

Transcending Labor Relations: A Study on the Mechanisms for Protecting Social Insurance Rights and Interests of Workers in New Business Forms

— An Empirical Analysis Based on Judicial Cases

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Abstract: *With the rise of new business forms, the traditional industrial-era model of binding social insurance to labor relations is facing unprecedented challenges. In the context of these new business forms, whether the protection of workers' social insurance rights and interests can be "decoupled from labor relations" has become a hotly debated topic in academia, with "the ability to establish labor relations" emerging as a key variable influencing government departments' policy choices on classified social insurance coverage. Based on this, the paper constructs a theoretical model of the correlation between social insurance and labor relations to analyze cases concerning the protection of social insurance rights and interests of workers in new business forms. It examines the advantages and disadvantages of binding social insurance to labor relations and suggests promoting social insurance policy innovation by transcending labor relations. The paper advocates abandoning the path dependency that starts with labor relations and clarifying the theoretical basis that workers' access to social insurance rights should be based on labor rather than employment. To adapt to the profit model of new business forms, it proposes establishing a rule of "proportional responsibility for commissions," where the social insurance contribution base is determined by the proportion and amount of corporate commissions. By reasonably setting rates, it will protect the healthy development of new business forms in a balanced manner. In this way, enterprises can share social insurance responsibilities according to unified rules without worrying about being classified as having a labor relationship, which helps fully protect workers' social insurance rights and interests and promotes fair competition and healthy development among enterprises.*

Keywords: workers in new business forms ♦ transcending labor relations ♦ social insurance ♦ judicial cases

Introduction

Workers in new business forms refer to workers who rely on the internet platform to engage in emerging occupations such as delivery, travel, transportation, housekeeping, marketing, and live streaming. These workers earn remuneration through a profit-sharing mechanism based on platform algorithms and assessment standards from consumer payments. As of 2020, there were about 84 million service providers in these new business forms and around 6.31 million employees in platform companies in China.¹ In the 2022 hit Chinese drama *Draw the Line*, the sudden death of female streamer Luo Youyou aroused widespread public concern about the protection of social insurance rights and interests of workers in new business forms. In the drama, Luo Youyou signed a brokerage contract with Kaba Kaba Media Company and agreed that the company would not pay social insurance for her. After Luo died suddenly, her parents sued to confirm that the company had a labor relationship with Luo and bore the liability for work-related injury compensation based on the law. The court finally supported the claims of Luo's parents and ordered the company to compensate various work-related injury insurance benefits totaling one million yuan in accordance with the law.

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¹ State Information Center, "China's Sharing Economy Development Report," 2021, page 8.

However, in real life, due to the diversity of operation models of new business forms, the relationship between new business enterprises and workers is far more complicated than the plots in film and television dramas. According to statistics, in 2019, Chinese workers who were able to establish labor relations with platform companies only accounted for 8% of the total number of platform workers.² The situation abroad is not optimistic either. As a representative of Europe's most well-known platform companies, Uber believes that drivers using the Uber application are independent contractors, so there is no legal obligation to bear social insurance responsibilities for them. The Swiss Accident Insurance Fund (SUVA) determined in January 2017 that Uber drivers are employees and the company must pay social security contributions for them, but Uber questioned this in court.³

In July 2021, eight Chinese government departments, including the Ministry of Human Resources and Social Security and the All-China Federation of Trade Unions, jointly issued the *Guiding Opinions on Protecting the Labor Security Rights and Interests of Workers in New Employment Forms* (hereinafter referred to as the “*Guiding Opinions*”), which divided workers employed by internet platforms into three types based on the standard of “whether labor relations can be established”: those who meet the conditions for establishing labor relations, those who do not fully meet the conditions for establishing labor relations but the company exercises labor management over the workers (hereinafter referred to as those who do not fully meet the conditions for establishing labor relations), and individuals who independently conduct business activities on the platform and engage in freelance work (hereinafter referred to as freelancers). Guiding opinions were also put forward for the protection of their social insurance rights and interests, reflecting the innovative ideas of “classified governance” and “classified social insurance coverage.” Under the new thinking, the existence or strength of labor relations has become a key variable affecting the content and level of social insurance rights protection for workers in new business forms.

This paper takes the hotly debated issue of whether social insurance for workers in new business forms can be “decoupled from labor relations” as its starting point, constructs a theoretical model based on the correlation between social insurance and labor relations, and then uses the model to classify and examine judicial cases involving the protection of social insurance rights and interests of workers in new business forms. This paper deeply explores the advantages and disadvantages of binding social insurance to labor relations through case analysis. Finally, from the perspective of transcending labor relations, this paper proposes a path and plan to improve the social insurance rights and interests protection mechanism for workers in new business forms. For the sake of brevity, the enterprises in this paper include platform enterprises and enterprises that work with platforms in employment.

I. Literature Review and Academic Reflection

Since the establishment of the social insurance system under the Bismarck model, the development of the social insurance system in the industrial era has always followed the logic of “confirming social insurance through recognizing labor relations,”⁴ and “labor law and social insurance law are closely and inseparably bound together like conjoined twins.”⁵ However, the rise of new business forms has profoundly changed the traditional single form of labor employment, people's employment ways and concepts, and even the entire employment structure. Also, it has led to a series of new problems and challenges for the

² Zhou Irene, *Digital Labour Platforms and Labour Protection in China*, ILO Working Paper, 2020, 11, quoted from Wang Min, “Review and Selection of Labor and Social Insurance Policies in the Context of New Business Forms,” *Chinese Social Security Review* 3 (2021).

³ Wang Min, “Review and Selection of Labor and Social Insurance Policies in the Context of New Business Forms,” *Chinese Social Security Review* 3 (2021).

⁴ Lu Quan, “Production Model, Employment Pattern and Social Insurance System Innovation,” *Journal of Social Sciences* 6 (2021).

⁵ Hanau, Peters-Lange: *Schnittstellen von Arbeits- und Sozialrecht*, NZA1998, S. 785 (785), quoted from Shen Jianfeng, “Binding, Separation or the Third Way: On the Relationship between Labor Relations and Social Insurance,” *Law Review* 5 (2022).

labor insurance system and social insurance system established in the industrial economy era.⁶ The most urgent issue is that social insurance and labor relations in the traditional industrial era, which are “closely and inseparably bound together like conjoined twins,” are facing unprecedented challenges. Therefore, whether social insurance should be “decoupled from labor relations” becomes the primary theoretical issue in exploring the protection of the social insurance rights and interests of workers in new business forms. From a basic academic perspective, the views in academia can roughly consist of three schools of thought, namely the proponent camp (or decoupling camp), the opponent camp (or binding camp), and the middle camp.

A. Academic position and views of the proponent camp (decoupling camp)

The proponent camp argues that the modern social insurance system is based on the factory labor relations model of the industrial era, but this institutional arrangement that closely “links” social insurance and labor relations has made it difficult to adapt to the new business forms of the digital age. Their basic academic position is that “this connection is becoming increasingly outdated and creates a moral hazard that promotes the use of independent contractors or workers to provide labor.” They advocate that the future direction of reform is to “decouple basic social welfare programs from labor relations” and “extend specific basic protections to all workers, regardless of whether they have a labor relation.”⁷ However, due to different academic perspectives, the specific academic views are expressed differently, which can be roughly summarized into several representative propositions such as decoupling theory, transcendence theory, obstruction theory, and separation theory.

The decoupling theory advocates that the goal of social insurance system reform should be to decouple social insurance from labor relations and expand “employee social insurance” to “worker social insurance.” In other words, workers, regardless of whether they have a labor relationship or not, or whether they are formally employed or flexibly employed, whether they are employed by labor or self-employed, are covered by various types of social insurance, and the applicable workers of rigid insurance requirements should be expanded.⁸ The transcendence theory advocates transcending the path of “identifying labor relations — confirming social insurance” and taking whether the laborer has participated in social labor (whether employed or in other forms of labor) as the standard for evaluating whether they should receive social insurance benefits.⁹ The obstruction theory advocates that “in order to strengthen the protection of online platform service providers, the connection between the identity of workers in labor relations and the social insurance system should be appropriately obstructed, so that online platform workers can cover social insurance and enjoy social insurance rights and interests even if their worker status is not clear.”¹⁰ The separation theory advocates “actively exploring social insurance coverage methods that separate employees and employers, that is, allowing social insurance coverage not necessarily based on labor relations, while requiring employers and employees to each bear corresponding social insurance contribution responsibilities.”¹¹

B. Academic position and views of the opponent camp (binding camp)

The opponent camp argues that the new business forms have not fundamentally changed the nature of traditional labor relations and, therefore, opposes the proposition of “decoupling from labor (employment) relations” in terms of protecting the labor rights and social

⁶ State Information Center, *China's Sharing Economy Development Report*, 2022, page 11.

⁷ Orly Lobel, “The Gig Economy & the Future of Employment and Labor Law,” *University of San Francisco Law Review* 51 (2017): 69-73.

⁸ Wang Quanxing and Zhao Qinggong, “Basic Choices of Ideas for Deepening Reform of China's Social Insurance System,” *Jianghuai Tribune* 3 (2018).

⁹ Lu Qian, “Production Model, Employment Pattern and Social Insurance System Innovation,” *Journal of Social Sciences* 6 (2021).

¹⁰ Xie Zengyi, “Identification of Labor Relations in Internet Platform Employment,” *Peking University Law Journal* 6 (2018).

¹¹ He Wenjong, “Digitalization, Informal Employment and Social Security System Reform,” *Chinese Social Security Review* 3 (2020).

insurance rights of workers in new business forms. Their basic academic position is that “technology has no decisive impact on work and social relations in the workplace more generally.”¹² Therefore, internet technology will not fundamentally change the nature of the employment relationship.¹³ The so-called freedom of platform workers is essentially a kind of “pretended freedom.”¹⁴ The digitalization of the labor market institutionalizes the power asymmetry between buyers and sellers of labor time in a completely new way.¹⁵ In other words, “the internet economy has not fundamentally changed or subverted the basic form and nature of employment relations. The employment relationship is still the basic form of employment relations in the internet economy.” However, there are still obvious differences between the employment relationship in the internet economy and the traditional employment relationship. Its main characteristics are “loose management on the surface and strict control inside, formal independence and substantive labor subordination, and nominal equal rights and real unbalanced relationship.” Therefore, “only by confirming the basic framework of the employment relationship and strengthening and improving labor law regulations can the basic rights and interests of workers be protected.”¹⁶

C. Academic position and views of the middle camp

The middle camp believes that “the complete binding of labor relations and social insurance is inevitable in a specific historical stage, but not logically inevitable.” Their basic academic position is that “the so-called separation of social insurance relations from labor relations does not mean no longer considering labor relations and redesigning the prerequisites for establishing social insurance, but rather adding new possibilities for establishing social insurance relations on the basis of the basic model of labor relations + social insurance.” “Social insurance should still be based on labor relations in principle. Meanwhile, based on specific reasons, there may be a situation where there is a labor relationship but no social insurance, or there is no labor relationship, but there is social insurance. This is the third way out for the relationship between the two.”¹⁷ According to the third path, protecting the social insurance rights and interests of workers in new business forms should not regard the recognition of labor relations as the only access to social insurance relations, but should use the degree of economic subordination as the standard¹⁸ and make specific institutional arrangements case by case according to social policy needs.¹⁹ Specifically, it means unpacking the social insurance “rights package” of workers in new business forms, and adopting compulsory and selected insurance methods according to the different “basic rights types” corresponding to each type of insurance.²⁰

In summary, adhering to the institutional arrangement that closely links social insurance and labor relations may be the ideal solution to protect the social insurance rights and interests of workers in new business forms. However, the realistic problem that needs to be faced is that “under the requirement of linking labor relations with compulsory social insurance obligations,” if all are identified as labor relations, then “the vast majority of sharing economy platform companies will be unable to afford the huge social insurance contributions under the

¹² Jacques B éanger, “Technology and Work,” in *Social Theory at Work*, Marek Korczynski, Randy Hodson, Paul K Edwards eds., Yao Wei and Ma Yongqing trans. (Beijing: China Renmin University Press, 2012), 179-180.

¹³ Antonio Aloisi, “Commoditized Workers: Case Study Research on Labour Law Issues Arising from a Set of On-Demand/Gig Economy Platforms,” *Comparative Labor Law & Policy Journal* 3 (2016): 653-690.

¹⁴ Supiot Alain, “Les Nouveaux Visages de la Subordination,” *Droit Social* 2 (2000) : 131-145.

¹⁵ Steve P. Vallas and Anne Kovalainen, *Taking Stock of the Digital Revolution, Work and Labor in the Digital Age* (Bingley: Emerald Publishing Limited, 2019), 1-12.

¹⁶ Chang Kai and Zheng Xiaojing, “Employment Relationship or Cooperation Relationship?: Analysis on the Nature of Employment Relationship in the Internet Economy,” *Journal of Renmin University of China* 2 (2019).

¹⁷ Shen Jianfeng, “Binding, Separation or the Third Way: On the Relationship between Labor Relations and Social Insurance,” *Law Review* 5 (2022).

¹⁸ Lou Yu, “Construction of the Legal System of Social Insurance for Platform Economy Workers,” *Chinese Journal of Law* 2 (2020).

¹⁹ Zhang Rongfang and Mi Jing, “Legal Logic and Legislative Approach for Realizing Social Insurance Rights of Atypical Workers,” *Journal of Hubei University (Philosophy and Social Sciences Edition)* 5 (2020).

²⁰ Lou Yu, “Construction of the Legal System of Social Insurance for Platform Economy Workers,” *Chinese Journal of Law* 2 (2020).

current standards.”²¹ There are also real lessons from abroad. For example, Spain promulgated the *Courier Law* in March 2021, which clearly defined couriers as platform employees and required social insurance contributions for them. This resulted in wage cuts and withdrawal of investment, triggering new dissatisfaction.²² The so-called third way is actually an attempt to separate “economic subordination” from the “triple subordination” of personality, economy, and organization under traditional labor relations and use it as a “transfer interface”²³ to connect social insurance and labor relations. However, in essence, it seems that it has not fundamentally gotten rid of the path dependence of “social insurance bound to labor relations.” In comparison, “decoupling from labor relations” may be a realistic approach to protecting the social security rights and interests of workers in new business forms and has formed a relatively broad “academic consensus” in different contexts such as decoupling theory, transcendence theory, obstruction theory, and separation theory. The urgent task is how to transform academic consensus into solutions.

II. Policy Review and Research Framework

According to China’s social insurance regulations, apart from the empirical distinction between part-time employment and self-employed individuals, all forms of flexible employment are classified as “other flexibly employed people.”²⁴ Therefore, the social insurance policy for workers in new business forms still needs to be reviewed within the framework of the social insurance policy for flexibly employed people. Judging from the policy documents that have been published in China, the one that clearly puts forward the requirement of “improving the social insurance system that adapts to the characteristics of new employment forms” should be the *Opinions on Implementing Employment and Entrepreneurship at Present and in the Future* (hereinafter referred to as the “*Opinions on Employment and Entrepreneurship*”) issued by the State Council in April 2017. The “*Guiding Opinions*” reviewed and approved by the State Council Executive Meeting in July 2021 is a guiding document for protecting the social insurance rights and interests of workers in new business forms in the new era. In February 2023, the General Office of the Ministry of Human Resources and Social Security issued the *Guidelines for the Conclusion of Labor Contracts and Written Agreements for Workers in New Employment Forms (Trial)* (hereinafter referred to as the “*Conclusion Guidelines (Trial)*”), which provided operable normative guidance for the implementation of the “*Guiding Opinions*.”

A. Policy review

The “*Opinions on Employment and Entrepreneurship*” call for accelerating the construction of “online social insurance” to facilitate the coverage and transfer of workers in new business forms to support the development of new business forms. It also uses “whether a labor contract has been signed” as the standard and adopts a “dichotomous approach” to clarify the social insurance policy system for workers in new business forms. First, for those who have signed a labor contract, companies are required to contribute to employees’ social insurance according to law. Second, for those who have not signed a labor contract, they “may cover elderly care and medical insurance” as flexibly employed people, and “explore ways to provide unemployment and work-related injury insurance for them.” Since then, the General Office of the State Council, the National Development and Reform Commission, the Ministry of Human Resources and Social Security, and other departments have also successively launched a series of policy documents to promote the healthy development of the

²¹ Wang Lijian, “Research on Employment Relations and Social Security Practice Dilemmas of Individual Operators on Sharing Economy Platforms,” *Chinese Social Security Review* 3 (2021).

²² Feng Jin, “Changes in Labor Relations, Workers’ Demands and Social Insurance System Reform,” *Chinese Social Security Review* 5 (2022).

²³ Lou Yu, “Construction of the Legal System of Social Insurance for Platform Economy Workers,” *Chinese Journal of Law* 2 (2020).

²⁴ Wang Tianyu, “The ‘Three-part Approach Labor’ Governance Model for Platform Employment,” *China Legal Science* 2 (2023).

sharing economy and the platform economy. Although they emphasize the protection of the social insurance rights and interests of workers in new business forms from different angles, they basically incorporate the protection of the social insurance rights and interests of them into the policy framework of the flexibly employed group under the “dichotomous approach” approach and unify the regulations.

The “*Guiding Opinions*” issued in July 2021 mainly improved the social insurance rights protection mechanism for workers in new business forms from three aspects: “improving social insurance policies, strengthening work-related injury insurance, and optimizing social insurance management”. It also reconstructed the social insurance policy system for workers in new business forms with the innovative idea of a “three-part approach” based on the standard of “whether a labor relationship is established.” First, for “those who meet the conditions for establishing a labor relationship,” it emphasizes urging the related enterprises to cover social insurance in accordance with the law; second, for “those who do not fully meet the conditions for establishing a labor relationship,” it emphasizes that enterprises should “guide and support” workers in new business forms to cover corresponding social insurance according to their circumstances; third, for “self-employed persons,” it emphasizes the relaxation of household registration restrictions on coverage and allowing them to choose between employee and resident social insurance programs to ensure that all those who should be insured are insured (see Table 1).

Table 1 Main policy documents in China for protecting the social insurance rights and interests of workers in new business forms (2017-2023)

Name	Issuing Department	Issuing Time	Requirements
<i>Opinions on Implementing Employment and Entrepreneurship at Present and in the Future</i> (State Council Document [2017] No. 28)	State Council	April 2017	Improve employment and social insurance systems to adapt to the characteristics of new employment forms
<i>Guiding Opinions on Promoting the Development of the Sharing Economy</i> (Development and Reform High-Tech [2017] No. 1245)	National Development and Reform Commission, Ministry of Human Resources and Social Security, etc.	July 2017	Study and improve social insurance coverage and payment measures for flexibly employed people that are adapted to the characteristics of the sharing economy
<i>Guiding Opinions on Promoting the Standardized and Healthy Development of the Platform Economy</i> (State Council Document [2019] No. 38)	General Office of the State Council	August 2019	Speed up the research and improvement of social insurance policies for platform enterprises and flexibly employed people, and carry out pilot projects on work-related injury insurance.
<i>Opinions on Supporting Flexible Employment through Multiple Channels</i> (State Council Document	General Office of the State Council	July 2020	Study and formulate platform employment and labor protection policies to clarify the responsibilities of

[2020] No. 27)			internet platform companies in protecting workers' rights and interests.
<i>Opinions on Serving the "Stability on Six Fronts and Security in Six Areas" and Further Improving the Work Related to Streamlining the Government, Delegating Power, and Improving Government Services</i> (State Council Document [2021] No. 10)	General Office of the State Council	April 2021	Improve social insurance policies and measures to adapt to flexibly employed people, promote the relaxation of household registration restrictions on covering social insurance at the place of employment, and accelerate the implementation of pilot projects for work-related injury insurance.
<i>Guiding Opinions on Protecting the Labor Rights and Interests of Workers in New Forms of Employment</i> (Ministry of Human Resources and Social Security [2021] No. 56)	Ministry of Human Resources and Social Security, All-China Federation of Trade Unions, etc.	July 2021	Clarify for the first time that platform enterprises should bear corresponding responsibilities for protecting the rights and interests of workers, improve relevant policies on basic pension and medical insurance, strengthen work-related injury insurance, and optimize social insurance management.
<i>Guiding Opinions on Implementing the Responsibilities of Online Catering Platforms to Effectively Protect the Rights and Interests of Food Delivery Workers</i> (Internet Trading Supervision and Administration Department of the State Administration for Market Regulation [2021] No. 38)	State Administration for Market Regulation, Ministry of Human Resources and Social Security, etc.	July 2021	Food delivery platforms and their partners shall legally provide social insurance for delivery workers with labor contracts and encourage other delivery workers to cover social insurance; they shall cover the pilot program for work-related injury insurance according to national regulations and explore diversified commercial insurance protection schemes.
<i>Notice on Carrying out Pilot Work on Work-related Injury Insurance for Employees in New Forms of Employment</i> (Ministry of Human Resources and Social Security [2021] No. 110)	Ministry of Human Resources and Social Security, Ministry of Finance, etc.	December 2021	Starting in July 2022, a pilot program will be launched in seven provinces and cities, including Beijing, Shanghai and Jiangsu, targeting couriers, drivers, and other workers employed by large platform enterprises in the

			transportation, instant delivery, food delivery, and local freight industries. The employers will cover the costs, and the individuals employed will not need to pay fees.
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Name	Issuing Department	Issuing Time	Requirements
<i>Notice on Issuing the Guidelines for the Conclusion of Labor Contracts and Written Agreements for Workers in New Employment Forms (Trial) (Ministry of Human Resources and Social Security [2023] No. 6)</i>	General Office of the Ministry of Human Resources and Social Security	February 2023	Specify that the labor contracts and written agreements of workers in new business forms should include the content of social insurance and occupational protection.

Under the policy system reconstructed according to the “three-part approach,” those who do not fully meet the conditions for establishing a labor relationship are a group of workers in new business forms with “incomplete labor relations” between “having a labor relationship” and “no labor relationship.” Enterprises only need to sign a written agreement with them, not a labor contract, and also adopt a special model of “work-related injury insurance +” in terms of protecting social security rights and interests. The so-called work-related injury insurance + model means that in addition to providing work-related injury insurance, enterprises must also promise to “support and be willing to assist” workers in new business forms in covering corresponding social insurance. In terms of work-related injury insurance, enterprises can independently choose one of the following three protection plans: (1) cover the work-related injury insurance pilot for workers in new business forms and assume the corresponding responsibilities such as payment, (2) provide reasonable compensation for work-related injury suffered by workers in new business forms through commercial insurance, (3) or choose other commercial insurance plans.²⁵

B. Research framework

In the “three-part approach” policy system reconstructed based on labor relations, the relationship between the social insurance and labor relations of workers in new business forms is neither a completely “binding” relationship nor a completely “decoupling” relationship. It certainly cannot be called a thorough “middle way,” but rather an innovative idea of “classified social insurance coverage” formed on the basis of “incorporating” academic viewpoints from various schools. Specifically, for those who meet the conditions for establishing a labor relationship, the traditional approach of “recognizing the labor relationship — confirming social insurance” advocated by the “binding camp” is adopted. For freelancers, the approach of “decoupling from labor relations” advocated by the “decoupling camp” is adopted, and they are included in the unified regulation of the social insurance policy for flexibly employed people. For those who do not fully meet the conditions for establishing a labor relationship, a new model of “work-related injury insurance +” is introduced. This new model looks similar to the third way advocated by the “middle camp,” but there is actually an essential difference because the third way advocated by the “middle

²⁵ *Notice on Issuing the Guidelines for the Conclusion of Labor Contracts and Written Agreements for Workers in New Employment Forms (Trial) (Ministry of Human Resources and Social Security [2023] No. 6).*

camp” is based on the choice of economic subordination and takes compulsory coverage of basic medical insurance for employees as the approach,²⁶ while the new model is based on the consideration of occupational risks and takes the provision of work-related injury insurance plans by enterprises as the approach.²⁷

According to the design and construction of the “*Guiding Opinions*”, the protection of social insurance rights and interests of workers in new business forms has actually formed three different matching models. First, those who meet the conditions for establishing a labor relationship enjoy full employee social security rights and interests, which can be called the “full labor relationship + employee social insurance rights and interests” model. Second, those who do not fully meet the conditions for establishing a labor relationship enjoy work-related injury insurance rights and interests. Meanwhile, the enterprises should support and assist them to “cover the basic pension insurance and basic medical insurance for employees as flexibly employed people, or cover the basic pension insurance for urban and rural residents and basic medical insurance for urban and rural residents in accordance with regulations.”²⁸ This can be called the “incomplete labor relationship + work-related injury insurance rights and interests + social insurance rights and interests of flexibly employed people” model. Third, freelancers who have “decoupled from labor relations” can voluntarily choose to cover the basic pension insurance for enterprise employees, the basic medical insurance for employees, or cover the basic pension insurance for urban and rural residents, and the basic medical insurance for urban and rural residents according to regulations. This can be described as the “decoupled from labor relations + social insurance rights and interests of flexibly employed people” model. The three models of protecting the social insurance rights and interests of workers in new business forms have established a new research framework for protecting the social insurance rights and interests of workers in new business forms.

Under the new research framework, if we deduce purely from a theoretical perspective, there should be four different combinations of the correlation between social insurance and labor relations of workers in new business forms (hereinafter referred to as the theoretical model, see Table 2): the first is “labor relations + social insurance”; the second is “labor relations + no social insurance”; the third is “no labor relations + social insurance”; and the fourth is “no labor relations + no social insurance.” Of course, whether the theoretical model can “portray” the true situation of the protection of social insurance rights and interests of workers in new business forms still needs empirical testing. Below, 12 judicial cases involving the protection of social insurance rights and interests of workers in new business forms were selected from the China Judgments Online website, and classified and examined using the theoretical model. The time span and geographical distribution were considered during the selection process to ensure that the cases were representative. The time span is from 2019 to 2022, and the cases involve nine provinces, including namely, Beijing, Shanghai, Tianjin, Zhejiang, Shandong, Jiangsu, Henan, Hubei, and Inner Mongolia.

III. Case Analysis and Discussion

According to the theoretical model of the correlation between social insurance and labor relations of workers in new business forms, the above 12 judicial cases are summarized into four categories, namely, cases with “labor relations + social insurance,” cases with “labor relations + no social insurance,” cases with “no labor relations + social insurance,” and cases with “no labor relations + no social insurance” (see Table 2). Through the classification and

²⁶ Lou Yu, “Construction of the Legal System of Social Insurance for Platform Economy Workers,” *Chinese Journal of Law* 2 (2020).

²⁷ In the paper “The ‘Three-part Approach Labor’ Governance Model for Platform Employment,” *China Legal Science* 2 (2023), Wang Tianyu proposed that under the “Three-part Approach Labor” governance model, we should focus on the “quasi-employees’ rights and interests protection list” and achieve bottom-line protection through supporting systems such as the work-related injury insurance for new business forms. However, this paper was published after the implementation of the “*Guiding Opinions*” and should be regarded as a post hoc theoretical interpretation.

²⁸ *Notice on Issuing the Guidelines for the Conclusion of Labor Contracts and Written Agreements for Workers in New Employment Forms (Trial)* (Ministry of Human Resources and Social Security [2023] No. 6).

examination of judicial cases, it can be seen that “identifying labor relations to confirm social insurance” is still the norm for workers in new business forms to protect their social insurance rights and interests, and it is still the logical reasoning generally followed by judges in making judgments. Following this line of reasoning, “there is social insurance if there is a labor relationship” and “there is no social insurance if there is no labor relationship” are in line with the inertial thinking and reality that social insurance and labor relations are mutually bound, and are also in line with the legal and policy logic that social insurance and labor relations are mutually justified. However, if we further analyze the above judicial case, we can derive several issues that require in-depth discussion.

Table 2 Theoretical model of the correlation between social insurance and labor relations

Labor Relations	Social Insurance	
	Yes	No
Yes	Case 1: Labor dispute between Yu and an e-commerce company in Hangzhou [Case No.: (2019) Zhejiang 01 Civil Final 9693] Case 2: Dispute over work-related injury insurance benefits between Zhang and a service company in Jiangxi [Case No.: (2022) Tianjin 02 Civil Final 6120] Case 3: Labor dispute case between Wang and a logistics company in Inner Mongolia [Case No.: (2022) Beijing 03 Civil Final 11924]	Case 4: Labor dispute between Li and a takeaway company in Jinan [Case No.: (2022) Shandong 01 Civil Final 4387] Case 5: Case of Zhao, a company in Suzhou, and a human resources company in Jinan confirming labor relationship [Case No.: (2020) Jiangsu 05 Civil Final 6253] Case 6: Labor dispute case between Tan and an internet company in Yichang [Case No.: (2021) Hubei 05 Civil Final 3200]
No	Case 7: Labor dispute between Li and a media company in Weihai [Case No.: (2021) Shandong 10 Civil Final 2164] Case 8: Labor dispute between Guan and a media company in Qingdao [Case No.: (2022) Shandong 02 Civil Final 2158] Case 9: Labor dispute between Zhou and the Yancheng branch of a company in Shanghai [Case No.: (2020) Jiangsu 0991 Civil First Trial 129]	Case 10: Labor dispute between Zhou and a technology company in Shanghai [Case No.: (2019) Shanghai 02 Civil Final 3226] Case 11: Labor dispute between Cao and an internet company in Henan [Case No.: (2020) Henan 02 Civil Final 2095] Case 12: Labor dispute between Lu and a service company in Chifeng [Case No.: (2019) Inner Mongolia 04 Civil Final 4645]

A. Is social insurance a reference factor or a decisive factor in confirming the labor relations of workers in new business forms?

From a legal perspective, social insurance is based on the principle of mandatory public law, and labor relations are based on the principle of autonomous private law. The two adopt “two different technical methods of public law and private law to solve social problems in the labor field in the industrial age,” respectively, and they are “completely bound to each other with the inevitability of a specific historical development stage, but this is not logically inevitable.”²⁹

Article 2 of China’s *Notice on Matters Concerning the Establishment of Labor Relations* (Ministry of Labor and Social Security [2005] No.12) stipulates that “If an employer has not signed a labor contract with an employee, the following documents may be used to determine whether a labor relationship exists between the two parties: (a) wage payment vouchers or

²⁹ Shen Jianfeng, “Binding, Separation or the Third Way: On the Relationship between Labor Relations and Social Insurance,” *Law Review* 5 (2022).

records (employee wage payment roster), and records of payment of various social insurance premiums; ..." According to this, the "record of payment of various social insurance premiums" is only clearly defined as a "reference" certificate rather than a "decisive factor," which shows that its original intention is not to "completely bind" social insurance and labor relations.

Therefore, in Case 8, the Qingdao company's claim that social security payment is only a "reference factor but not a decisive factor" in confirming the labor relations is not without reason.

To determine whether there is a labor relationship between the two parties, we need to examine whether the two parties have the consent to establish a labor relationship... "Paying (social) insurance on behalf of a person for a period of time" is only a reference factor rather than a decisive factor. The recognition of labor relations under new forms of employment requires judgment based on specific rights and obligations. ... The payment of social insurance for the employee (the worker) does not directly constitute a labor relationship between the two parties. If other circumstances do (or do not) meet the basic characteristics of a labor relationship, the existence of a labor relationship cannot be determined solely based on partial payment of social insurance. (Civil Judgment of Case 8)

However, judicial cases show that not only do labor arbitration institutions and courts regard "records of payment of various social insurance premiums" as a "decisive factor" in determining the establishment of a labor relationship during the adjudication process, but this logic of identification and inference is also "deeply rooted in the hearts of workers in new business forms." For example, in Case 12, when a Chifeng company tried to prove that a Shanghai company and Lu had a labor service (labor) relationship by saying that the Shanghai company that cooperated with it had covered insurance for Lu, Lu clearly said,

This insurance is commercial insurance... It cannot prove that Lu has a service (labor) relationship with the company in Shanghai, nor can it prove that he does not have a service (labor) relationship with the company in Chifeng. Only if this insurance is social insurance can it prove the purpose of proving of the Chifeng company. (Civil Judgment of Case 12)

B. Does "labor relations mean social insurance"? Does "no labor relations mean no social insurance," the true situation of the protection of social insurance rights of workers in new business forms?

The so-called labor relations mean social insurance; no labor relations mean no social insurance is a general description of the protection of social insurance rights and interests of workers in new business forms by the academic community.³⁰ However, through examining and analyzing judicial cases, it is not difficult to find that such a general description can hardly "describe" the complex picture of the protection of social insurance rights and interests of workers in new business forms, and it does not conform to reality either.

First, the two cases of "labor relations + no social insurance" and "no labor relations + social insurance" show that there is indeed a "middle ground" between the two ends of "labor relations mean social insurance" and "no labor relations mean no social insurance." In Case 5, although the company acknowledged the existence of a labor relationship with the worker in new business forms, it attempted to evade its legal responsibility to pay social insurance premiums by issuing social insurance subsidies and purchasing commercial insurance. In Case 7, although the company always denied the existence of a labor relationship, it did not refuse to assume the legal responsibility of covering social insurance for the worker in new

³⁰ Lou Yu, "Construction of the Legal System of Social Insurance for Platform Economy Workers," *Chinese Journal of Law* 2 (2020), Lou Yu believes that the approach of using "quasi-employees" to solve the social insurance issues of platform workers has certain advantages compared to the traditional practice of "labor relations mean social insurance" and "no labor relations mean no social insurance" in labor relationship determination. However, the final application of a specific system does not differ much. Other scholars have made similar arguments.

business forms and withholding and paying social insurance premiums on his behalf. In Case 9, the company denied the existence of a labor relationship between the two parties, but still paid “social insurance losses” to the worker in new business forms through a third party. Of course, the existence of this “middle ground” may not conform to legal and policy logic but proves that, in reality, there is no “unbreakable” and completely binding relationship between the social insurance and labor relations of workers in new business forms.

Second, since local courts lack a consensus on whether workers enjoy the “civil right to sue for back payment of social insurance” according to law, even if workers in new business forms can confirm the labor relationship, whether their social insurance rights and interests can be protected is still faced with the uncertainty of “different judgments for the same case.” Article 100 of China’s *Labor Law* stipulates that “If an employer fails to pay social insurance premiums without reason, the labor administrative department shall order it to pay within a time limit; if it fails to pay within the time limit, late payment fees may be charged.” In Case 1, the company therefore believed that the workers in new business forms should seek administrative relief rather than judicial relief for the issue of back payment of social insurance.

According to Article 100 of China’s *Labor Law*, the payment of social security arrears falls within the jurisdiction of the administrative management department, rather than the scope of civil litigation cases accepted by the people’s court. Therefore, even if there is a dispute over the back payment of social insurance between Yu and the company, or between Yu and other companies, he should seek redress from the administrative department rather than through a court ruling. (Civil Judgment of Case 1)

According to Articles 47 and 48 of China’s *Labor Dispute Mediation and Arbitration Law*, for disputes arising from the implementation of national labor standards in social insurance, the arbitration award is final and workers still have the right to sue according to law. However, local courts do not have a unified approach to this. In Case 1, Article 37 of the *Zhejiang Province Labor and Personnel Disputes Mediation and Arbitration Regulations* stipulates that “the arbitration tribunal’s ruling on disputes such as back payment of social insurance premiums and compensation for work-related injury insurance benefits is final; if the worker is dissatisfied with the final ruling, he or she may file a lawsuit with the people’s court in accordance with the law.” Therefore, the court confirmed that the worker has the civil right to sue for back payment of social insurance according to the law. However, in a labor dispute case between a Shaanxi Internet company and Cao, which was decided in 2022, although the case was basically the same as Case 1, the local court held that

As a worker of new business forms, Cao... formed a relationship (with the internet company) that conforms to the dual characteristics of personal subordination and economic subordination in the labor contract, so a labor relationship is established. ...(Cao’s) request to handle pension insurance, medical insurance, work-related injury insurance, maternity insurance and unemployment insurance is the responsibility of the social insurance agency and does not fall within the scope of cases accepted by the court.³¹

Finally, judicial cases show that the so-called labor relations mean social insurance is just a “beautiful abstraction” of the academic community on the protection of the social insurance rights and interests of workers in new business forms. Under the logic of identifying labor relations — acknowledging social insurance, “confirming labor relations — identifying work-related injuries — requesting compensation for work-related injuries” is the realistic picture of the protection of social insurance rights and interests of workers in new business forms. Seven of the 12 cases mentioned above are labor dispute cases caused by work-related injuries. In reality, most workers in new business forms request confirmation of labor relations not to fully protect their social insurance rights and interests, but only to

³¹ See the Civil Judgment (2022) Shaanxi 0104 Civil First Trial No. 1679 of the Lianhu District People’s Court of Xi’an City, Shaanxi Province.

protect their rights and interests in work-related injury insurance. In the complex employment relationship of the new business forms, it is difficult for workers to protect their rights and interests in work-related injury insurance. In Cases 5 and 6, although the workers were able to confirm the labor relationship, this was only the first step in protecting their rights and interests in work-related injury insurance. Whether they can obtain compensation according to law is still unknown, and it was not even the time to talk about protecting other social insurance rights and interests. In Case 10, the worker will not be able to obtain compensation for work-related injuries because his request to confirm the labor relationship was not supported by the second-instance court. Although the court made it clear that if the worker's lawful rights and interests were infringed upon during the delivery of food, he could assert his rights in accordance with relevant laws and regulations, and the best outcome would be to seek compensation through commercial insurance.

C. Does the binding of social insurance with labor relations help to fully protect the social insurance rights and interests of workers in new business forms?

After the advent of the digital age, if we are still trapped in the mindset of identifying labor relations to confirm social insurance, or remain in the industrial age where social insurance and labor relations are “completely bound together,” it will not only fail to help fully protect the social insurance rights and interests of workers in new business forms, but the final result may also be counterproductive.

From the perspective of enterprises, in order to cut off the logical chain of mutual confirmation between labor relations and social insurance, on the one hand, they must carefully avoid labor law risks by signing labor contracts or cooperation agreements; on the other hand, they must also think of ways to evade legal responsibilities on social insurance, such as agreeing in the cooperation agreement not to pay social insurance (Case 6) or having a third party pay social security on behalf of the enterprise (Case 8) or paying social security losses to the workers through individuals (Case 9). Among them, Case 5 is particularly typical. In this case, the company in Jinan was a business outsourcing partner of a company in Suzhou. In the agreement between the two parties, the company in Suzhou clearly excluded “any labor or service relationship” with the employees of the company in Jinan. The company in Jinan wanted to transfer the employer's liability risk and evade legal liability on social insurance, so even the commercial insurance of the worker was purchased through a company in Dezhou (and it was denied afterwards). This was simply to avoid establishing a labor relationship with the worker due to the purchase of commercial insurance. Despite Jinan company's strong argument that

Even if... purchasing group accident insurance also falls within the scope of commercial insurance, not social insurance; commercial insurance reflects a relationship of economic interest, and commercial insurance behavior cannot indicate whether a labor relationship is established or not, and it cannot be the basis for judging whether a labor relationship is established or not. (Civil Judgment of Case 5)

However, both the first-instance and second-instance courts used “purchase of commercial insurance” as important factual evidence in ruling that a labor relationship had been established between the Jinan company and the worker. It is undeniable that such a judgment is undoubtedly beneficial to an individual worker. Still, it may eventually cause more and more workers in new business forms to lose their social insurance rights or see them “shrink” into just work-related injury rights. The protection of work-related injury rights will also “revert” from the work-related injury social insurance model to the employer liability insurance model or commercial insurance model. It may even get to the point that in order to avoid forming labor relations or to make it easier to “evade” responsibilities when labor disputes occur, companies dare not even buy commercial insurance “blatantly” but only buy it “secretly” through other companies. Obviously, such a result is not conducive to

comprehensively protecting the social insurance rights and interests of workers in new business forms as a whole.

From the perspective of workers, the protection of social insurance rights of workers in new business forms is not only limited by the carefully designed algorithm system of the enterprises, but also trapped in the “maze” of employment relations cleverly arranged by the enterprises to avoid the mutual confirmation of labor relations and social insurance. Even if they can eventually enter the arbitration and litigation procedures, they still have to face the uncertainty of “different judgments for similar cases.” Therefore, workers in new business forms will only file for arbitration and litigation to confirm the labor relationship unless they encounter accidental injuries or deaths and need to request compensation for work-related injury insurance benefits. They usually will not file for arbitration and litigation to protect their all-around social insurance rights and interests. This is also the main reason for the objective existence of “labor relations + no social insurance” cases. That is, the main demand of workers in new business forms or their close relatives who encounter accidental injuries and deaths is to be able to confirm the labor relationship and then obtain work-related injury compensation, while fully protecting social insurance rights and interests are basically not within the scope of their main demands.

D. Is the binding of social insurance and labor relations conducive to the healthy development of new business forms?

Facing the digital age, “when thinking about the innovation of China’s social insurance system, we must change our mindset. We cannot ask society to adapt to the existing system, but rather let the system adapt to social changes.”³² If we remain in the industrial age where labor relations and social security are mutually bound together and allow the existence of labor relations based on private law autonomy to determine the existence of social insurance based on public law enforcement, not only will it be difficult to fully protect the social insurance rights and interests of workers in new business forms, it may also be detrimental to the healthy and benign development of new business forms. In Case 10, the judge wrote in the judgment regarding a Shanghai technology company’s “business outsourcing” approach to food delivery that

When the employer is unclear, the law cannot leave disadvantaged workers helpless and forced to bear risks on their own. ... The risks that employees reasonably believe are the risks of the employer are the risks brought about by the operating method of the ××× Company. ... There is no way of operating or employing people that can lock an employer in a safe where “all profits belong to oneself, and all risks belong to the other party.” There is no such safe in the world, and such a safe will not be recognized by law. (Civil Judgment of Case 10)

Enterprises are well aware that such a “safe” is impossible to exist in reality and in law. Therefore, in cases of “no labor relations + social insurance,” although the enterprises do not admit the existence of a labor relationship with the workers, they will still assume social insurance responsibilities through various channels or methods. Even in cases of “no labor relations + no social insurance,” although the enterprises strongly deny the existence of a labor relationship with the workers and exclude the assumption of social insurance responsibilities, they will, almost without exception, purchase commercial insurance to protect the workers from work-related injury risks or transfer the employer’s liability risks. In fact, several well-known domestic platform companies almost all provide commercial insurance plans for their workers. For example, Didi began to provide drivers with the “Xiaoju Medical Insurance” and “Caring Insurance” plans in 2018. Ele.me launched the “World Couriers’ Heart” insurance program in 2018. And Meituan launched the Courier

³² He Wenjong, “Digitalization, Informal Employment and Social Security System Reform,” *Chinese Social Security Review* 3 (2020).

Guardian Program in 2019. However, the coverage of these programs is mostly limited to the employers' liability risks caused by accidental injuries and deaths.³³

Judging from judicial cases, the operation models of new business forms indeed put companies at risk of "being reasonably regarded by workers as employers." In Case 8, after the enterprise signed a "live streaming performance agreement" with the worker when it wanted to file a lawsuit against the worker for breach of contract, the worker filed a labor dispute arbitration and lawsuit on the grounds that the enterprise had paid social security fees for it, and finally confirmed that there was a labor relationship between the two parties, putting the enterprise in an embarrassing situation. Even if the company is not identified as an employer, it will usually have to bear a certain proportion of the compensation liability if an accidental injury or death occurs to the worker. For example, in May 2021, Liu died suddenly of a cerebral hemorrhage while delivering food. His family sued the food delivery platform. The platform argued that it had signed an outsourcing agreement with a labor service company. The court determined that the platform and its cooperating labor service company were both at fault and were liable for 20% and 70% of the compensation, respectively.³⁴ For another example, in a dispute over liability for injury between a food delivery company in Jinan and Ma and other service providers, the court ruled that Ma should bear 20% of the civil liability and the company should bear 80% of the civil liability. Although the company had commercial insurance, the insurance company only bore compensation within the insurance limit, and the food delivery company still had to bear liability for compensation for the excess.³⁵

The mutual reinforcement of social insurance and labor relations may also cause the new business forms to fall into a vicious circle of "bad money driving out good money," which has been clearly demonstrated in the development of new business forms at home and abroad. In China, traditional taxi companies that originally assumed social insurance responsibilities have given up their employer obligations under the competitive pressure of online ride-hailing services. Before "Baidu Takeout" was changed to "Ele.me Star," the relationship between them and the couriers was a standard employment relationship with labor contracts.³⁶ JD.com, which used to purchase five insurances and one fund for couriers, also announced in 2019 that it would no longer provide a basic salary and would lower its accumulation fund standards.³⁷ When it comes to other countries, in 2016, six platforms in the United States treated workers as employees, including Bridj (customized buses), Munchery (private chef specialty food delivery), Managed by Q (office butler service), Bluecrew (on-demand temporary worker services), Shyp (logistics operations), and Instacart (fresh grocery purchasing). However, as of 2019, only Bluecrew and Instacart were still able to operate independently, and the other four platforms either went bankrupt or were acquired.³⁸

IV. Reform Approach and Policy Recommendations

A. Reform approach

In order to protect the social insurance rights and interests of workers in new business forms, the *Guiding Opinions* constructed three different combination models based on whether a labor relationship can be established, highlighting the innovative idea of "classified

³³ Yang Jing, "Protection Programs for Employees of Platform Enterprise: Comparison between China and Europe and Implications," *Social Security Studies* 3 (2020).

³⁴ Wang Jing, "A food delivery courier in Beijing died suddenly while delivering food late at night, and his family was compensated 2.17 million yuan," *guangming.com*, accessed May 19, 2023, <https://m.gmw.cn/bai-jia/2022-12/06/1303215042.html>.

³⁵ See the Civil Judgment (2021) Shandong 01 Civil Final No. 9124 of the Intermediate People's Court of Jinan City, Shandong Province.

³⁶ Wang Min, "Review and Selection of Labor and Social Insurance Policies in the Context of New Business Forms," *Chinese Social Security Review* 3 (2021).

³⁷ Yang Jing, "Protection Programs for Employees of Platform Enterprise: Comparison between China and Europe and Implications," *Social Security Studies* 3 (2020).

³⁸ *Ibid.*

social insurance coverage,” which has improved the mechanism to protect the social insurance rights and interests of workers in new business forms. Among the three combination models, from “complete labor relations” to “incomplete labor relations” and then to “no labor relations,” the picture of the labor relations between workers in new business forms and enterprises is outlined as “from strong to weak” and then “from weak to none.” Correspondingly, the content and level of social insurance rights protection for workers in new business forms “gradually decrease,” and the social insurance costs borne by enterprises also “gradually decrease.”

In accordance with the provisions of the “*Conclusion Guidelines (Trial)*”, enterprises shall independently decide on the form of employment and assume corresponding social insurance responsibilities based on employment realities and the degree of labor management, taking into account factors such as the degree of autonomy of workers in new business forms over working hours and workload, the degree of control over the labor process, etc. However, they shall not enter into written agreements by means of inducement, fraud, coercion, etc., that infringe upon the rights and interests of workers. However, in a scenario where labor dispute arbitration bodies find it difficult to form a unified standard for identifying labor relations in new business forms, if there is a lack of unified social insurance rules, there seem to be no insurmountable policy boundaries among the three combination models of protecting the social insurance rights and interests of workers in new business forms. Driven by the interest of reducing social insurance costs, enterprises can “switch” among the three combination models through business model selection and algorithm design without having to resort to inducement, fraud, or coercion.³⁹

In the Foreword to the *World Social Protection Report 2020-2022*, Guy Ryder, director-general of the International Labor Organization (ILO), wrote that “we are only as safe as the most vulnerable among us; our well-being and destinies are intimately entwined, regardless of our location, background or work,” and that “now is the moment to strengthen and invest in social protection systems everywhere, including social protection floors, so we are better prepared for whatever future crises may come.”⁴⁰

At present, workers in new business forms are a vulnerable group among professional workers, and those who do not fully meet the conditions for establishing a labor relationship, those who rely on platforms to operate independently, and those who engage in freelance work are the groups with the weakest social protection. Only by setting a unified minimum standard for the protection of their social insurance rights and interests can we ensure that no matter how the enterprises’ employment model “switches,” the bottom line of the protection of the social insurance rights and interests of workers in new business forms will not be broken. However, from the perspective of implementing the employment-first strategy, the reform of the mechanism for protecting the social insurance rights of workers in new business forms must also take into account the policy orientation of encouraging new business forms to provide more jobs. If a balance must be struck between the pros and cons, a more pragmatic approach to reform might be to promote the innovation of social insurance policies by transcending labor relations, requiring enterprises to assume social insurance responsibilities of workers in new business forms according to unified rules without using this as a basis for confirming labor relations.

B. Policy recommendations

To promote the innovation of social insurance policies by transcending labor relations, it is first necessary to abandon the path of dependency on social insurance rights and interests

³⁹ The Chongqing Higher People’s Court released the ninth batch of cases with 10 typical cases of labor disputes in April 2023, pointing out that one of the new characteristics of the city’s labor dispute cases in 2022 was that “the phenomenon of employers transferring business risks through various means is prominent. For example, enterprises with new employment forms require delivery couriers to first register as individual industrial and commercial households, and then sign a contract with the individual industrial and commercial households to evade labor-related legal responsibilities.”

⁴⁰ International Labour Office, *World Social Protection Report 2020-2022: Social Protection at the Crossroads-in Pursuit of a Better Future*, Geneva: ILO, 2021, page 3.

that start with labor relations. Meanwhile, it is necessary to innovate in setting the payment base and payment ratio for workers in new business forms to cover social insurance, in order to adapt to the operational characteristics and profit models of new business forms and balance the protection and healthy development of new business forms.

First, transcending labor relations. Abandoning the path of dependency on social insurance rights and interests that start with labor relations, and adopting the concept that workers' acquisition of social insurance rights is based on labor rather than employment,⁴¹ lays the theoretical foundation for workers in new business forms to cover social insurance and enjoy a minimum standard of social insurance rights. As for specific measures, the academic community has put forward some inspiring reform suggestions, and local governments have also carried out valuable practice and explorations. For example, in terms of unemployment insurance, this is a practice of "decoupling" labor relations and reasonably defining involuntary unemployment, building the unemployment insurance payment mechanism in a classified way, shortening the unemployment insurance payment period, and improving the content of unemployment insurance benefits.⁴² In terms of maternity insurance, the current system is reformed and split into two parts. First, maternity medical expenses are included in the basic medical insurance as an item for single disease settlement. Second, a maternity subsidy system is established for all members of society (including farmers).⁴³ In terms of basic pension insurance and medical insurance, this is a practice of drawing on Germany's personal work account system of "decoupling workers' social rights from employers" to facilitate workers' job transitions.⁴⁴ In particular, Zhejiang and Guangdong, among other provinces, have taken the lead in practical exploration and introduced policies in the field of work-related injury insurance, encouraging employers to voluntarily provide work-related injury insurance for specific individuals, including workers in new business forms, and explicitly stating that this should not be used as the basis for confirming the existence of an employment relationship between the two parties.⁴⁵

Second, proportional responsibility for commissions. It is suggested that the business characteristics and profit models of new business forms be adapted, and the contribution base for the social insurance responsibilities shared by enterprises and workers in new business forms be determined based on the enterprise's commissions ratio and amount. Although the "algorithm system" of new business forms is complex and changeable, the core profit model of enterprises represented by platforms lies in the "commission system," and the remuneration of workers is "taken from the fees paid by consumers according to the rules and standards determined by the platform."⁴⁶ Under this kind of business operation and profit model,

⁴¹ Wang Min, "Review and Selection of Labor and Social Insurance Policies in the Context of New Business Forms," *Chinese Social Security Review* 3 (2021).

⁴² Meng Xianyu, "Unemployment Insurance for Workers of Internet Platform Economy: Institutional Dilemma and Construction Logic," *Lanzhou Academic Journal* 11 (2020).

⁴³ He Wenjong and Yang Yixin, "Research on the Reform of China's Maternity Insurance System," *Journal of Zhejiang University (Humanities and Social Sciences)* 4 (2014).

⁴⁴ Wang Lijun and Tu Yongqian, "On the Improvement of the Social Insurance System for Flexibly Employed People," *Social Sciences in Guangdong* 6 (2022).

⁴⁵ Article 57 of the *Zhejiang Province Digital Economy Promotion Regulations* (effective from March 1, 2021) stipulates that platform operators can provide work-related injury insurance to employees by covering work-related injury insurance with a single insurance type. Article 16 of the *Measures for Employers in Zhejiang Province to Cover Work-related Injury Insurance for Specific Personnel Who Do Not Meet the Conditions for Establishing a Labor Relationship (Trial)* (Draft for Comments) published in November 2022 stipulates that if an employer voluntarily pays work-related injury insurance for a single type of insurance for specific personnel, it shall not be used as a reference for confirming the existence of a labor relationship between the two parties. Article 13 of the *Measures on Specific Personnel, such as Employees Who Exceed the Statutory Retirement Age, Covering Work-related Injury Insurance (Trial)* (Regulations of the Human Resources and Social Security Department of Guangdong (2020) No. 55), which came into effect in Guangdong Province from April 1, 2021, stipulates that if an employer voluntarily chooses to cover the work-related injury insurance for its employees for a single type of insurance in accordance with the provisions of these measures, it shall not be used as a reference for confirming the existence of a labor relationship between the two parties.

⁴⁶ Wang Min, "Review and Selection of Labor and Social Insurance Policies in the Context of New Business Forms," *Chinese Social Security Review* 3 (2021).

“proportional responsibility for commissions” and “proportional responsibility for share” should become the basic logic for enterprises and workers in new business forms to share the responsibility of paying social insurance premiums. Following this logic, the enterprise’s commission ratio and amount should be used as the contribution base for calculating the social insurance responsibilities shared by enterprises and workers. This new calculation rule has obvious advantages: first, it can “ignore the complex and insignificant, and focus on the simple and important,” and clarify the identity of the platform enterprise as the primary responsible party, which means that the platform is responsible for setting the commission ratio. Meanwhile, the platform is also responsible for establishing the distribution rules for the platform and its partner enterprises to bear the social insurance fees of workers, that is, “the larger the platform, the greater the responsibility.” Second, it will help curb the tendency of enterprises to pass on the burden of social insurance fees to workers. Research shows that companies can pass on part of the social insurance costs to employees in the form of reduced wages,⁴⁷ and the lower the skills of the employees, the greater the company’s ability to pass on the costs.⁴⁸ According to the new calculation rules, under the premise that the rate is determined, the enterprise’s payment burden is linked to and positively correlated with the amount of its commission, which is conducive to curbing platform companies from setting high commission ratios. Meanwhile, it can also partially restrain enterprises from reducing the labor share of workers in new business forms in order to pass on the burden of social insurance.

Third, setting reasonable rates. It is suggested to balance the protection of the healthy development of new business forms and avoid enterprises losing their potential and vitality to create jobs due to the burden of excessive social insurance contributions. The *Guiding Opinions on Flexibly Employed People in Urban Areas Covering Basic Medical Insurance* issued by the General Office of the former Ministry of Labor and Social Security in May 2003 allowed flexibly employed people to cover insurance and pay premiums “in accordance with the contribution level of the local basic medical insurance pooling fund.” This “contribution level” was around 70% (about 4.2%) of the employer contribution rate (around 6%) in accordance with the requirements of the *Decision of the State Council on Establishing a Basic Medical Insurance System for Urban Employees*. The *Comprehensive Plan for Reducing Social Insurance Rates* launched by the General Office of the State Council in 2019 reduced the employer contribution rate of basic pension insurance for employees from 20% to 16%. “But the contribution rate for self-employed persons remains at 20%, and they have not been able to enjoy the benefits of the reform,” so the self-employed should be included in the coverage of the rate reduction.⁴⁹ Therefore, if we draw on Germany’s individual work account system for basic pension insurance and medical insurance, we should set the total insurance rates for enterprises and workers in new business forms in accordance with the above-mentioned rate policies. In terms of work-related injury insurance, the base rate should start at the lowest level in the industry, but the floating range of differential rates should be increased. This will reduce the resistance and pressure on enterprises to cover insurance and also encourage them to pay more attention to and strengthen work-related injury prevention, thereby reducing the overall incidence of risks and accidents. Similarly, the academic community has also proposed using a “unilateral contribution system” to enhance the attractiveness of unemployment insurance policies and a “floating rate system” to encourage new business forms to create jobs. Based on the reality that the total unemployment insurance

⁴⁷ Feng Jin, “Changes in Labor Relations, Workers’ Demands and Social Insurance System Reform,” *Chinese Social Security Review* 5 (2022).

⁴⁸ Feng Jin, “The Impact of Social Insurance on Wages: From the Perspective of Human Capital Differences,” *Journal of Financial Research* 7 (2014).

⁴⁹ Lu Quan, “Production Model, Employment Pattern and Social Insurance System Innovation,” *Journal of Social Sciences* 6 (2021).

rate in most parts of China is 1%, it is recommended that the initial unilateral rate for enterprises be set at 0.3%.⁵⁰

Conclusion

It is generally recognized that the operating model of new business forms is very different from that of traditional industries, and the employment model of workers in new business forms is also very different from that of traditional workers. The report of the 20th National Congress of the Communist Party of China calls for “supporting and regulating the development of new forms of employment” and “strengthening the protection of rights and interests of workers in flexible employment and new forms of employment” under the goal of implementing an employment-first strategy.⁵¹ This requires that the protection of the social insurance rights and interests of workers in new business forms must adhere to the policy orientation of encouraging new business forms to create more jobs, and must coordinate and balance the legitimacy of the development and growth of new business forms and the appropriateness of social protection for their workers. Excessive social protection will inhibit the development and growth of new business forms and will not be conducive to stimulating their potential for job creation. However, “naked running” without a social protection bottom line may bring about “short-term prosperity” in the industry, and disorderly and vicious competition will definitely not be conducive to the long-term stability of new business forms. It goes without saying that promoting innovation in social insurance policies from a perspective that transcends labor relations and requiring enterprises to assume social insurance responsibilities for workers in new business forms in accordance with unified rules while not using this as a basis for confirming labor relations is not the optimal solution for protecting the social insurance rights and interests of workers. However, it may be a suboptimal solution for implementing the strategic goal of employment-first in the digital age. This plan is conducive to fully protecting the social insurance rights and interests of workers in new business forms. Also, it can ensure fair competition and healthy development of enterprises under unified social insurance rules.

(Translated by *CHEN Feng*)

⁵⁰ Yue Zongfu, “Unemployment Insurance for Workers in New Business Forms: Reform Ideas and Policy Optimization,” *Academic Journal of Zhongzhou* 6 (2023).

⁵¹ Xi Jinping, “Hold High the Great Banner of Socialism with Chinese Characteristics and Strive in Unity to Build a Modern Socialist Country in All Respects: Report to the 20th National Congress of the Communist Party of China,” *People’s Daily*, October 26, 2022.