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On Labor Remuneration Right

胡 玉 浪

指导教师姓名: 蒋 月 教 授

专业名称: 民 商 法 学

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内容摘要

劳工问题是现代社会的主要问题，劳工问题的核心是劳动报酬问题。劳动报酬是劳动者及其家庭成员的基本生存保障。劳动报酬权是劳动者在劳动关系中享有的基本的和核心的权利。但是，由于各方面的原因，目前我国劳动者劳动报酬权受侵害的现象十分严重，加强劳动报酬权的法律保护已经成为当前我国的一项重要课题和全社会的共同责任。本文主要从私权和人权相结合的角度，以报酬正义与制度保障为主线，运用价值分析方法、类型分析方法、比较法分析方法等多种方法，对劳动报酬权进行法理阐释和制度构建。

全文除导言和结语外，共分为四章。

第一章 劳动报酬权的基础理论。本章从劳动报酬权的概念、性质、价值这三个角度对劳动报酬权的理论基础进行分析。劳动报酬权是劳动者基于从属劳动关系而享有的获得劳动报酬的权利，它是一项独立的权利，也是一项复合权利。劳动报酬权的内容包括劳动报酬谈判权、劳动报酬请求权和劳动报酬优先权。劳动报酬权是私权，也是人权。劳动报酬权具有生存价值、秩序价值和正义价值。因此，保护劳动报酬权是保障劳动者生存权、实现社会公平正义的物质基础，是协调劳资关系、建设和谐社会的重要保证，加强劳动报酬权的法律保护也是国家应承担的国际人权法上的义务和责任。

第二章 劳动报酬谈判权。本章从劳动报酬决定机制这一角度对劳动报酬权的法律保护展开探讨。劳动报酬谈判权是劳动者与雇主之间就劳动报酬问题进行讨价还价的权利，是保护劳动报酬权的起点和基础。劳动报酬谈判权包括劳动报酬个别谈判权和劳动报酬集体谈判权。劳动报酬谈判权的行使必须建立在意思自治和主体平等的基础上。在现实中，由于资本的优势和劳动者的弱势地位，加上劳动力商品的特殊性，劳动者劳动报酬谈判权的行使受到极大的限制。因此，应当针对劳动报酬谈判权的不同形式，加强以最低工资制度为基础的劳动报酬个别谈判权的法律保护和以劳工联合为基础的劳动报酬集体谈判权的法律保护。

第三章 劳动报酬请求权。本章从债权请求权的角度对劳动报酬权的法律保护进行研究。劳动报酬请求权是劳动者要求雇主依法支付劳动报酬的权利。确立劳动报酬请求权既有不同国家和地区的立法和学说可资借鉴，也有利于促进劳动

报酬权概念的体系化和进一步加强劳动报酬权的法律保护。劳动报酬请求权可分为劳动报酬支付请求权、劳动报酬续付请求权和劳动报酬违约损害赔偿请求权。根据劳动报酬预付制、期中支付制和后付制等不同支付形式,分析了劳动报酬请求权与雇主的抗辩权、劳动给付请求权与劳动者的抗辩权的不同法律关系。劳动报酬权是一种继续性给付债权而不是定期给付债权或分期给付债权,劳动报酬请求权应当适用统一的诉讼时效和较长的诉讼时效期间。劳动报酬请求权诉讼时效的起算点是“劳动争议发生之日”,但这里的“劳动争议发生之日”不是“当事人知道或者应当知道其权利被侵害之日”,而应根据劳动关系存续期间和劳动关系解除或终止之后这两种情况而分别确定。

第四章 劳动报酬优先权。本章分析了在雇主破产、清算、终止等丧失完全支付能力的情况下劳动报酬权的法律保护。劳动报酬优先权是一种法定担保物权。确立劳动报酬优先权的基础在于劳动报酬的特殊性和劳动报酬权实现的风险性,同时也有助于实质意义上的平等和公平的实现。劳动报酬优先权应当优先于除共益费用优先权、人身性债权优先权以外的其他一般优先权、特别优先权和传统担保物权受偿。与此同时,虽然单个劳动者的债权数额较为有限,但各个劳动者的债权总和可能十分巨大,加上劳动报酬优先权的效力特别强大,也不需要以占有或登记为生效要件,因此,为了平衡劳动者与担保物权人、其他优先权人的利益,维护交易安全,防止权利滥用,法律应当对劳动报酬优先权的效力进行适当的限制。

关键词: 劳动报酬权; 报酬正义; 制度保障

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Abstract

Labor issue is one of the major issues of modern society, and the key of the issue is labor remuneration. Labor remuneration is the basis of survival for the labor as well as their family members. Therefore labor remuneration right becomes an elementary right enjoyed by the labor. In current China, however, the protection for the labor remuneration right is far from satisfactory for a variety of reasons. In order to promote China's socio-economy and enhance China's legal construction process, it is the responsibility of the whole society to propel relevant law enactment process and to establish a more efficient labor remuneration right protection legal system. In this paper, the author argues for the legal principles and system construction of labor remuneration right from the perspectives of private rights as well as human rights. The author establishes his arguments mainly on remuneration justice and security system by means of value analysis, modal analysis and comparative analysis.

This paper consists of four chapters in addition to the preamble and the conclusion.

Chapter one: Fundamental theories of labor remuneration right. In this chapter, the author illuminates the fundamental theories of labor remuneration right from the perspectives of the concept, character and merits of labor remuneration right. Labor remuneration right, which can be isolated right as well as complex right, refers to the labor's right to get labor reward by virtue of subordinate labor relations. Labor remuneration right can be private rights as well as human rights, which consists of labor remuneration Negotiation right, labor remuneration claim right and labor remuneration priority right. The author argues that labor remuneration right is provided with survival value, system value and justice value. Thus, the protection of labor remuneration right becomes substantial safeguard of the survival right of the labor and meets the requirement of social justice. Enhancing the protection of labor remuneration right ameliorates the relationship between labor and capital, expedites

the construction of a harmonious society and becomes the nation's obligation in international human rights protection.

Chapter two: Labor remuneration Negotiation rights. In this chapter, the author begins his argument for the legal protection of labor remuneration right with the remuneration determining mechanism. Labor remuneration Negotiation right is the essence and basis of labor remuneration right, which includes individual bargaining right and the collective bargaining right for remuneration. The parties concerned shall observe the principle of autonomy of will during the process of Negotiation as subjects with equal status. In reality, however, the labor has difficulties in enforcing remuneration Negotiation rights owing to the superiorities of the capital and the inferiorities of the labor and the specialty of labor commodities. To tackle the problem the author suggests that the authorities concerned amplify the legal protection for the individual bargaining right on labor remuneration in accordance with the minimum wage system and the collective bargaining right of the Labor Union on labor remuneration.

Chapter three: Labor remuneration claim right. This chapter makes a further research on labor remuneration right legal system from the perspective of obligatory right. Labor remuneration claim right refers to the right for the labor to claim reward from the employer, including labor reward request rights, labor reward continuous request rights in case of failure of payment or delayed payment, and damage claim right in case of the breach of labor remuneration contract. The establishment of labor remuneration claim right system will promote systematism of the protection of labor remuneration right, which different legislations and doctrines can be used for reference from various countries and districts. The author in this chapter also provides analyses of and discussion of labor remuneration claim right in relation to the employer's counterargument right, labor reward requesting right in relation to the labor's right of defense, and the beginning of prescription of labor remuneration claim right. The author insists that labor reward requesting right is a kind of continuous payment creditor right, hence a uniform prescription of action and longer

duration of prescription should be applied. The author holds that the beginning of prescription of labor remuneration claim right shall be *the day the labor dispute takes place* instead of *the day the labor knows or ought to know his rights are infringed*, which depends on whether the labor relationship still exists or the labor relationship is terminated.

Chapter four: Labor remuneration priority right. The focus of this chapter is the protection of labor remuneration right in cases of bankruptcy, liquidation and termination when the employer is unable to deliver any payment. The author argues that labor remuneration priority right is a prescribed real right of pledge, and the foundation for the establishment of labor remuneration priority right lies in its differentiation and the risk of the accessibility of the right. The establishment of labor remuneration priority right will substantially promote equality and justice. The author proposes that labor remuneration priority right go before the other general priority, special priority and traditional real right pledge priority with the exclusion of common debts and the person creditor's rights. Meanwhile, although the amount of remuneration for individual labor is limited, the summation of the remuneration for collective labors may be very huge. Labor remuneration priority right isn't built upon duly registration or appropriation. In considering the mightiness of the labor remuneration priority right, the author holds that appropriate restrictions on the validity of the right are necessary in order to balance the interests between the labors and other creditors and avoid the abuse of labor remuneration priority right.

Key words: Labor remuneration right; Remuneration justice; System guarantee.

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