



## Study of The Labor Relations of University Students During Their Internship

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### ABSTRACT

The labor relationship between the internship student and the internship company has long been unclear in law and has been the subject of much debate in academic circles. In the course of their internship, university students have established a special, de facto labor relationship with the company, but this relationship is skewed by the absence of law. Therefore, the internship system for university students needs to be regulated at the legal level. The establishment of a multi-party negotiation mechanism to enhance the bargaining position of university students, the improvement of the work injury insurance treatment of university students in internships to avoid the relevant risks, and the regulation of the management of labor contracts during university students' internships to clarify the rights and responsibilities of all parties have become a necessary part of enhancing the employability of university students.

**Keywords:** *University students, internship, labor relations.*

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### INTRODUCTION

As an important reservoir of social resources, university students must eventually make use of a certain platform to give full play to their human capital effect in society, and this platform must be the employer with a legally qualified subject, while the school environment of the university students is quite different from the actual working environment. Although the university environment has certain socially meaningful characteristics, this environment provides a certain paternal shelter for university students, and the groups that students come into contact with in university are relatively homogeneous and homogeneous, and they rarely have the opportunity to experience the workplace during their school years. Students will inevitably feel a strong sense of discomfort if they go directly to work with an employer as soon as they graduate. Arranging for students to develop their professional working skills in an internship is essential to improving their employability, and can also improve the employment rate and level of employment of university students at the root of the problem. For example, many higher education institutions offer majors that follow the “2+1” training model, with distinctive features of cultivating application-oriented talents; the training programs of many undergraduate institutions also arrange courses in the first three years and arrange students to carry out internships in the last year. However, there is a lack of legal regulation on how to determine the status of university students in the internship process, whether there is a labor relationship with the employer, and how to resolve labor disputes. This has led to confusion in practice.

### Determination of labor relations for university student internships

#### *Classification of internship types*

To discuss labor relations in internships, it is necessary to first have a precise understanding of the concept of internship, China's Labor Law does not make a corresponding statement on internships, and China's Labour Contract Law only has specific regulations on the “probationary period”, however, the “probationary period” is not the same as an internship. The concept of internship that has been clearly expressed at the legal level is the Regulations on the Administration of Internship for Students in Vocational Schools (hereinafter referred to as the “Regulations”) issued by the Ministry of Education of China and five other departments, which stipulates that students of secondary vocational schools and higher vocational schools implementing full-time academic education are arranged by vocational schools or approved by vocational schools to go to enterprises (businesses) and other enterprises on their own by the requirements of professional training objectives and talent training programs. The main body of the Regulations has already been amended. As the subject of the Regulations has been restricted, the target group of internships defined therein is limited to students of middle and senior vocational schools, excluding students of undergraduate institutions [1]. However, in reality, students in undergraduate institutions also need internships to enhance their ability to adapt to the workplace, which is similar to the definition of the function of internships in the Regulations, and both are ultimately characterized as practical teaching activities. Therefore, if we draw on the formulation in the Regulations to define internships as an academic concept, it should be possible to extend the subject to university students in most undergraduate institutions. Regarding the classification of types of internships, the Regulations classify internships for students in secondary and

higher vocational institutions into forms such as cognitive internships, shadowing internships, and top-up internships. The focus of the internship is on observation in the field, with the emphasis on visualizing and concretizing the content of classroom lectures. The shadowing placement focuses on supporting work under the guidance of a 'master', with the emphasis still on 'learning by watching'. On the other hand, the top-up placement focuses on the relatively independent completion of some jobs, with the emphasis on "learning by doing". As there is no legal definition or normative document on internships in undergraduate institutions, there is no unified standard. Teaching internships are similar to cognitive internships and job shadowing internships in vocational colleges, which involve the observation and supplementary work in the teaching process. The final year internship is similar to the final year internship in vocational schools, which aims to develop student's vocational skills and is relatively long in duration. It can be seen that the internship in vocational colleges and the internship in undergraduate colleges are not only quite consistent in terms of teaching objectives but also highly compatible in terms of teaching and internship sessions.

### ***Determination of labor relations***

Labor is the cornerstone of the continuity of human society, and it is a uniquely human skill and practical activity. Human labor is not an isolated activity, but one that is connected to the tools and objects of labor and other subjects of labor. In traditional agrarian societies, human labor is produced within a single household, closed or semi-closed to a living cluster, with no or little contact with other clusters, so that there are both kinship and cooperative labor relations within the household of the worker. The definition of the labor relationship of the intern is based on the theoretical definition of the labor relationship, i.e. on the recognition that the intern has a theoretical labor relationship with the internship (since the intern's practical activities in the internship are indeed a process of undifferentiated physical and mental expenditure), and on the question of whether the intern has a legal labor relationship with the internship or What is the nature of the other labor relations with the internship.

The purpose of exploring whether university students and their internship units have a labor relation in the legal sense is to provide a legal basis for the protection of the rights and interests of university students in the process of internship, to strengthen the constraints on internship units and to clarify the responsibilities that schools should assume in the process of university students' internship. The question of whether there is a legal labor relationship between the university students and the internship unit during the internship process is not stipulated in the laws of China, which has not only led to a debate on the labor relationship between the university students and the internship unit in the academic field, but also a wide range of disputes in judicial practice. The Labor Law provides that "labor relations shall be established by concluding a labor contract." This indicates that the establishment of labor relations at the legal level should be evidenced by the conclusion of a labor contract, however, both interns from vocational colleges and undergraduate colleges do not sign a standard labor contract with the employer during their internship. Although some institutions have signed agreements with internship units to establish internship sites, and others encourage graduates to sign tripartite agreements with internship units, these agreements do not have the same effect as labor contracts in the sense of the Labor Law, resulting in the labor rights and interests of students in the internship process not being effectively protected for a long time, relying entirely on the negotiation between schools and internship units and the consciousness of internship units. This negotiation and conscientiousness are quite random and unstable. Whether it is an internship or a graduation internship, the students enter the internship unit to adapt to their jobs on the premise that they have mastered a considerable degree of professional knowledge, and at this time the students have less or almost no need for the guidance of the "master", who is more likely to be the employer. In this case, it is also more likely that the employer aims to increase the productivity of the student and to create a greater performance [2], and the "learning by doing" approach of both forms of the internship is also conducive to increased productivity and technological spillover. Although the institution is still the de facto management body of the students, the company has become the de facto management body of the students by managing them in accordance with the rules and regulations of the company in order to create a performance. Although China's Labor Law requires the signing of an employment contract as proof of the establishment of an employment relationship, this does not mean that an employment relationship is established at the date of signing the employment contract. Therefore, the internships of university students discussed in this article also refer to the internship and graduation internships.

However, to prove whether the students and the internship unit belong to the labor relations at the legal level depends on the establishment of a basic precondition, i.e. whether the students are workers or not. The Labor Law in China does not give a clear definition of a worker, but only excludes minors under the age of sixteen through a prohibition clause. Our Constitution states that "Citizens of the People's Republic of China have the right and duty to work." There is no reason to exclude university students who are eligible to work from the list of workers and to deprive them of their right to work.

Based on this, it is believed that college students in the internship process and the internship unit establish a special kind of labor relations, this special performance in the internship unit has spent brain and physical strength and de facto become a member of the business activities of the enterprise, according to the relevant legal provisions as workers and

internship units have established a de facto labor relations, but in the series of regulations are not recognized. This special feature is also reflected in the fact that although the relevant regulations do not deny that students can be workers, they are still students until they graduate, and the university is still the de facto management subject.

### **Review of labor relations management for internship students**

#### ***Absence of an employment (internship) contract***

The existence of a de facto special labor relationship between the intern and the internship unit must be supported by appropriate evidence and bases, which in the Labor Law is expressed in the labor contract. Article 2 of our Labor Law provides that "This Law shall apply to enterprises and individual economic organizations in the territory of the People's Republic of China and to workers who form labor relations with them." This indicates that China's Labor Law naturally divides workers into two categories by way of exclusion: those who form labor relations with the employer, which apply to the legal system of social law; and those who do not form labor relations with the employer, which apply to the legal system of civil and commercial law in China. Since this de facto special labor relationship formed between university students and their internship units during the internship process is not directly recognized by China's Labor Law, to stabilize and coordinate this labor relationship, it is stated in the Regulations that "before students take part in job shadowing and top-up internships, the three parties, namely the vocational school, the internship unit, and the students, shall sign an internship agreement. " It is stipulated that the agreement should include basic information, labor protection, safety responsibilities, salary and remuneration, and assessment methods, which protect the legitimate rights and interests of students during their internship. However, for undergraduates, the regulations on internship agreements are extremely scarce, and there is hardly any law regulating the internship system for undergraduates, which has resulted in almost no agreement between some undergraduates and universities and internship units, and even if some institutions have signed agreements related to fixed-term internships with internship units, they have not consulted students, and have not even informed students of the relevant contents. The students are not even informed of the content. In this way, students who have internships in the internship unit with which the university has established an internship agreement must accept the agreement drawn up between the university and the internship unit, which does not give sufficient individual respect to students and ignores the legitimate rights and interests of students as labor subjects during their internship. If students choose to find internship units on their own, the lack of internship agreements makes it even more difficult to protect their rights and interests, while universities can only fulfill their obligation to inform students in advance and strengthen the safety warning and daily attention to students on their own. At present, many universities encourage college students to sign the Employment Agreement for Graduates of National Ordinary Higher Education Institutions (referred to as the "Tripartite Agreement") with their internship units, however, the Tripartite Agreement is only an important certificate to confirm whether college students are employed or not, and is not equivalent to a labor contract, with a strong color of planned economy and not strong legal effect[3].

#### ***Absence of a multiparty consultation mechanism***

The negotiation mechanism of labor relations usually refers to the tripartite negotiation, that is, the coordination procedure established by employers, workers, and the government to maintain labor relations, safeguard the legitimate rights and interests of workers and employers, and reduce labor disputes, which plays an important role in maintaining social stability and promoting economic development. In the process of internship for university students, to safeguard the rights and interests of students and ensure the smooth development of student internships, it is also necessary to establish such a multi-party negotiation mechanism. Due to the lack of corresponding legal regulations, the weak awareness of students' rights, and the limited number of internship units available, the voice of students in the negotiation process is rather weak, and if we rely on students as an independent subjects to negotiate with internship units, the effectiveness is extremely limited. This will pave the way for students to enter the job market and help them to make the best use of their human capital in the labor market. However, in reality, this multi-party negotiation mechanism is not only not recognized by the relevant legislation, but also often lacks multiple parties. From the perspective of the students, the lack of relevant laws has led to a "skewed labor relationship" between the students and the internship unit during the internship process, with a huge difference in power between the two parties. Due to the lack of social experience and social resources, students are often in a weak position in the internship process, while the internship unit is in a completely dominant position in the hiring process, and thus completely dominates the behavior of students in the internship process. In the event of a labor dispute between the students and the internship unit, the enterprise will often take advantage of its position to defend its interests, while the students will often feel overwhelmed in the process of negotiation with the enterprise, and may even suffer from fraud. From the perspective of universities, many universities will cooperate with relevant units to establish internship sites and sign internship agreements in the spirit of standardized management and responsibility for students. In this type of internship arrangement, universities are in a certain position to negotiate and consider carefully in the process of choosing internship units, and the internship agreements established by them are regulated by relevant laws and regulations.

#### ***Gap in worker's compensation insurance benefits for internship students***

If university students are treated as students, the main personal risks they face are illness and accidental injury, and

for senior students, there may also be maternity risks, therefore, all regions have cooperated with universities in their jurisdictions to provide university students with university student medical insurance that is included in the local basic medical insurance for urban and rural (town) residents, and has achieved a certain coverage rate, which has effectively shared the risk of illness for students who do not yet have an income. This has helped to share the risk of illness among university students who do not yet have a financial income. Under the current regulations, even if the status of internship students as workers is not recognized, injuries or illnesses caused by students during their internship can be considered third-party liability and are not covered by medical insurance. However, to maximize their own interests, internship companies often refuse to pay workplace injury insurance to interns on the grounds that they are not employees of the company and that their status as students prevents them from purchasing workplace injury insurance. Furthermore, due to the short duration of the internship, there is often a lack of insurance products available in the market, even if the internship company wishes to purchase appropriate accident insurance for the internship students. As a result, students are completely exposed to the risk of accidental injury or illness due to their internship [4]. The Trial Measures on Work Injury Insurance for Enterprise Employees issued by the former Ministry of Labor used to include students from colleges and universities, technical schools, and vocational high schools who went to enterprises for internships in the treatment of work injury insurance and were given a one-time treatment by the local work injury insurance agency, and the enterprises could not bear the relevant costs. The Regulations on Work-Related Injury Insurance, on the other hand, lack regulation of the social security rights of internship students. At the national level, some provinces have noticed the legal loopholes in this area and have actively promulgated relevant regulations to guarantee the treatment of work-related injuries to university students. In terms of the level of treatment, they all require the same level of protection as other employees, and in terms of responsibility, they all require the employer and the university to share the burden, only the proportion of the burden varies, however, few provinces have made corresponding regulations, and most regions still have no corresponding measures to make up for this loophole. This is also an area where the social security system needs to focus on building mechanisms and filling loopholes.

### **Reflections and initiatives**

The reason why it is difficult to determine the labor relations of university students in the internship process, why it is difficult to protect their rights and interests, and why it is difficult to implement measures to solve the problem is, ultimately, the lack of laws to protect the rights and interests of university students in internships and the lack of clear recognition of the de facto special labor relations formed between university students and internship units. It is obviously unreasonable to restrict the internship system to students from vocational institutions and to ignore students from undergraduate institutions. As far as the regulations on internships for vocational students are concerned, the legislative level is also too low, lacking effective binding force on internship units, and its content is often a guiding regulation, lacking corresponding implementation methods and provisions for special cases, as well as regulation of internship units and disciplinary measures for their violations, which not only results in the weak enforcement of the regulations but also leads to a situation in which there is no way to comply with them in some cases [5]. In the context of the Ministry of Education's University-Industry Cooperation Collaborative Education Project, enterprises and universities are working more and more closely together, with closer ties in talent training and a deeper understanding of the importance of university students entering enterprises for internships.

### ***Improving basic law legislation***

In the process of legislation, we should focus on the overall situation, grasp the hierarchy, integrate the internship system of vocational and undergraduate institutions, integrate the problems that have already appeared in the old relevant laws and regulations and those that need to be solved nowadays, or create a separate basic law on the student internship system under the guidance of the labor law in order to raise the level of legislation, or add special provisions on student internship to the labor law in order to increase the effectiveness of the implementation of supporting norms, and in The special labor relations established between internship students and internship employers are explicitly recognized in the regulations, and such labor relations are interpreted accordingly at the legal level. In the former case, the aim is to raise the legislative level of the internship system as one of the important components of the "special law" of the Labor Law, to provide a clear and relatively specific regulation of the internship system for university students at the national level, to raise the internship system to a strategic position on a par with the collaborative education program, and thus to enhance the effectiveness of the law. The latter, on the other hand, is a special part of the Labor Law, which provides for the internship system in special circumstances, with the aim of strengthening the legal status of the internship system and giving greater autonomy to localities in regulating the internship system in their respective jurisdictions. The internship unit establishes an ordinary labor relationship like that of any other employee. At the same time, the central government should, in accordance with the specificities of the respective internship systems of vocational and undergraduate institutions, and guided by the spirit of the introduced legislation, formulate its own implementation guidelines in order to meet their respective training requirements and carry out targeted practical internship activities. While conscientiously implementing relevant regulations, local governments should also formulate or integrate relevant rules and regulations with the actual situation, encourage universities to actively build internship partnerships with employers, effectively protect students' legitimate rights and interests such as the right to information, the right to independent choice and the

right to appeal in the internship process and enhance students' awareness of and ability to defend their rights.

### ***Regulating the management of labor (internship) contracts***

Although the Labor Contract Law of China stipulates that the labor contract can be concluded in written or oral form, the written form is more authoritative and effective in proving the evidence, which can reduce unnecessary evidence and proof in case of disputes, and can also bind the internship unit and the internship student to fulfill their respective obligations. In addition to clarifying the employment relationship between the internship student and the internship unit, laws and regulations also need to regulate the evidence of this relationship, so that it has the corresponding legal effect. The employment contract during the internship period should not only contain the basic information about the internship unit, the duration of the internship, the job content and duration of the internship position, the specific working hours and leave, the remuneration for the internship period, the social security treatment, the labor protection and the protection against occupational hazards but also the rights and obligations of the internship unit, the internship student and the student's university. The labor contract during the internship should be in triplicate, and the university, as one of the management bodies of the students, is also responsible for keeping and reviewing the labor contract agreed between the students and the internship unit. In the process of establishing an internship site, the university has to sign an internship cooperation agreement with the internship unit, the legal validity, and significance of which is similar to the collective labor contract established between the enterprise and the trade union and regulated by the internship regulations. Before the students go to the internship site, the corresponding internship cooperation agreement has to be informed to the students and agreed upon by them. Students can also sign a separate employment contract with the internship unit on their own. In the event that students choose their own internship unit, the university is equally responsible for fulfilling the corresponding obligations.

### ***Establishing a multi-stakeholder consultation mechanism***

Due to the lack of legal regulations, students have very little say in the agreements related to their internship and in the negotiation of labor disputes that arise during their internship, and if they are left to negotiate with the internship unit as an independent individuals, they will inevitably have little success due to the lack of appropriate institutions or organizations to support them. The university, as the "mother's family" of the students, should take up its responsibility and fulfill its obligations before the students enter the workplace. Article 9 of the Measures for Handling Student Injuries stipulates that the school shall bear the responsibility for student injuries caused by one of the following circumstances: the school organizes students to participate in educational and teaching activities or off-campus activities without providing them with appropriate safety education and does not take the necessary safety measures within the foreseeable scope. It is thus clear that universities should strictly fulfill their obligation to warn and educate students about safety in the course of their internship. In case of non-fulfillment of obligations by the internship unit or labor disputes with students, universities should actively coordinate among them, judge the rights and obligations of all parties and activities help students to defend their legitimate rights and interests. On the part of the government, the relevant departments need to perform their judicial functions well, improve the relevant rules and regulations, make the internship process of university students as lawful and rule-based as possible, and provide negotiation and arbitration for disputes arising from the internship process. At the same time, the relevant government departments also need to strengthen the supervision of internship units for university students, so that the dignity of the law can be thoroughly reflected and the rights and interests of internship students can be fully and completely protected.

### ***Improving treatment of work-related injuries and occupational protection***

At present, the Work Injury Insurance Regulations do not include university students in the regulation. After the internship system has been legally regulated accordingly, social security should also share the risk of illness or accidental injury that university students may face in the course of their internship, filling this part of the legal gap. Many places have already made corresponding regulations on the treatment and responsibility of work-related injuries of students in internships, providing valuable pilot experiences for the unified implementation nationwide, therefore, on the basis of defined relations between internship students and internship units, it becomes logical to clarify the treatment and responsibility of work-related injuries of students, and there are already reference areas for the implementation of the legislation. The legislation will be relatively smoother. The work injury insurance premiums for students should be borne by the internship unit, and the rates should be in line with those of other employees, and it is the responsibility of the university to urge the internship unit to purchase work injury insurance for the students. If the student is injured at work and the employer does not purchase work injury insurance, the internship student's work injury insurance treatment should be paid by the employer; if the university does not supervise, the internship unit and the university should share the responsibility according to a certain ratio. Of course, the most important thing to improve the treatment of work-related injury insurance is to prevent the occurrence of work-related injuries, in this regard, both internship units and universities should actively fulfill the relevant responsibilities [6]. At present, many universities have already offered safety education courses for students. Therefore, before students start their internship, universities can make use of the safety education courses, and teachers of relevant majors or experts in the field of labor safety protection can teach students the basic principles and practices of occupational hazard protection. At the same time, the internship unit should

also provide safety education to students before they start their internship according to the content of their internship and the risks involved, to avoid physical injuries and economic losses to the company due to their work.

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