

Study of Legal Regulations on the New Trend of Development Of "karoshi"

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Abstract: In recent years, there are numerous cases of "karoshi" in China, which involves wide groups and shows the trend of intellectuals as the main part and rejuvenation. Because of China's existing law does not establish the legal concept of "karoshi", and the lack of appropriate legislative norms, so that the legitimate rights and interests of workers can not be effectively protected. Therefore, from the perspective of legal concept of "karoshi" and the present characteristics, this thesis analyzes and defines the causing reasons and its legal nature, and put forward legislative proposals on the legal regulation of "karoshi".

Keywords: Karoshi; Rejuvenation; Concurrence Injury Infringement; Legal Regulations

1. Introduction

1.1. Concept of "Karoshi"

The concept of "Karoshi" was first developed in Japan, and now the international community generally defined "Karoshi" as: "Karoshi" is a sub-health state because of long working hours, increasing labor intensity, too much psychological pressure to become exhaustion, and it is a phenomenon due to cumulative effect to suddenly trigger a rapid progression of the underlying disease of the body, so that the treatment is useless, and then died. The concept of "karoshi" defined by Chinese scholars is more inclined to be defined from labor regulations. It is generally considered to be a situation that "karoshi" is workers who in the labor process, due to the long working hours beyond legal requirements and labor intensity, leading to overwork and endanger life even death.

1.2. The New Trend of Development of "karoshi" Phenomenon

With the development of economic society, people pay a lot expense for work. Until October 16, 2000, People's Court of China in Shanghai Jing'an District firstly tried a case of "karoshi", which attracted general concern and hot debate for "karoshi" phenomenon in China. In recent years, there are a lot of reports about workers over-worked due to excessive overtime even lead to "karoshi". The "karoshi" groups include civil servants, high-tech industry personnel, white-collar workplace, ordinary employees and migrant workers. Moreover, in recent years, "karoshi" is showing a younger trend, such as the 23-year-old female white-collar Fang Yan because of long-term stay up all night to work overtime every day and have dinner after 21:00, thus suffering from acute gastric ulcer and leading to hemorrhagic shock and died in De-

ember 16, 2011. And also for the well-known only 25 years old female postgraduate Pan Jie, due to excessive fatigue lead to physical weakness, and finally died of acute meningitis. "Karoshi" is showing a younger trend, which is now worse and worse to become a serious social problem of China. How to protect various groups of workers in all ages, especially how to slow down the younger trend of "karoshi" has become a problem we need to focus on.

2. Relevant Legal Regulations of Karoshi in China

At present, there is no special law on "karoshi" in China, but in dealing with this issue there are the following laws to be invoked:

2.1. Regulations of "Constitution" for Workers' Fundamental Rights

The right of rest is one of the basic rights of citizens in Chinese constitution. "Constitution" Article 43 clearly states that the working people have the right to rest. The national developed workers' rest and recuperation facilities, and regulate working hours and vacations for workers".

2.2. Regulations of Working Hours and Rest Periods

"Labor Law" Article 36 states that laborers work for no more than eight hours per day, and average working time per week is no more than 44 hours. The Article 38 states that the employer should ensure workers' rest at least one day a week. The Article 41 states that due to the production and management needs and after consultation with labor unions and workers, the employer can extend work hours, but can not be more than one hour a day; for special reasons that need to extend the working hours, work

hours must not be extended more than three hours a day under the conditions of the protection of workers' health, and it can not be more than thirty-six hours per month. There are all kinds of regulations on the right and time to have rest and be on leave for workers in "Labor Law". The Article 37 states that employers shall strictly execute the work quota standards and may not compel or in a disguised form to force laborers to work overtime. If employers arrange work overtime, overtime pay should be paid to the employees in accordance with the relevant regulations, and so on.

2.3. Regulations of Labor Intensity and Safety and Hygiene of Labor

"Labor Law" Article 52 states that the employer must establish and improve the system of safety and hygiene of labor, strictly execute rules and standards of national safety and hygiene of labor, and to have safety and hygiene of labor education for laborers to prevent accidents in the process of labor to reduce occupational hazards. The Article 53 states that the facilities of safety and hygiene of labor must meet the standards of national regulation. The Article 54 states that employers must provide conditions of safety and hygiene of labor and necessary labor protection supplies for workers comply with national regulations, and to carry out regular health checks for workers with occupational hazards. Article 56 states that workers in labor process must strictly follow safety operation regulations. Employers have the right to refuse to perform the employees' illegal command and their force to perform dangerous operations; for the behavior to endanger the safety and health, employers have the right to criticize, expose and accuse. Chapter 7 in "Labor Law" is about the special protection for female workers and nonage workers, as described in Section 59, 60, 61 is provided for limiting the labor intensity of female workers in different situations such as menstruation, pregnancy, etc., Article 64 is about the nonage workers' working intensity restrictions.

2.4. Regulations of Workers' Labor Security

"Regulations on labor injuries and insurance" Article 15 states that the workers have one of the following circumstances can be regarded as labor injuries: during working hours and be on work died with sudden illness or after rescue invalid death within 48 hours. Article 25 in "Labor Security Supervision Regulations" states that violation of labor security laws, regulations or rules to extend the working hours of workers, the labor and social security administrative departments will give a warning to the employees, and will order to make corrections in the period, and will impose a fine with the standard of 100-500 yuan per aggrieved workers.

2.5. Regulations of Labor Inspection

"Labor Law" Chapter 11 is devoted to labor supervision and inspection, such as Article 85 stipulate the Labor administrative departments of government at all levels above the county level should supervise all employees to comply with the status quo of labor laws and regulations, and have the right to stop the violators and make corrections. In addition, "Regulation for the safety and supervision in the mines", "Safety supervision regulations of boiler pressure vessel", "Provisional Regulations on occupational safety and health supervision of productive construction projects", "Measures for the implementation of safety supervision in mine construction projects" and "The measures for the administration of labor safety and hygiene inspectors" and so on also have regulatory requirements of labor inspection.

3. The Nature of "karoshi" and the Reasons for the Generation of its New Trend of Development

3.1. Different Theories about the Nature of "karoshi"

(1) Industrial injury theory. Many scholars advocate industrial injury theory, who believe the cause of "karoshi" is that the employers forced workers to extend work time, strengthen labor intensity, which accord with the laws and industrial injury identification of labor legal regulations; and industrial injury has brought into the social security system so that the victims or their families can get compensation through the social insurance system and labor parties, have a clear relief approaches, and help ease tensions in the employment relationship. But there are many limitations in China's current industrial injury insurance system, which on the amount money may not be able to completely fill the actual damage or loss caused by industrial injury to the workers, nor make compensation for the victims on moral damage. The industrial injury insurance can not replace liability for compensation for infringement of right.

(2) Tort theory. Some scholars advocate tort theory, who believe the employers violated the rest right, vacation right and rights of life and health provided by constitutional for the workers, and the death of the employees is a direct result of the employers' tort, therefore they advocate to identify the "Karoshi" as tort, and employers make compensation legally for the damages of victims due to tort. But for the prosecution of tort, workers should prove employers' tort, which is not faster as the application of industrial injury insurance, and in link of proof, laborers are difficult to obtain evidence. Even if they win, it is difficult to execute.

(3) Concurrence of industrial injury tort theory. "Karoshi," has both the nature of industrial injury and the tort, so the nature of liability arising from it is also different. The way to relief for victims can either from the perspective of industrial injuries, to make compensation for vic-

tims with industrial injury insurance, or from the perspective of tort, to make compensation for victims with employers' compensation, and even investigate its administrative responsibilities. Typically, workers are in a weak position in labor relations, who have less right to choose the job content, and are often afraid to infringe upon the interests of the workplace, or do not have the capability to proof due to the weakness. Thus, in producing a variety of responsibility forms, the victims shall be entitled to a plurality of individual claim to better compensate for the victims, and severely punish labor units. In addition, the close relatives of "karoshi" can apply for compensation for moral damage. This will not only maximize the compensation of victims, but also to make up the legal lack on this issue in China. This thesis agrees with this point of view, and will make some recommendations based on it.

3.2. Reasons for the Generation of the New Trend of Development of "karoshi"

In China, the cases of "karoshi" happen frequently in recent years and are showing a younger trend, but in reality there is not a proper law to regulate this issue. The generation of "Karoshi" is a result of many factors, the current rapid economic development in China, industrial restructuring, the complex structure of the new period of employment, many social factors are not yet stable, whether the employers, individual workers or administrative agencies, laws and regulations have played a catalytic role for it.

(1) Employer factor. First, China is in a period of rapid economic development, the society is in an increasingly competitive, to cope with increasing competition, enterprises must increase their yields. The main force in enterprise is young people, so that it will lead the young "Karoshi". Second, "Karoshi" makes high economic benefits. The employer in order to obtain greater economic benefits in a short time and to be in a favorable position in the market competition, workers have to work excessive overtime task to ensure to complete the task on time or over. Third, "Karoshi" causes low cost of tort. In labor disputes generation, workers are in a weak position with respect to the employers, who do not have enough time and money to protect their own interests, not to mention even if the workers put forward the tort, the existing law has small supervision and regulation intensity on the employers, which is not enough to have an impact on the employers. Fourth, because of existing laws and regulations have not yet clearly defined on "Karoshi", some employers have various reasons to have workers work overtime, or to force workers to work overtime with excess labor task. Some employers encourage workers to work overtime, which causes serious damage to the health and the legitimate rights and interests of workers.

(2) Labor factor. From the perspective of workers, the reason of "Karoshi" is very complex. Some workers are being forced, although some employers do not require directly, but the overloaded task make many workers have to work overtime, but some young workers in order to get greater success in performance, jobs and benefits they have to pay more working time than the time to complete the task. The pressure from family, the pressures from skyrocketing house prices, the pressure from elderly support, the pressure from children's education, and the pressure from disease and medical, etc., these problems are the result of workers' "Karoshi". But there are some workers' "Karoshi" are voluntary, many young people in the aspects of the houses, cars, and children's high-standard education and so on, have pressure and compare from the people around. For their high expectations and fine plans in the future, they are reluctant to give up all opportunities to increase income and make promotion, and often work overtime with young body, constantly challenge the physical and mental limits.

(3) Lack of administrative supervision. Administrative enforcement of labor administration is not enough, which can rarely provide justice responses for the tort works' report or complaint. For the local economic interests, some local governments connive at the misconduct of certain corporate management, and ignore the protection of vulnerable workers. There are also a small number of labor law executive officers in law enforcement are in corruption, favoritism, bias employers, and indulgent trespass facts.

4. Proposals on the Perfection of Legal Regulation of "Karoshi"

4.1. Identified Standards

For the identification of "karoshi" industrial injuries in China, people may consider drawing the experience of Japan, to develop a specific strict criterion in order to facilitate the application of judicial practice. First, in time, to calculate exceeding working hours of "Labor Law" in week or month as the unit, by taking working condition into account of six months before the onset of workers. It may wish to further stipulate work overtime 100 hours one month before the onset, or 2-6 months before the onset of more than 80 hours overtime per month, which have a direct causal relationship with workers work overtime and even death; Second, some other work factors, such as work environment, be away on official business frequently, the regularity of work and rest, whether have consecutive night shifts and so on should be considered; Third, the obligation scope of the employers should be identified. According to the obligation scope to determine the fault of the employers, the responsibility they should be burden with and the responsibility for their proof. For the obligation of the employers, there should

specifically have the obligation to strictly limit workers overtime, the obligation to ensure workers paid leave, the obligation to have regular health checks for workers and so on.

4.2. Identified Organization

Setting of "Karoshi" identified organization can be found in the reference of industrial injury to make some special provisions additionally. First, it might set up a "karoshi" identified committee led by labor and social security administrative department, organized by employers' union, and also composed of government departments and medical experts on the regional and city level units, in which medical experts can be hired by labor administrative departments among experts with medical senior professional title, or directly make random selection from compiled experts databases. This can improve the identified authority of "karoshi" to some extent, and enhance the work efficiency and quality. Second, in the process of "karoshi" identification can be applied to the avoidance system, the prescription system, and so on, take the identification of the medical experts as the main reference for technical conclusions, and should follow the principle of "pass with the majority of votes". Third, if the employers have different views on identified results by identified organization, they may require a higher level of identified organization to re-identify or bring an administrative proceeding.

4.3. Responsibility Assumption

In "karoshi" cases, the victims are in a weak position in terms of the burden of proof, while the evidence obtain of "karoshi" have high requirements on the respect of professional knowledge, practical skills, equipments and other facilities, which can not use the proof rules of "who advocates, who proof", so it is recommended to set responsibility of the burden of proof on different stages for both parties. Workers not only need to prove the existence of labor relations with the employers, but also need to prove the existence of violation of laws and regulations of employers, such as forced labor or in coercion to engage too much work for a long time, not provide workers with working environment with safety and health standards. Employers should take the burden of proof on the respect of not implemented in violation of regulations, the death of its workers have no necessary causality with the work, and its subjective fault. If the employers refuse to fulfill its burden of proof, the four identified institution of "karoshi" can directly identify by law with the evidence provided by workers. However, it needs to give the employers certain exemptions, for example, on the basis of proving "no infringe any legitimate rights and interests of workers, working hours and the intensity of workers are in normal standard, and the death of workers have no necessary causality with the work", if

the employers can further prove the deaths of workers is because" workers' physically and mentally defective, serious illness or intentional suicide", then the employers can disclaimer.

4.4. Judicial Practice

In judicial practice, in accordance with the provisions of the labor proceedings, when labor disputes occur we must first put forward labor dispute arbitration, only when arbitration is not accepted, the case may be brought before the court. This provision increases the difficulty of workers rights, which takes a lot of manpower and financial resources. Some workers do not have the knowledge of relevant law and do not qualify with legal aid, which can not protect their legitimate rights well. The principle of "Who advocates, who proof" make it difficult for relatives of the victims to find positive evidence, making "karoshi" almost impossible to win. In addition, labor inspection authorities should strengthen supervision on the employers. According to current "Labor Security Supervision Regulations" in China, Article 25 states that the forfeit standard of employers who violate the laws and regulations or extend the working time is only 100-500 yuan for each victim, it is recommended to increase the intensity to 1000-5000 yuan for each person to further intensify supervision, so as to play a warning role for employer's violations.

5. Conclusion

The rapid development of modern society economy has brought pressure to a growing number of young people to make them increasingly busy with their work and neglect their life, thus making the "Karoshi" problem shows a trend of rejuvenation. But to solve this problem is a difficult and complex task, and the experience for the treatment of "karoshi" is not perfect in China, which need to selectively draw on the experience of other countries' legal regulation.

References

- [1] Huang Yueqin. *New Labor Law*. [M] China University of Political Science and Law Press. 2003.
- [2] Guo Jie. *Labor Jurisprudence*. [M] China University of Political Science and Law Press. 2007.
- [3] Wu Yitai, Xiao Ganping. Preliminary Study on Legislate of "Karoshi" in China. [J] *Jiang Xi Social Sciences*. 2009:11.
- [4] Sun Guoping. On "Karoshi": A Comparative Law Perspective. [J] *Contemporary Law Review*. 2010:1.
- [5] Wu Jing. Study on Necessity and Feasibility of "Karoshi" into Industrial Injury Insurance. [J] *Fortune Time*. 2011:4.
- [6] Dong Baohua. Legal Consideration of "Karoshi". [J] *Prosecutor Review*. 2012:6.
- [7] Zhang Shanshan. Discussion on "Karoshi" and Related Legal Issues. [J] *The Merchandise and Quality*. 2012:8.
- [8] Shen Qian. Discussion on "Karoshi". [J] *Hua Zhang*. 2013:31.

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- [9] Shi Yu. Study on Legal Adjustment of "Karoshi". Master thesis of Dongbei University of Finance and Economics. 2007.
- [10] Luo Yuqing. The Legal Regulation of "Karoshi". Master thesis of Inner Mongolia University. 2012.
- [11] Ning Yong. Study on the Legal Regulation of "Karoshi". Master thesis of Ocean University of China. 2013.