



# Research on the Protection of the Rights and Interests of Overage Workers in China

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**Abstract.** Population aging is one of the major challenges facing the world, and the problem of over-age workers is particularly prominent, and the existing social security system cannot fully meet the needs of over-age workers in China. By deeply discussing the current situation and existing problems of the protection of the rights and interests of overage workers in China, and proposing the realization path of the protection of the rights and interests of overage workers in China, it is of great significance to improve the social security system, promote social equity and sustainable economic development, and also provide theoretical support and practical guidance for improving the social security system and policies of overage workers in China.

**Keywords:** overage workers; protection of rights and interests; Population ageing

## 1 Introduction

In China, with the continuous acceleration of the aging process of the population, the problem of overage workers has attracted increasing attention. According to the data of the 2022 National Aging Development Bulletin, as of the end of 2022, the elderly population aged 60 and above in the country was 280.04 million, accounting for 19.8% of the total population; The elderly population aged 65 and above in China is 209.78 million, accounting for 14.9% of the total population. The dependency ratio of the elderly population aged 65 and above in China is 21.8%. It can be seen that with the continuous development of the aging trend of the population, China will inevitably face a trend of declining labor supply year by year, and it is inevitable at present. Over-age workers refer to those who have reached the statutory retirement age but are still engaged in labor activities, which play an important role in social and economic development, but the work rights and interests of over-age workers cannot be fully guaranteed. In recent years, it is common to see that the wage bargaining and rights protection issues faced by over-age workers have been made public, and how to effectively protect the rights and interests of over-age workers has gradually been put on the agenda<sup>1</sup>. With the increasing number of over-age workers in China, the existing social security system cannot fully meet the needs of over-age workers in China. Therefore, it is of great significance to study the current situation and problems of the protection of the rights and

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interests of overage workers in China and explore the path of their realization in order to improve the social security system and promote social equity and sustainable economic development.

## **2 The Current Situation and Problems of the Protection of the Rights and Interests of Overage Workers in China**

At present, China's law stipulates that the retirement age is "60 years old for men, 55 years old for female cadres, and 50 years old for female workers". Over-age workers are employed persons who have reached the statutory retirement age and are still working. At present, there are three main groups of overage workers in China: one is retired and rehired personnel, who are generally senior technical personnel or management personnel before retirement, with excellent technical ability, management ability and work experience, and are willing to continue to exert their residual heat after retirement; The second is over-age migrant workers and temporary workers, who have a relatively low level of education, and most of them are engaged in manual labor, with high living pressure or excessive pension burden, and then choose to continue to work.

Under the current social conditions, it is urgent to effectively protect the labor rights and interests of overage workers. However, in practice, the work rights of workers who are over age are not adequately protected, which is mainly manifested in three aspects: First, occupational discrimination against these overage workers. Employers sometimes abuse the right to terminate or otherwise force employees to resign. Employers abuse the right to terminate labor contracts to exclude overage workers from the labor market, and employers often discriminate on the grounds of age, often citing poor performance and reduced ability of employees. Employers also use disguised means, such as frequent wage reductions, reduction of working hours, and job changes, to force over-age workers to voluntarily leave their jobs or dismiss them, which is also a form of discrimination against over-age workers.

Second, the current labor law has the problem of ambiguity and insufficient protection when dealing with the legal identity of overage workers, which has led to a large number of cases of "different judgments in the same case" in judicial practice in various places, making this group of workers face problems such as unequal pay for equal work, excessive working hours, and difficulty in realizing compensation for occupational injuries for a long time. On the one hand, the legal identity of workers beyond age is not clear. According to the current labor law in China, when a worker begins to legally obtain basic pension insurance benefits, his labor contract will be terminated, which means that in this case, workers beyond the legal age will not be protected by the labor law. However, it is not clear whether the Labor Law applies to whether retired re-employed persons who have reached the statutory retirement age but do not enjoy pension insurance benefits are labor relations. The ambiguity of the legislative content has led to the fact that in judicial practice, some adjudicators have included the employment relationship of overage workers, which is different from traditional labor relations, as an employment relationship, and included it in the scope of adjustment of civil law, which has lowered the level of protection of the rights and interests of overage workers. From another point of view, there are deficiencies in the protection of labor rights and

interests of workers who are over the age. In practice, it is difficult to confirm the employment relationship between a large number of overage workers and their employers, which makes it difficult to apply the provisions of the labor law such as minimum wage, maximum working hours, rest and leave, overtime pay and work-related injury insurance to these overage workers. Therefore, overage workers generally face the problem of insufficient legal protection in terms of basic labor rights and interests such as compensation for occupational injuries, the right to rest, and the right to labor remuneration.

Third, due to the background of the times and the limitation of education level, most of the elderly lack a sense of rights. According to the 2021 China Labor Statistics Yearbook, only 10% of the employed population over the age of 60 have received a college degree or above. Most of the time, workers are unaware that their rights have been violated and do not know how to defend their rights. In addition, due to the disadvantage of the labor market, elderly workers do not dare to defend their rights and interests for fear of not being able to obtain employment opportunities. The elderly have always been neglected in employment, and there is a lack of skills training and legal knowledge training for the elderly, resulting in the legal literacy and self-protection ability of the elderly can not be improved. The elderly do not have access to convenient remedies and do not know how to connect with trade unions and labor arbitration departments, so that the law cannot reach the terminal and cannot benefit the objects of legislation.

### **3 The Path to Realize the Protection of the Rights and Interests of overage Workers in China**

#### **3.1 Strengthen the Construction of Policies and Regulations, and Improve the Security System for Over-Age Workers**

At present, although China's laws do not prohibit overage workers from re-employment, there is no law that explicitly determines the status of overage workers. In theory and practice, the theory of labor relations and the theory of labor relations coexist, and the determination of disputes over overage workers is also different in different places, and the phenomenon of different judgments in the same case occurs from time to time. The U.S. federal Age Discrimination in Employment Act prohibits age discrimination against the elderly through hiring, firing, layoffs, compensation and other conditions of employment<sup>2</sup>. Only by legally confirming the status of over-age workers can the labor rights and interests of over-age workers be protected. First, it is necessary to amend the Labor Law in response to the issue of subject qualifications, and to grant over-age workers the qualification of labor subjects from the legal level, which is the basic premise for the protection of their labor rights and interests, and the granting of labor subject qualifications to over-age workers in labor relations is of great benefit to the protection of their rights and interests and even the smooth operation of the entire market<sup>3</sup>. The second is to amend the Labor Contract Law to address the issue of legal relations, and to recognize that the relationship between overage workers and employers is a special labor relationship. The employment contract signed by the two parties is included in the scope of adjustment of the Labor Contract Law as a special labor contract.

Formulate employment policies and regulations for over-age workers to regulate employers and protect the labor rights and interests of over-age workers. The employment of overage workers can not only create social value, but also reduce the pressure on pension insurance payments. China has entered the situation of growing old before getting rich, and it is even more necessary to improve the employment legislation for over-age workers.

### **3.2 Improve Vocational Training and Re-Employment Services for Over-Age Workers**

Addressing the new challenges of workplace training and education has become an important area of concern<sup>4</sup>. Vocational training and education, especially for the re-employment of over-age workers, are crucial. The updating and upgrading of the skills of over-age workers can not only improve their employment competitiveness, but also enhance their self-confidence and adaptability in the workplace, which can improve the employment competitiveness of elderly workers and adapt to new job needs and market changes. In view of the fact that the knowledge and skills of over-age workers are relatively outdated and cannot adapt to new production activities, the Germany government has introduced policies to improve the skills of older workers, such as promoting vocational training, testing and short-term training measures, and developing the potential of older people. Combined with China's national conditions, different vocational training is carried out for different over-age workers, so as to improve their own vocational skills, better adapt to the job, and help over-age workers win more employment opportunities. In terms of reemployment services, China can learn from Japan's experience, such as Japan's establishment of a Silver Human Resources Center (SHRC) specifically for overage workers. Labor departments in various parts of the country can also set up special human resources centers in the talent market in light of the actual situation, and can also cultivate a number of social service organizations to provide employment services for over-age workers through neighborhood offices, village committees, communities, and other institutions.

### **3.3 Promote the Reform of the Retirement System in a Timely Manner and Establish a Flexible Retirement Policy**

The UK government encourages delayed retirement and "age diversity" in the workplace for a variety of reasons<sup>5</sup>. China's population base is large, the current aging situation is severe, facing the situation of growing old before getting rich, and the pressure on pension insurance payment is huge, so the statutory retirement age can also be gradually extended, and a flexible retirement age policy can be established, so that overage workers can choose the most suitable retirement time according to their own conditions. China can optimize the pension system in combination with the actual national conditions, including increasing the calculation base and contribution ratio of pensions, and gradually establishing a unified national pension system to ensure that the basic living needs of retirees are met. At the same time, we can explore the establishment of a personal account system, so that individuals can accumulate pensions during their work

and improve the individualization and sustainability of pensions. Through the protection of the rights and interests of overage workers, to a certain extent, it can reverse the incentive for in-service workers to pay social insurance.

### **3.4 Improve Judicial Relief Mechanisms for Over-Age Workers to Protect Their Rights, and Increase Their Awareness of Rights Protection**

China's current labor law system does not include over-age workers in the scope of adjustment of the labor law, so the ways and effects of over-age workers' relief are very limited, and the judiciary, as the last line of defense of social justice, should protect the legitimate rights and interests of over-age workers. The first is to establish a diversified dispute resolution mechanism. Establish a diversified mediation mechanism, give full play to the role of arbitration and mediation, enterprise mediation, trade union mediation and people's mediation, handle labor disputes between overage workers and employers through multiple channels, actively promote reconciliation between labor and management, resolve disputes in a timely manner, and eliminate factors of social instability. The second is to improve judicial aid procedures. Overage workers are a vulnerable group in society and do have economic difficulties, and China's labor dispute litigation procedures are cumbersome and complex, which increases the time and economic cost of rights protection, and most overage workers are forced to give up their rights protection because they cannot bear it. Therefore, it is necessary to increase the intensity of legal aid for over-age workers, provide free legal advice and agency services, help them solve legal problems, and be able to take up legal weapons to protect their legitimate rights and interests when over-age workers encounter wage arrears and their rights and interests are infringed.

## **4 Conclusion**

With the increasing number of over-age workers in China, the existing social security system cannot fully meet the needs of over-age workers in China. Therefore, through an in-depth study of the current situation and problems of the protection of the rights and interests of overage workers in China, it is found that the work rights of overage workers are not adequately protected, which is mainly manifested in two aspects: first, occupational discrimination against these overage workers. Second, the current labor law has the problem of ambiguity and insufficient protection when dealing with the legal identity of overage workers, which has led to a large number of cases of "different judgments in the same case" in judicial practice in various places, making this group of workers face problems such as unequal pay for equal work, excessive working hours, and difficulty in realizing compensation for occupational injuries for a long time. Third, due to the background of the times and the limitation of education level, most of the elderly lack a sense of rights. Finally, in view of the above three problems, corresponding solutions are proposed: first, strengthen the construction of policies and regulations, and improve the security system for over-age workers; the second is to improve vocational training and re-employment services for over-age workers; The third is to promote the reform of the retirement system in a timely manner and establish a flexible

retirement policy. These implementation paths are of great significance for improving the social security system and promoting social equity and sustainable economic development.

## 5 Epilogue

The protection of the rights and interests of overage workers is related to social equity and sustainable economic development, and there are still many challenges and problems in this regard in China. Therefore, we can find an effective path suitable for the protection of the rights and interests of overage workers in China based on China's national conditions. In the face of the aging population and the declining birthrate, China can strengthen the construction of policies and regulations, improve the security system for over-age workers, promote the reform of the retirement system in a timely manner, establish a flexible retirement policy, and improve the judicial relief mechanism for over-age workers to protect their rights, so as to fully protect and safeguard the legitimate rights and interests of over-age workers, promote the employment of over-age workers, and promote the continuous improvement of the social security system.

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