun v. a medical institution labor dispute," Sun resigned because the medical institution failed to inform him that "the position required 24-hour shifts" and claimed unemployment compensation. The court supported his

claim by referring to Article 500 of the Civil Code. However, in the case of "Chen v. a construction company labor dispute," Chen forged a construction engineer qualification certificate, causing a project shutdown. The company claimed liability for pre-contractual negligence, but the court rejected the claim on the grounds that "the Labor Law does not explicitly stipulate this ." This difference in judgment stems from the lack of legal basis, making it difficult for both employees and employers to obtain unified remedies for their losses.

3.3. Difficult Issue 3: Determining the Validity of Employment Contracts with Unqualified Parties

Ineligibility refers to a situation where the employee or employer lacks the legal qualifications, which in practice mainly includes two categories:

3.3.1. The employer's legal status is not up to standard

First, there is the issue of "lack of employer qualifications," such as unregistered individual businesses or illegally established "black workshops." Article 93 of the Labor Contract Law stipulates that "if a worker has provided labor, the employer or its investor shall pay labor remuneration and economic compensation," but it does not explicitly define the validity of the contract. For example, in the "Labor Dispute Case between Liu and an Illegal Processing Plant," the court ruled the contract invalid, but ordered the processing plant to pay wages and compensation based on the validity of the contract [8]. Second, there is the issue of "employment beyond the scope of business," such as a catering company hiring "construction workers" to do store decoration. Some courts hold that "the scope of business does not affect the employer's qualifications, and the contract is valid," while others hold that "exceeding the scope of business results in an unqualified employer, and the contract is invalid . "

3.3.2. The worker is not qualified

First, regarding the clause "under 16 years old (excluding special industries)," the "Regulations on Prohibiting the Use of Child Labor" explicitly prohibits such employment, but the validity of these contracts is disputed between the "invalidity theory" and the "unfounded theory." In practice, both are deemed invalid, but there are disagreements regarding the payment standard—some courts pay according to the "local minimum wage," while others pay according to the "oral agreement between the parties." Second, regarding the clause "lacking the legal qualifications for the position," such as working as a teacher without a teaching certificate, if the qualification is legally mandatory (e.g., teacher, doctor), the contract is invalid due to illegal content; however, if it is a requirement voluntarily set by the company (e.g., "5 years of work experience"), it does not affect the validity of the contract .

3.4. Difficult Issue 4: Determining the Validity of Standard Clauses in Employment Contracts

Employment contracts provided by employers are mostly standard form contracts, which may contain clauses that "exempt the employer from liability" or "exclude the rights of the employee." In practice, disputes mainly focus on two points:

3.4.1. Standards for fulfilling the obligation to provide instructions and explanations

According to Article 497 of the Civil Code, standard clauses must meet the "obligation to provide reasonable notice and explanation" (such as bolding or separate signature confirmation), otherwise they may be invalid. For example, in the labor dispute case between Zhou and an internet company, the company bolded the clause "non-competition penalty of 100,000 yuan" but did not provide separate explanation. The court held that "bolding alone is insufficient to prove that the obligation to explain has been fulfilled," and the clause was invalid. In contrast, in the labor dispute case between Wu and a real estate company, the company had Wu sign next

to the clause to confirm that he "has read and understood" it, and the court determined that the obligation to explain had been fulfilled .

3.4.2. The effect of a "general disclaimer clause"

Some employers stipulate that "the employer is not liable for damages caused by the employee's own fault." Are such clauses valid? For example, in the labor dispute case between Chen and a machinery factory, Chen was injured at work due to operational error. The company refused to pay workers' compensation based on this clause. The court held that "workers' compensation is a statutory liability, and a general exemption clause that excludes statutory rights is invalid, regardless of whether it is stated or explained." However, for "non-work-related injuries" (such as hospitalization due to personal illness), the court usually recognizes the partial validity of such clauses, believing that the employer is not liable if there is no fault on their part.

4. Pathways to Resolve Difficult Issues in the Conclusion and Validity Determination of Labor Contracts

4.1. Legislative improvement: refining rules and filling gaps

4.1.1. Clarify the boundaries of the validity of oral employment contracts

The "Regulations for the Implementation of the Labor Contract Law" adds a clause stating: "In full-time employment, if an employer and an employee conclude an oral labor contract within one month from the date of employment, it shall be deemed a valid contract; if no written contract is concluded after one month, the oral contract shall be valid, but the employer shall pay double wages from the day following the completion of one month of employment until the date of conclusion of the written contract." It also clarifies the rules of evidence: "The content of an oral contract can be determined through a comprehensive examination of evidence such as wage records, attendance records, and work orders. If the employer holds evidence but refuses to provide it, it shall be presumed that the employee's claim is valid . "

4.1.2. Refine the obligations and responsibilities of informing the other party before entering into a contract

The "Guidelines on the Obligation to Disclose Information Before Concluding Labor Contracts" have been formulated, clarifying the "legally mandated scope of disclosure" for employers, such as job content, location, remuneration, occupational hazards, and social security, and the "legally mandated scope of disclosure" for employees, namely , identity, education, professional qualifications, and health status directly related to the position. Information beyond this scope, such as marital status and maternity, is not subject to employee disclosure obligation. Furthermore, a clause on liability for pre-contractual negligence has been added to the "Labor Contract Law": "If an employer or employee violates their obligation to disclose information, causing losses to the other party, they shall bear liability for compensation. The scope of compensation includes direct losses (such as transportation expenses and medical examination fees) and indirect losses (such as unemployment losses and recruitment costs) [Wang Yun. A Study on Several Legal Issues in the Conclusion of Labor Contracts [D]. Sichuan University, 2005.]. "

4.1.3. The validity and consequences of contracts with unqualified entities

The document clarifies that "if an employer lacks the required qualifications, the labor contract is invalid, but if the employee has already performed labor, the employer or its investors should pay wages based on the standards for the same position and bear the responsibility for work-related injury insurance"; "if the employee is under 16 years of age (excluding special industries), the contract is invalid, and the employer must pay labor remuneration based on the local minimum wage and bear administrative responsibility; if the employee does not possess

the legal qualifications, the contract is invalid, and the employer may claim compensation for direct losses such as project rework costs."

4.2. Judicial uniformity: Issuance of guiding cases to standardize judgment criteria

4.2.1. Publish guiding cases on "Conclusion and Validity Determination of Labor Contracts"

The Supreme People's Court may select typical cases such as "the validity of oral contracts," "the obligation to inform before contracting," and "the judgment of standard clauses" to clarify the rules of adjudication. For example, regarding the validity of standard clauses, guiding cases may clarify that: "Employers must fulfill the obligation of 'separate explanation + signature confirmation' for standard clauses that 'exempt legal liability' (such as failure to pay social security or self-inflicted work-related injury liability), otherwise they are invalid; for clauses that 'restrict the rights of workers,' both 'instructions' and 'reasonable content' must be met simultaneously, otherwise they are invalid . "[8]

4.2.2. Unified allocation of the burden of proof:

In labor dispute arbitration, the burden of proof is reversed in cases involving "oral contracts" and "breach of the obligation to inform": employers must prove that "a written contract has been entered into", "the obligation to inform has been fulfilled", and "the employee concealed information", otherwise they will bear adverse consequences; employees must prove that "labor has been provided" and "there is a causal relationship between the loss and the breach of contract", thus reducing the difficulty of providing evidence .

4.3. Corporate Compliance : Strengthen process management and prevent risks

4.3.1. Standardize the process of entering into written contracts

Establish a synchronized "employment - contracting" mechanism, sign a written employment contract on the day the employee starts work, and avoid "employment first and contracting later"; for standard clauses such as non-competition agreements and confidentiality agreements, formulate a separate "Terms Explanation Document", have the employee sign to confirm "I have read and understood", and keep a written record .

4.3.2. Strengthen contract notification and subject review

Prepare a "Job Information Notification Form" that clearly defines the job content, risks, remuneration, and other legally required information, and have the employee sign it for confirmation. Before hiring, verify the employee's academic qualifications and certifications through the China Higher Education Student Information System (CHESICC) and official platforms. Consult a lawyer in advance to confirm the employer's eligibility for employment if the job involves "employment beyond the scope of business" .

5. Conclusion

The complex issues surrounding the conclusion and validity of labor contracts are essentially a contradiction between the "lag in legal rules" and the "complexity of employment practices," as well as a difficult balance between "formal justice" and "substantive justice." From defining the validity of oral contracts to characterizing contracts with unqualified parties, from the boundaries of the obligation to inform before contracting to the judgment of standard clauses, every dispute involves a struggle between the worker's right to survival and the employer's right to employ workers. Solving these problems requires a " three-pronged" governance system: legislation needs to fill in the ambiguities and provide clear guidance for practice; the judiciary needs to unify judgment standards through guiding cases to avoid inconsistent rulings

in similar cases; and enterprises need to standardize the conclusion process to prevent validity risks from the outset.

Only in this way can the conclusion of labor contracts return to the essence of "fairness and voluntariness," and the determination of validity reflect the concept of "preferential protection," ultimately achieving stable and harmonious labor relations and providing legal protection for the healthy development of China's labor market.

References

- [1] Xie, Z. Y. (2017). The transformation of the legal adjustment model of labor relations in China. *Chinese Social Sciences*, (02), 123-143+208.
- [2] Wang, Y. (2005). A study on several legal issues in the conclusion of labor contracts (Master's thesis). Sichuan University.
- [3] Mao, M. Y. (2021). Research on the regulation of standard clauses in labor contracts (Master's thesis). Sichuan Academy of Social Sciences.
- [4] Feng, Y. J. (2006). The legal effect of oral labor contracts and the legal effect of de facto labor relations. *China Labor*, (01), 18-19.
- [5] Jie, G. (2013). The normative system for regulating the content of standard clauses. *Legal Studies*, 35(02), 102-118.
- [6] Cheng, Y. Y. (2014). A course in labor contract law. Capital University of Economics and Business Press.
- [7] Zhang, H. G. (2015). Labor Contract Law: Theory and cases. Beijing Jiaotong University Press.
- [8] Wang, L. Q. (2011). Labor dispute arbitration standards and norms. People's Publishing House.