

# Comparative Law Research and Analysis on the Legal Identity Determination of Platform Employment in the Gig Economy: A Case Study of Germany and Japan

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## Abstract

With the rapid development of the gig economy in the context of digital platforms, the legal relationship of employment on online platforms has become increasingly complex, and the traditional "employee-independent contractor" dichotomy has been unable to cover the new labor relationship. This article takes the German "quasi-employee" system and the Japanese "quasi-employee" exploration as the starting point, compares the institutional paths and practical experience of the two countries in the legal identity identification and rights protection of platform workers, and reveals the common challenges they face in terms of hidden platform control and legal lag. On this basis, combined with China's actual national conditions, it proposes suggestions for creating a "third type of worker" legal identity and supporting legal system, including remuneration protection, work-related injury insurance coverage, legal responsibility clarification and technical governance rules, aiming to provide a reference for my country to improve the legal system of platform employment under the gig economy.

## Keywords

Gig Economy; Platform Employment; Quasi-Employee System.

## 1. Introduction

In recent years, with the rapid development of the digital economy, the gig economy has expanded rapidly around the world as an emerging form of employment, especially driven by Internet platforms, and the number of platform workers such as online car-hailing drivers, food delivery riders, and online anchors has been growing, constituting an important part of the modern labor market. However, this form of labor also raises challenges to the traditional labor law system. Under China's current legal framework, most platform workers are defined as "independent contractors" and are therefore excluded from the scope of labor law protection, making it difficult to enjoy basic labor rights and interests such as social insurance, wage protection, and work-related injury compensation, which has aroused widespread concern at the legal, social and policy levels. The flexibility and dependence of platform employment coexist, and its vague legal attributes make the definition of labor relations an important issue to be solved urgently in academic and practical circles.

In this context, it is particularly important to learn from foreign experience. Germany has established a "quasi-employee" system to break through the dichotomy of traditional labor relations and try to provide legal protection for workers between employees and self-employed people. Japan, on the other hand, adheres to the traditional dichotomy of "employment and contracting" and gradually explores the concept of "quasi-employee" to adapt to the reality of flexible employment. This paper compares the institutional arrangements of Germany and Japan in the legal recognition of platform employment, analyzes their respective institutional advantages and limitations, and then puts forward suggestions for the path of legal identity

identification and protection of rights and interests of platform practitioners in the context of China's gig economy in combination with China's national conditions, aiming to provide theoretical support and institutional reference for the construction of a more fair, flexible and inclusive labor law system.

## **2. The Legal Status of Online Platform Practitioners in China's Gig Economy**

### **2.1. The Legal Status of the Gig Economy in China**

With the rapid progress of the Internet, the gig economy has become an indispensable part of the global economy, China's gig economy has risen rapidly, especially in the environment of online platforms, online car-hailing drivers, food delivery riders, live broadcast platform anchors and other forms of flexible employment have emerged in large numbers, China's current labor law is mainly based on the traditional employment relationship framework, has not fully adapted to the new labor model of the gig economy, the legal identity of gig economy practitioners is vague, and many platform workers are considered to be "independent contractors", rather than "workers", are not entitled to formal social security and benefits [1].

### **2.2. Labor Dichotomy and the Attempt to Protect Rights and Interests under the New Economic Model**

Traditional labor law theories are based on the dichotomy between "employees" and "independent contractors", but this classification is not applicable to platform employment in the new economic model. The flexibility and independence of platform workers make it impossible for traditional labor laws to effectively cover the basic rights and interests of these workers [2]. Therefore, China's academic and judicial practice is exploring a legal framework of "trichotomy" or "employee-like" to adapt to the new economy, which can provide more reasonable protection for workers based on factors such as economic dependence and the degree of platform control [3,4].

### **2.3. Dependent Criteria Analysis**

"Subordination" is one of the core criteria for identifying labor relations, and the existing laws in China generally rely on the subordination criterion for the identification of platform workers, that is, whether the practitioners show dependence on the platform economy and management in the process of working on the platform, because the platform's control over workers is relatively obscure and flexible, and the traditional subordination standard is not applicable to all the situations of platform workers. In the current stage of judicial practice, there are differences in the interpretation and application of "subordination" in various courts [5].

## **3. An Extraterritorial Investigation of the Legal Status of Online Platform Practitioners in the Gig Economy**

### **3.1. Identification Practice and Legal Protection of Internet Platform Practitioners in Germany**

Germany's legal practice in determining the identity of platform employees is relatively mature, and it has adopted a "quasi-employee" system, breaking through the dichotomy framework of traditional labor law [6]. Under Section 12a of the Collective Contracts Act, German labour law provides "employee-like" status for workers who are financially dependent on the platform and lack bargaining power. Although this system can provide some basic rights for platform workers, its scope of application is relatively narrow and there is a risk that platforms will avoid their obligations [7].

### 3.1.1. Criteria for Determining the Status of an Employee

Article 611a of the German Civil Code defines the concept of employment contract and labor relations in Germany, according to which an employee is unable to arrange his or her own working hours and work content, but is dependent on his employer and works according to his employer's instructions [8]. In German judicial practice, when determining whether an employment relationship is constituted, it is not only necessary to look at how the civil contract itself is agreed between the two parties, but also to conduct a comprehensive assessment of what needs to be actually performed in practice based on the standard of comprehensive review and judgment, and if a substantive employment relationship is involved in the performance of the contract, it should be determined that there is an employment relationship between the parties to the contract [9]. The determination of the status of "employee" places great emphasis on the dependence and subordination of the employee, which can be divided into three levels: the dependence of labor, the dependence on the payment of labor consideration, and the contract in which there is a labor relationship [10]. Among them, the element of dependent labor is the most important, that is, in the mainstream theory in Germany, "the subordination of personality" is the core element in judging whether an employee is an employee.

The criteria for judging "personality subordination" have the following requirements. First of all, it is necessary to obey the employer's work arrangement, which is embodied in the employer's absolute command over the type of work that the employer performs, the manner in which the work is performed, the time when it is started and the duration of the work, and the employee needs to obey the instructions. The specific manifestations of the employee's time obedience are: only during the working hours agreed in the contract, the employee is instructed by the employer to carry out labor work; Second, the employee needs to join the employer's organization. When the employee enters into an employment contract with the employer, he also binds the fruits of his labor to the employer's company. Third, there are other factors that affect the identification of employees, such as: Are the labor tools and workplaces the responsibility of the employee or provided by the company? Is the employee a self-employed worker? Whether the employee has insurance provided by the employer, etc. Since a single standard cannot be used for the determination of labor relations and employee status, in practice, it is necessary to comprehensively consider the above-mentioned criteria and combine with the subordinate criteria to legally identify and identify the employee.

### 3.1.2. Criterion of Dependence Theory: Quasi-Employee System

Since the main mode of labor in the society at the beginning of the German labor law was the traditional factory production mode, only the identity of the employee was defined. Subsequently, as a result of socio-economic developments, domestic workers who were entrusted by managers to perform entrusted work at home or in other designated places with the assistance of independent or two or less than one family member excluded such workers from the scope of legal protection, which was too narrow from both a theoretical and practical point of view [11]. This was followed in 1911 by the German Work in the Home Act, which was a separate legal provision for domestic workers from the German Civil Code. Starting from the concept of domestic workers, Germany later proposed the concept of the "class of employee" system, the specific constituent elements of which were first elaborated in the German Labour Court Act of 1926, and the construction of the class employee system was improved in a series of subsequent acts[12]. Since then, Germany has established a three-point system of "worker-type employee-domestic worker" for the definition of the legal status of workers.

The concept of quasi-employment, created in German law, refers to the subject of labor between a subordinate worker and a self-employed worker. According to Article 12a, paragraph 1, of the Collective Contract Law, category employees are those who are economically subordinate to

the employer, who are in a disadvantaged position in the labour relationship and who need to be protected in the same way as employees by the law [13]. In other words, the class employee has little or no instruction and control from the employer, and there is no personal dependence and subordination between the employee and the contractual counterpart. The criterion for determining whether a class employee is a class employee in the sense of German law is mainly based on whether there is economic dependence between the class employee and the counterparty to the contract, that is, the income derived from the contract constitutes the main source of income for the class employee [14]. A worker may serve only one customer or several customers, and as long as the income from one of the companies accounts for more than half of his total income, he or she can be recognized as a class employee who is economically subordinate to a specific company, and his legal status is recognized as a class employee, which is protected by specific laws. Gig economy practitioners have great freedom and flexibility in terms of when, where and how they work, and are not completely and absolutely dominated by their employers during working hours, so there is no personality dependence with the platform or the company. In addition, for practitioners who mainly "do odd jobs" between various platforms as their main source of income, they are obviously economically dependent on this, and belong to the group of employees referred to in German law.

### **3.2. Existing Legislation and Practice in Japan**

Japan is relatively conservative in terms of the gig economy legal system, mainly adopting the traditional "employee-independent contractor" dichotomy, and Japanese courts still tend to take "personal subordination" as the core criterion when determining the status of platform workers, which results in flexible workers not being able to obtain basic guarantees such as social security and minimum wage [15].

#### **3.2.1. Criteria for Determining the Status of a Worker**

Japan's labor law strictly follows the dichotomy between employees and independent contractors, and determines whether a worker is an "employee" based on whether or not he or she is under the direct management of the platform. This strict standard has led to flexible workers such as food delivery riders and ride-hailing drivers often being recognized as independent contractors.

#### **3.2.2. The Expansion of the Concept of Labor**

Despite the tendency of the Japanese legal system to adhere to the traditional dichotomy, with the rapid development of the gig economy, the Japanese government has begun to promote reforms, proposing to adopt the concept of "quasi-employee", introducing elements such as economic dependence, and gradually expanding the standard boundaries of worker identification [16].

#### **3.2.3. Legal Protection for the Employment of Internet Platforms**

At present, Japan's legal protection is mainly focused on social security and minimum wage, but it is difficult for platform workers to obtain full labor security because they are often treated as independent contractors.

## **4. Strengths and Weaknesses of Gig Economy Policies in Germany and Japan**

### **4.1. Advantages and Limitations of German Policy**

#### **4.1.1. Institutional Advantages: Flexibility and Judicial Initiative**

Germany's "quasi-employee" system provides a flexible legal framework for platform workers, which can effectively protect the basic rights and interests of workers who are more financially

dependent. However, the system still faces the risk of limited coverage and platform evasion obligations.

#### **4.1.2. Limitations: Coverage and Platform Risk Avoidance**

The scope of application of the "employee-like" system in Germany is limited, and many flexible gig workers are not covered by the scope of protection, and the platform evades responsibility by splitting tasks or adjusting income models, resulting in a weakened protection effect [17].

### **4.2. Strengths and Dilemmas of Japanese Policy**

#### **4.2.1. Institutional Advantages: Rule Clarity and Gradual Reform**

Although Japan's policy is conservative, its dichotomy framework is relatively clear, and the application of the law is not too controversial. However, this framework is clearly insufficient to protect platform workers, and further institutional innovation is needed.

#### **4.2.2. Dilemma: Dichotomy Rigidity and Judicial Conservatism**

Japan's judicial system still adheres to the traditional dichotomy of platform workers, which prevents most gig workers from receiving adequate legal protections. The pace of reform has been slow, resulting in the rights and interests of many platform workers still not being protected.

### **4.3. Common Challenges to German-Japanese Policy**

#### **4.3.1. Technical Covert Control**

In Germany and Japan, the platform uses algorithms and data management to implicitly restrain workers, which is not easy to rely on the traditional labor law framework to achieve identification and standardization, and the platform's management of workers not only revolves around traditional work instructions, but also uses algorithms to influence workers' work behaviors in terms of task scheduling, reward mechanisms, performance evaluation, etc. Although this kind of control does not seem so direct, in fact, it largely controls the work content, time arrangement, income level and so on of workers, and the current legal framework is difficult to effectively deal with the implicit technical means used by platforms in labor management, resulting in a gap in the protection of workers' rights and interests, and the implicit control of technology makes it difficult for traditional labor law to define the actual relationship between platforms and workers, which in turn affects the protection of the legitimate rights and interests of workers.

#### **4.3.2. Legal Lag**

The current labor regulations in Germany and Japan show a clear lag in the face of new problems in the gig economy and platform employment. The rapid development of the platform economy has exceeded the adaptability of the existing legal system, and many legal provisions have not kept pace with the needs of new forms of labor. The flexibility and diversity of platform employment make it impossible for the traditional labor law framework to cover all emerging work relationships, resulting in insufficient legal capacity to respond to the protection of the rights and interests of platform workers. In Germany, although the "quasi-employee" system provides protection for some platform workers, there are still many uncovered labor groups; However, Japan's dichotomy framework has failed to effectively adapt to the development of the platform economy, making it difficult for platform workers to obtain basic labor protection such as social security and minimum wage. As a result, legal lag has become a common challenge in Germany and Japan in the field of platform economy, and it is urgent to fill this gap through legal reform and innovation.



## **5. Conclusion: Suggestions on the Identification of Online Platform Practitioners based on China's National Conditions**

### **5.1. Comparison of the Feasibility of the Criteria for Determining the Legal Status of Platform Workers Inside and Outside the Region**

After an in-depth comparison of the legal frameworks of Germany and Japan, we can conclude several results: the German "quasi-employee" system adopts flexible identification methods to provide a certain legal level of protection for platform workers, but its coverage is narrow, and platform enterprises can easily escape responsibility, although Japan's traditional dichotomy has established a relatively clear legal framework, it is still not in place to protect platform workers. Based on the experience of Germany and Japan, China can innovate in the existing legal system, formulate a set of identification methods for "third category workers" in line with the new economic model, adopt the method of quantifying the economic dependence of platform workers, the strength of platform control and working conditions, and combine the current situation of China's social security system to give platform workers in the gig economy a clear legal identity to ensure that their basic labor rights and interests can be enjoyed.

### **5.2. Establish a System of Legal and Regulatory Safeguards for the Third Category of Workers**

#### **5.2.1. Establish a Remuneration Guarantee System**

In order to protect the basic economic interests of platform workers, it is necessary to create a minimum remuneration guarantee system, which needs to set minimum wage boundaries according to different platform industries and labor intensities, and requires platforms to pay labor remuneration on a regular basis to prevent workers from falling into poverty due to income fluctuations, and it is necessary to consider providing platform workers with reasonable income protection means based on working hours or tasks to ensure that they can receive remuneration commensurate with labor intensity when working [18].

#### **5.2.2. Strengthen Work-related Injury Insurance Coverage**

Many platform workers in the gig economy, such as food delivery riders and online car-hailing drivers, face relatively high occupational risks, and most of the existing social insurance system does not cover such flexible employment groups, so it is necessary to promote the popularization and strengthening of work-related injury insurance to ensure that platform workers can get adequate compensation in a timely manner when they encounter work accidents. In order to reduce the economic hardship caused by work-related accidents of platform workers.

#### **5.2.3. Clarify the Legal Responsibilities of Each Entity**

In the gig economy, there is often ambiguity in the legal responsibilities of platform enterprises, workers and other relevant entities, which affects the effective protection of workers' rights and interests. Therefore, legislation should be adopted to clarify the legal responsibilities of each subject. Platform enterprises should bear more legal responsibilities, especially in terms of working conditions, income security and security protection of workers [19]. At the same time, workers also need to be clear about their responsibilities and obligations to avoid personal reasons that lead to the failure to protect their rights and interests. By clarifying the responsibilities of all parties, it can not only improve the protection effect of platform workers, but also help promote the more standardized operation of platform enterprises [20].

### 5.3. The Integration Path of Technology Governance and Legal Framework

#### 5.3.1. Strengthen the Transparency Requirements of Platform Algorithms

The law should stipulate that when platforms use algorithms to manage workers, they must disclose the working principles and key decision-making points of the algorithms, such as task allocation criteria and performance measurement standards, and transparent algorithms can let workers know their work arrangements and income distribution mechanisms, so that platforms cannot use algorithms to carry out unfair manipulation.

#### 5.3.2. Strengthen Data Privacy Protection

With the expansion of the platform economy, the management and decision-making of platforms take the personal data of workers as an important basis, and the law should strengthen the supervision and control of the collection and use of workers' data by platforms to ensure that workers' personal data is not arbitrarily abused, and it is necessary for platform enterprises to abide by the principles of reasonableness and transparency when using data.

#### 5.3.3. Establish a Technical Audit Mechanism

As the technology becomes more complex and the algorithms and technical management of the platform become more and more complex, it is proposed to plan a special technical audit mechanism to conduct regular reviews of the platform's algorithms and management processes, ensure that the platform acts in accordance with relevant laws and regulations, and protect the legitimate interests of workers, and the technical audit should include the fairness, transparency and privacy protection of the algorithm.

#### 5.3.4. Promote Cross-sectoral Legislation

In addition to the adjustment of the labor law, it is also necessary to promote the synchronous adjustment of relevant laws in the fields of artificial intelligence, big data, and privacy protection, and build a multi-level and multi-dimensional legal system, so as to more appropriately meet the new requirements for the protection of workers' rights and interests under the conditions of the platform economy.

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