

Justification of and Response to the Specificity of Workers' Personality Rights

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Abstract: *The pervasive existence of subordination in the workplace endows workers' personality rights with a distinct specificity that differs from other civil subjects. The specificity of workers' personality rights is primarily manifested in three aspects: the exercise of rights is restricted by the employer; personality rights infringements often accompany violations of workers' economic property rights; and the scope of rights is not limited to the duration of employment. To respond to the specificity arising in the labor domain, certain disputes concerning workers' personality rights should be handled through labor dispute resolution procedures. In individual cases, judicial authorities should differentiate among protection levels based on the specific type of personality rights involved, with a focus on examining the reasons, methods, and extent of the employer's restrictive actions, thereby establishing a practical and reasonable review system.*

Keywords: personality rights ♦ workplace ♦ personal freedom ♦ human dignity ♦ civil code

The independent compilation of personality rights in the *Civil Code* is a significant innovation in China's civil legislation and an important symbol leading civil legislative efforts.¹ This endeavor establishes the basic rules for personality protection within the private law domain in China, but it also faces the issue of "how to handle the relationship with special civil laws."² In the field of labor, the *Civil Code* does not distinguish between subjects in the application of personality rights rules, and it lacks special attention to the specificity of workers. Although academia has produced abundant and impressive literature on the protection of workers' personal freedom and human dignity, these efforts are mostly focused on the construction and shaping of specific and concrete rights. They revolve around singular dimensions of rights, failing to extract the common characteristics of workers' personality rights protection, and thus cannot form a unified adjustment paradigm for these rights. Issues such as workers' health and safety, freedom of expression, and the protection of privacy and personal information frequently become the focus of theoretical research and media reports, all of which fall under the scope of sub-rights in the realm of personality rights. The specificity of personality rights in the workplace urgently needs to be understood from a macro perspective. When transitioning from the equal civil domain into the labor field, which is characterized by management and subordination, does the content and scope of personality rights change due to the existence of labor relationships? When workers' personality rights are infringed, should the application of civil law take into account the intervention of special rules and remedies provided by labor laws? Is it necessary to refine or supplement labor laws to coordinate with the personality rights provisions in the *Civil Code*? The protection of workers' personality rights continually calls for answers to these questions, and it is worth engaging in meticulous, theoretical, and forward-looking discussions based on civil law rules.

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¹ Zhang Mingqi, "The Compilation of Specific Laws of the Civil Code," *China Legal Science* 3 (2020): 19.

² Some argue that how to handle the relationship with special civil laws is the biggest problem faced by all civil codes in modern society, and labor law is a representative of "policy-based special civil law." See Xie Hongfei, "Constructing the Relationship between Civil Code and Special Civil Law," *Social Sciences in China* 2 (2013): 98.

I. Proposal of the Questions

The specificity of workers' personality rights under the framework of the *Civil Code* is obscured by a gap in the system. Civil law tends to flatten the labor exchange relationship into one of equality, thereby undermining the possibility of developing and advancing special protection norms for workers. Workers' personality rights refer to the personal rights and interests that workers enjoy in the labor processes and closely related fields. Currently, the restriction of personality rights to the subject of "workers" is only discussed and expanded at the theoretical level, and there is no such expression in existing laws. The legal relationship concerning the personality rights of workers and employers is governed and adjusted by the personality rights section of the *Civil Code*. Special protection norms for workers are extremely rare in the *Civil Code*, as "the labor exchange relationship, as adjusted by civil law, does not consider whether there is subordination, and all are treated as equal subjects."³ Article 1010 of the *Civil Code* stipulates that enterprises have an obligation to prevent sexual harassment, strengthening "protection for specific individuals" in special places,⁴ and this can be deemed as a special protection norm for workers. However, this is the only provision in the personality rights section related to the labor field. The rest of the *Civil Code* does not address other specific personality rights of workers, and no overarching provision for the protection of workers' personality rights is found in the "General Provisions" chapter of the personality rights section. Based on the guiding provision of Article 995 of the *Civil Code*,⁵ it is natural to turn the inspection focus to the labor law sector, interpreting it as a branch of "other laws," thereby playing a supplementary role in protecting workers' personality rights. China's labor law has inherited the traditional civil law's systemic defect at the value level of "valuing property over people,"⁶ with far fewer regulations on personality rights than on economic property rights. China's *Labor Law* and *Labor Contract Law* only clarify the legislative purpose of "protecting the legitimate rights and interests of workers,"⁷ without further specifying the specific scope of "legitimate rights and interests." It is necessary to interpret the provisions to conclude that they include the property rights and personal rights of workers. Other provisions related to the legislative purpose do not mention the term "personality rights" either, and the specific behavioral norms for the care and protection of the personality interests of workers are indirect, focusing mainly on material personality rights such as the right to physical integrity and the right to health. For example, Article 38 of the *Labor Law* stipulates the minimum guarantee of rest days for workers, and Article 32 of the *Labor Contract Law* stipulates that workers have the right to refuse illegal commands and orders to take risks. Based on this, the protection of personality rights in labor law urgently needs further consideration that is distinct from the general rules of civil law, and "the state needs to undertake the protection obligations of the labor rights enjoyed by the vast number of workers and the emerging workers' personality rights."⁸ Labor law, with both its general attributes of private law and its special social rules,⁹ should make systematic and contemporary responses to the norms of personality rights in civil law.

³ Wang Quanxing, "The Relationship between Labor Law and Civil Law under the Background of the Civil Code," *China Legal Science* 3 (2023): 30.

⁴ Wang Liming, "Interpretation of the Provisions on Sexual Harassment in the Civil Code's Right of Personality," *Journal of Soochow University (Philosophy & Social Science Edition)* 4 (2020): 6.

⁵ Article 995 of the *Civil Code* stipulates that a person whose personality rights are infringed upon has the right to request the actor to bear civil liability in accordance with the provisions of this Code and the other laws.

⁶ Wang Liming, "On the Transformation of Thinking in the Implementation of the Civil Code: From Special Regulations to Codified Thinking," *Social Sciences in China* 3 (2022): 19.

⁷ See Article 1 of the *Labor Law* and Article 1 of the *Labor Contract Law*.

⁸ Tu Yongqian, "The Modernization of Labor Law Legalization in China in the Context of Labor Code Formulation," *Legal Forum* 2 (2023): 99.

⁹ Shen Jianfeng, "The Positioning of Labor Law as a Special Private Law in the Context of the Formulation of the Civil Code," *Peking University Law Journal* 6 (2017): 1523-1524.

Research findings on workers' personality rights are scattered, and there is no summary that distinguishes the specificity of personality rights from other civil subjects. The research is basically limited to the refinement and improvement of individual rights norms, and there is a lack of macro research on the collection of personality rights. After the enactment of the *Labor Contract Law*, scholars have focused on analyzing individual rights that are closely related to the survival and development of workers, such as the right to personal rights and the right to equal employment.¹⁰ At that time, research aimed at perfecting and refining specific systems and the embryonic form of workers' personality rights in legal theory had just taken shape, but a rich rights spectrum had not yet been formed. With the widespread use of digital informatization, the focus of labor law research in China has shifted to the protection of workers' privacy rights, and attention has begun to focus on the boundary between workers' rights and the management rights of employers.¹¹ After the promulgation of the *Civil Code*, "privacy rights and personal information protection" are established in the personality rights chapter as a special section, pushing the research on the protection of workers' privacy and personal information to a climax. Many scholars start from the "specific areas of personal information protection" and begin to study "how the provisions of the *Civil Code* on privacy and personal information protection apply to the field of labor relations."¹² Additionally, Article 1010 of the *Civil Code* officially legalizes the prohibition of sexual harassment, highlighting the conceptual definition of workplace sexual harassment, the design of the system, and the issue of the employer's responsibility for prevention and control.¹³ Some studies start from the perspective of protecting the rights and interests of workers, especially female employees, to maintain workplace safety. Although there have been sporadic calls for "unified adjustment of workers' personality rights by labor law,"¹⁴ the *Civil Code* has taken the lead in including all types of personality rights of civil subjects under its umbrella, and the view that some personality rights norms should be included in labor law is no longer of reference value. The issue of the specificity of workers' personality rights is still waiting for an answer that conforms to the legislative trend. This paper analyzes the subordinate and dependent nature commonly existing in the labor domain, summarizes the unique characteristics of workers' personality rights, takes into account the differences in the concept of norms between labor law and personality rights section, and on the basis of respecting the existing legislative framework, provides new relief paths for the protection of the personality interests of workers as a special group.

¹⁰ For maintaining a safe working environment, some argue that there should be increased protection for the personal safety of workers, who are often the weaker party in labor contracts. See Feng Xiangwu, "On the Legal Benefits of Highlighting the Personal Nature of Labor Contracts — Also on the Protection of Workers' Personal Rights," *Journal of Gansu Political Science and Law Institute* 2 (2012): 54-61; there is also a viewpoint that starts from the perspective of equality rights, suggesting that "a concrete design for the judicial remedy mechanism for workers facing employment discrimination should be developed." See Lin Jia and Yang Fei, "On Judicial Remedies for Workers Subject to Employment Discrimination," *Political Science and Law* 4 (2013): 2-12.

¹¹ For example, some scholars use the principle of balancing interests to resolve the "conflict between enterprise information management practices and workers' privacy rights". See Tian Silu, "Intelligent Labor Management and Legal Protection of Laborers' Privacy," *Huxiang Forum* 2 (2019): 23; additionally, some scholars suggest that courts should apply the principle of proportionality to assess whether an enterprise's use of dismissal as a punitive measure against workers for expressing themselves in the media is justified. See Wang Jian, "Legal Protection of Laborers' Privacy in Social Media — A Comparative Study Based on EU and China's Judicial Practice," *Journal of Huazhong University of Science and Technology (Social Science Edition)* 4 (2019): 123-124.

¹² Xie Zengyi, "Protection of Employees' Personal Information: Value, Principle and Path," *Journal of Comparative Law* 3 (2021): 25-26.

¹³ Wang Xianyong, "Legal Regulation on Sexual Harassment in Workplace during the Age of Civil Code," *Law Science* 1 (2021): 135-136.

¹⁴ Du Lu, "Research on the Legal Protection of Laborer's Personality Right," *Journal of Northwest University (Philosophy and Social Sciences Edition)* 5 (2019): 57-59.

II. The Legal Foundation of the Specificity of Workers' Personality Rights

The specificity of workers' personality rights ultimately stems from the difference between workers and other civil subjects, and its legal foundation arises from the existence of the workplace and the characteristic of personal subordination in labor relationships. In analyzing the causes of this specificity, it is necessary not only to explore the transformation of personality rights within the workplace but also to examine how the labor relationship between the worker and the employer influences personality rights. The continuous impact of the workplace and the distinct manifestation of personal subordination in labor relationships are two sides of the same coin: The former focuses on the trend of the evolution from the civil field to the workplace from the external level of the scope of legal adjustment, while the latter analyzes the impact on the relationship between labor and capital personality rights after the radiation of personality's attributive nature from the internal level of legal relationships. Both aspects can justify the specificity of workers' personality rights, which arises from external control and management.

A. The background of the workplace defines the scope of personality rights regulation

The workplace is marked by the sustained control and management by the employer, making it a special civil domain. Among all the world-related relationships that take personality rights as the basis, the relationship between the employer and the worker within the workplace is especially unique. In traditional civil law, the richness and expansiveness of the content of personality rights lead to a variety of sub-rights with different and dispersed functions, and the methods for regulation and adjustments in the personality rights section vary widely. In contrast, the workplace focuses solely on the legal relationship of personality rights between the employer and the worker, centering entirely on the protection of the worker's personality interests. The rights system derived from this focus is more directed, and its commonalities are easier to grasp. The types and scope of personality rights associated with the identity of the worker are relatively fixed and limited, and particular attention should be paid to personality rights whose exercise is partially restricted due to factors specific to the workplace.

The structure of personality rights is centered around the notion of disposability.¹⁵ However, in the context of the labor domain, the control over workers' personality rights is not as complete as that of ordinary civil subjects. The control over personality rights refers to "the right of the holder, within a certain scope, to manage and control the object of the right according to their will and in accordance with the law, without getting the consent of others or the assistance of others' active behavior to achieve this."¹⁶ This management and control reveal that the power of disposal includes both a passive defensive aspect, such as being free from interference and infringement, and an active operational aspect, such as benefiting from or commercializing the rights. First, regarding the passive aspect, within the workplace, workers are often forced to relinquish or limit their absolute control over personal freedom, leisure time, and personal information, temporarily handing themselves over to the employer or disclosing themselves to the employer. The labor process often involves a restriction of the worker's control over these rights. Only when a worker is willing to share management and control of their body with the employer during working hours and provides personal information related to work in advance can the labor force and production resources be properly combined to complete the labor activity. In this context, the restriction on the exercise of personality rights does not arise from an explicit agreement or shared will of both parties but is instead an inevitable consequence of the nature of labor itself. The likelihood of infringement upon workers' personality rights, such as the right to corporeal integrity, the

¹⁵ Zhang Pinghua, "Personality Rights' Interest Structure and Its Legalization," *China Legal Science* 2 (2013): 44-45.

¹⁶ Wang Liming, "On the Definition of Personality Right," *Journal of Huazhong University of Science and Technology (Social Science Edition)* 1 (2020): 68.

right to health, the right to privacy, and personal information rights, all of which are focused on defending and protecting workers' interests, rises accordingly. Generally, workers "have already consented to such restrictions on their personal freedom when signing the contract,"¹⁷ and tacitly accept the limitations imposed by the employer on their personality rights. Second, regarding the active aspect, the labor field rarely involves the worker benefiting from or commercializing their personality rights, nor does it frequently give rise to related legal issues. In labor production and operations, the worker's personality is absorbed by the employer, who uses it to represent the company's image and manage production risks. There is no need to highlight the worker's personal identity, and the scope for exercising rights like the right to name or likeness, all being external markers of personality, almost vanishes. Therefore, in the workplace, the passive control over personality rights is somewhat restricted, while the active control over these rights is largely unable to be exercised. As long as the workplace exists, the scope of personality rights regulations shifts from an absolute right enforceable against all to a relative relationship between workers and employers. The extension of these rights only covers those aspects of personality rights that are influenced by the management of the employer.

B. The subordinate nature of personality shapes the content of the legal relationships of personality rights

Subordination is the core characteristic that distinguishes labor relations from other civil relations and is a summary of the subordination or dependency inherent in labor relations.¹⁸ Ultimately, it leads to "the separation of the laws governing labor relations from civil law, forming an independent legal field."¹⁹ To prevent employers from confusing and obscuring the real employment relationship with similar-looking labor relationships, contracting relationships, and other equal civil legal relationships, the theory of subordination serves as the most important method for determining the labor relationship, with the function of "differentiating labor relationships from other social relationships."²⁰ Even in the context of the sharing economy and digital economy, where "the criteria for subordination are currently facing unprecedented questioning and challenges,"²¹ it should still serve as a substantive standard that "plays a decisive role in the determination of labor relations."²² Italy, Japan, and China's Taiwan region, and other civil law jurisdictions use the theory of subordination as a basic method for analyzing and developing labor relations.²³ Although Chinese law does not

¹⁷ Michael Coester, "Protection of Employees' Personality Rights in the Employer-Employee Relationship," in *Gesamtausgabe der Aufsätze der Chinesisch-Deutschen Rechtswissenschaft*, translated by Chi Ying (Beijing: Law Press • China, 2003), 269.

¹⁸ Guan Huai and Lin Jia, *Labor and Social Security Law* (Beijing: Law Press • China, 2011), 11.

¹⁹ Wang Zejian, *Collection of Wang Zejian on Law (vol. 12)* (Beijing: China University of Political Science and Law Press, 2003), 101.

²⁰ Feng Yanjun and Zhang Yinghui, "Reflection and Reconstruction of the Criteria for Determining 'Labor Relations'," *Contemporary Law Review* 6 (2011): 94.

²¹ Xiao Zhu, "Theoretical Explanation and System Construction of Subordination Criteria for Labor Relationship Identification," *Law Science* 2 (2021): 176.

²² Xiong Wei and He Ling, "Reflections on the Theory of Labor Relationship Confirmation — From the Perspective of the Relationship Recognition Issue between Ride-Hailing Platform Companies and Registered Drivers," *Journal of Southwest Minzu University (Humanities and Social Sciences Edition)* 9 (2018): 102.

²³ The *Italian Civil Code* establishes a dual system of "subordinate labor and autonomous labor" for a variety of labor activities, determining the design and application of labor law protection norms." See Wang Quanxing and Su Yu, "The Analysis of Para-subordinate (or-dependent) Work of Italian Law and Its Inspiration," *Law Science Magazine* 1 (2016): 103; in Japanese law, "subordinate labor" is considered as "the subordination of labor" which is an essential element in determining the basic nature of labor law, and also serves as the benchmark for determining the applicability of labor law. See Tian Silu and Jia Xiufen, *Study of Labor Law of Japan* (Beijing: China Social Sciences Press, 2003), 1; China's Taiwan region takes the subordination of labor as a common premise for academic discussion, believing that "all labor law concepts that are different from the traditional civil law concepts are developed based on this idea." See

directly recognize the theory of subordination, it narrates the core meaning of subordination in important normative documents²⁴ related to the determination of labor relations, and the theoretical community also regards it as an indirect reflection of the localization of the theory of subordination.

Specific to the legal relationships of personality rights closely linked to labor relations, the subordination of personality is the foundation for the specificity of workers' personality rights. The subordination of personality inherent in labor relations extends to the legal relationships of personality rights between employers and employees, thus giving rise to the specificity of workers' personality rights compared to other civil subjects. Currently, the interpretation of the theory of subordination still takes the subordination of personality as its core characteristic.²⁵ Whether in civil law countries or common law countries, the core of the employment relationship (labor relationship) is hierarchical power, control, and subordination. These key elements enable employers to obtain managerial privileges and authority, and ensure the stability and continuity of workers' work, stimulating higher output efficiency.²⁶ The concept of personality subordination is an academic concept in the various jurisdictions of the continental law system, with slightly different expressions. The mainstream view in Germany considers that the standard for judging personality subordination should mainly focus on whether the employee has the two major characteristics of "integrating into the employer's organization" and "working under the employer's direction."²⁷ It takes the personal dependency of the labor provider as the substantive content of the employee concept.²⁸ Similarly, in Japanese law, the meaning of "subordinate labor" is discussed from aspects such as "personality subordination," and is considered by some academic views as one of the criteria for judging the use of subordinate relationships.²⁹ In China's Taiwan region, personality subordination refers to "a suppression of the worker's own decision-making right, where the specific detailed content of the labor service is determined not by the labor provider, but by the recipient of the labor service."³⁰ The Anglo-American legal system also has a similar approach to the continental law system in determining the status of employees, focusing on whether workers are in a subordinate position due to the employer's control during employment activities.³¹ Nowadays, the connotation of subordination has indeed changed due to the evolution of labor forms, but "courts can only maintain consistency in the most significant factor, i.e. control rights, in analyzing and classifying worker identity."³² This shows that it still occupies a core position in identity judgment. In China, the normative expression of personal subordination is that "the various labor regulations and systems

Huang Yueqin, *New Theory of Labor Law* (Beijing: China University of Political Science and Law Press, 2003), 94-96.

²⁴ See the "Notice from the Ministry of Labor and Social Security on Matters Related to the Establishment of Labor Relations" (Ministry of Labor and Social Security [2005] No. 12).

²⁵ Li Haiming, "On Workers in Labor Law," *Tsinghua University Law Journal* 2 (2011): 126.

²⁶ Xiao Zhu, "Theoretical Explanation and System Construction of Subordination Criteria for Labor Relationship Identification," 162-163.

²⁷ Wang Qian, "The Identification of Labor Relations in German Law," *Jinan Journal (Philosophy & Social Sciences)* 6 (2017): 47-48.

²⁸ Wilhelm Dutz, *Arbeitsrecht*, translated by Zhang Guowen (Beijing: Law Press • China, 2003), 17-18.

²⁹ Tian Silu and Jia Xiufen, *Study of Labor Law of Japan*, 54-57.

³⁰ Huang Yueqin, *New Theory of Labor Law*, 94-96.

³¹ The right-to-control test, as a method to distinguish between independent contractors and employees in the Anglo-American legal system, has long existed to allocate different rights rules for different identity groups. With the development of industry and changes in economic activities, the differences between employers, employees, and independent contractors have evolved into a complex situation. The traditional grasp of control rights has gradually shifted to a broader economic reality test or a comprehensive examination of multiple factors. See Hou Lingling and Wang Quanxing, "A Study on the Concept of Workers in Labor Law," *Journal of Yunnan University (Law Edition)* 1 (2006): 68-69.

³² Robert Sprague, "Worker (Mis) Classification in the Sharing Economy: Trying to Fit Square Pegs into Round Holes," 31 *ABA Journal of Labor and Employment Law* 1 (2015): 73-74.

formulated by the employer in accordance with the law apply to workers, and workers are subject to the management of the employer.” This notion of personal subordination is an important marker in determining the existence of a labor relationship. Across various definitions, personal subordination stands in contrast to personal independence or completeness, emphasizing the state in which workers, during the provision of labor, are managed, commanded, and subject to compliance and control. Some Chinese scholars argue that with the widespread influence of modern human rights concepts, the use of the term “personal subordination” is questionable, yet they still acknowledge the prevalent condition in which workers’ personal rights are restricted or infringed upon due to their subordination to employer management. Personal subordination has long existed in traditional labor relations, and it will continue to play its role in another way in the recognition of new forms of labor relations.

Under the framework of personal subordination, the non-exclusive nature of workers’ personality rights becomes their genetic trait and inevitable fate, as the absolute nature of personality rights tends to soften when applied to the labor field. Since labor provision cannot be separated from the worker’s body, labor production requires the worker to accept the employer’s instructions and control, which permeates the entire labor process. The traditional notion of “personal autonomy” transforms into “shared decision-making” within the labor field, where the boundaries, methods, and content of this shared decision-making must align with the subordinate nature of labor. The continued effect of personal subordination in the labor domain leads to the contraction of the boundaries of workers’ personality rights, a negative impact that workers must bear in exchange for the compensation received for their labor provision. This negative impact is often implicit, as the seemingly equal labor contract does not explicitly disclose these costs.

Unlike the civil domain, which celebrates the value pursuit of freedom and openness, the legislative approach to personality rights in the labor field has remained traditional and conservative. However, from the perspective of protecting workers’ rights, even though personal subordination is a factual state in the labor domain, workers’ personality rights must still be protected to the greatest extent possible within these real-world constraints. While the employer’s command and control are necessary for labor production, the labor production itself is unrelated to the worker’s personality interests. “The task of the new labor law is to realize the human rights of workers by reconstructing labor relations as personal legal relations at a new level, specifically the level of personal freedom.”³³ The protection of personality rights, especially for certain groups, requires enhanced safeguards. The protection of workers’ personality rights is closely tied to the development of personality rights as a whole³⁴ and urgently needs to address the difficulties imposed by subordination.

III. The Connotations of the Specificity of Workers’ Personality Rights

Combining the workplace and personal subordination to create a solid theoretical foundation for workers’ personality rights can uncover rights characteristics that other civil subjects do not possess. Through the summary of different types of cases where workers’ personality rights are violated, commonalities can be found in the exercise of rights, the scope of rights, and the patterns of infringement.

A. The first point of the specificity: the restricted nature of the exercise of rights

Although workers have the same content of personality rights as other civil subjects, the special relationship formed between employers and workers leads to more restrictions on the exercise of personality rights. The structure of legal interests in labor law is composed of workers’ interests, employers’ interests, and social public interests.³⁵ Among them, the

³³ Gustav Radbruch, *Einführung in die Rechtswissenschaft*, translated by Mi Jian (Beijing: the Commercial Press, 2013), 97.

³⁴ Wang Zejian, *Personality Rights Law: Legal Exegesis, Comparative Law, and Case Studies* (Beijing: Peking University Press, 2013), 98-99.

³⁵ Wang Quanxing, *Labor Law* (Beijing: Law Press • China, the 4th edition, 2017), 52.

conflict of private interests between the worker and the employer is the most obvious, leading to inevitable restrictions on workers' personality rights. Due to the strong dependency of personality rights on the body of the worker, when workers provide labor to employers, their personality rights and interests will also be affected by the employer. At the same time, employers impose on workers the obligation to complete labor quotas and the obligation of loyalty based on the labor contract when managing labor, providing a theoretical basis for restricting workers' personality rights.

The divisibility of personality rights calls for further interpretation and refinement of the restrictions on the exercise of rights to define the scope of personality rights that can and cannot be restricted. Personality rights have a maternal nature, giving rise to many sub-rights, and with the development of society and the progress of the legal order, new personality rights may emerge, and existing personality rights will also continuously generate new content. Paragraph 2 of Article 990 of the *Civil Code* stipulates that a natural person enjoys other personality rights and interests arising from personal freedom and human dignity. "Personal freedom" and "human dignity" are the criteria for determining "other personality rights and interests." Influenced by German law, "other personality rights and interests" are also called "general personality rights."³⁶ The "General Provisions" chapter of the *Civil Code* explicitly states at the outset that the personal freedom and human dignity of a natural person are protected by law, and then lists the specific personality rights enjoyed by civil subjects in the following articles.³⁷ Through contextual interpretation, personal freedom and human dignity can be seen as the value basis for various personality rights and interests. Personal freedom and human dignity, as the foundation of general personality rights, form a "source relationship"³⁸ with specific personality rights. As for the doctrinal discussions in the field of civil law on which of the two, personal freedom or human dignity, is the more fundamental value concept,³⁹ it does not hinder both from serving as the value foundation for personality rights. Moreover, the conceptual connotation and scope of personal freedom and human dignity are about to undergo new changes in the labor domain. However, from the perspective of the basis of rights, personality rights based on human dignity shall not be diminished under any circumstances, while those based on personal freedom can be restricted under necessary circumstances.

1. The principle of not diminishing the content of rights — from the perspective of human dignity

Human dignity is the primary value of the personality rights section,⁴⁰ and "human dignity and self-realization of individuals, as well as the essence of personality, are essentially of the same nature."⁴¹ Tracing back to the concept of public law, Article 38 of the *Constitution* confines the protection of human dignity to the scope related to the rights of reputation and honor, such as the "prohibition of insult, libel, and false accusations." Under the framework of civil law, human dignity is more richly elaborated. As the highest value goal of the entire legal system, human dignity is embodied in civil law as various types of personality rights for protection.⁴² German theory posits that human dignity can be

³⁶ Some civil law scholars believe that the significance of debating the terms "other personality interests" or "general personality rights" is not as great as the specific interpretation of the provisions. See Wen Shiyang, "General Personality Rights in the Context of the Civil Code," *China Legal Science* 4 (2022): 233-234.

³⁷ See Article 109 and 110 of the *Civil Code*.

³⁸ Zhu Xiaofeng, "On the Relationship between the Application of the General Clauses and that of the Specific Ones of Personality Rights," *Journal of Comparative Law* 3 (2021): 156-158.

³⁹ Zhu Xiaofeng, "The Normative Meaning of Personal Freedom as the Basis of the Value of General Personality Right," *Journal of Zhejiang University (Humanities and Social Sciences)* 2 (2021): 129-133.

⁴⁰ Wang Liming, "Human Dignity: The Primary Value of the Title of Personality Rights in Civil Code," *Contemporary Law Review* 1 (2021): 3-7.

⁴¹ Chen Sibin, "Constitutional Nature of Personality Rights and Its Manifestation in the Civil Law," *Human Rights* 4 (2023): 97.

⁴² Wang Zejian, *General Rules of Civil Law* (Beijing: Peking University Press, 2014), 28-29.

understood as “a mutual recognition and respect in the process of human interaction, as well as a practical claim effectiveness based on social interaction relationships.”⁴³ This objective expression of human dignity helps to reflect its social aspect and can explain the non-exchangeable attribute of human dignity, which is different from ordinary goods in the commodity market. Specifically, in the scenario of labor service provision, to prevent mental harm and trampling on workers, the personal rights and interests derived from human dignity in the labor exchange relationship cannot be handed over to the employer’s control along with the labor force. Instead, they become inherent rights of workers, forming a closely woven net of rights to resist potential threats from the labor field. The Marxist view of labor holds that labor is the source and foundation of human dignity.⁴⁴ In labor, workers “can freely exert their physical and intellectual abilities,”⁴⁵ and the social goal is to achieve “equal and dignified development for all members of society.”⁴⁶ In the civil field, the human dignity of natural persons always exists and is independent of whether they have the status of workers and whether they accept the direction and management of employers. In the repeated exchange relationship of performance, workers sacrifice a part of their personal freedom and even health according to the essence of labor subordination, but they should not cede the dignity deeply embedded in the core of personality rights to employers, completely materializing human dignity into a commodity with exchange value. In the long historical process and social progress, the connotation of human dignity keeps pace with the times, and this can also be seen in the adjudicative cases. For example, in the labor contract dispute appeal case between Beijing Dangdang Information Technology Co., Ltd. and Gao,⁴⁷ the sick leave rights and personality rights of transgender workers were discussed in detail, and the meaning of human dignity was extended to deeper levels such as “personal gender identity, gender expression.”

Typical personality rights based on human dignity, represented by the right to equal employment, the right to reputation, and the right to sexual autonomy, must not be diminished even when entering the field of labor relations:

(1) The right to equal employment. Some courts have reasoned that “the act of infringing upon the workers’ right to equal employment should mainly consider and judge whether it has violated the natural person’s human dignity.”⁴⁸ More precisely, human dignity is the legal interest protected by the right to equal employment. An individual’s aspiration for equal rules and relationships is the externalization of human dignity. If an individual suffers from unequal treatment or discrimination, it will stimulate the individual’s sense of rights and produce an intuitive feeling that human dignity has been insulted. This vision built upon equal rights is the same in other civil fields and even public law fields. The practice of equal treatment in the labor market is also applied in other situations, and the law does not soften the application of the principle of equality because of the disparity in economic strength or social status between the employer and the employee.

(2) The right to reputation. Article 101 of the *General Principles of the Civil Law* once stipulated, “Citizens and legal persons shall enjoy the right to reputation. The human dignity

⁴³ Song Xin, “On the Dignity of the Human Being in German Constitutional Law and Its Reference,” *Oriental Law* 6 (2016): 126.

⁴⁴ He Yunfeng, “Reinterpretation and Implications of Marx’s Theory of Labor Felicity — Further Remarks on Marxism of Labor-based Human Rights,” *Journal of Shanghai Normal University (Philosophy & Social Sciences)* 5 (2018): 32-34.

⁴⁵ Central Compilation and Translation Bureau, *Collected Works of Marx and Engels*, vol. 1 (Beijing: People’s Publishing House, 2009), 159.

⁴⁶ Central Compilation and Translation Bureau, *Collected Works of Marx and Engels*, vol. 3 (Beijing: People’s Publishing House, 2012), 87.

⁴⁷ The civil judgment of the Second Intermediate People’s Court of Beijing (2019) Jing 02 Civil Final No. 11084. For the detailed commentary of this case, see Li Siqi and Gao Zhihai, “Rights of Sick Leave and Personality for Cross-gender Laborers,” *People’s Judicature • Case 29* (2020): 8.

⁴⁸ The civil judgment of Beijing Third Intermediate People’s Court (2021) Jing 03 Civil Final No. 6702.

of citizens shall be protected by law.” In the workplace and areas outside the workplace, if an employer “disseminates information that denigrates and lowers the social evaluation of workers, it constitutes an infringement of the workers’ right to reputation.”⁴⁹ In the dispute case between Huang and Li Shizhen Pharmaceutical Group Co., Ltd. regarding the right to reputation, the company argued that its evaluation was for the management of internal employees, but the court did not accept this argument, determining that the company’s dissemination of the laborer’s collusion with evil forces constituted an infringement of the right to reputation. Although the court’s reasoning did not explicitly state the inviolability of human dignity, it indirectly revealed that the laborer’s right to reputation not only should not be restricted but also requires greater protection. The reason is that “it is precisely because there is a closer labor relationship between the employer and the worker that the evaluation made by the employer on the worker can usually be more easily believed by the majority.”⁵⁰

(3) The right to sexual autonomy. The prohibition of sexual harassment is aimed at not only protecting workers from personal freedom infringement but also safeguarding the integrity of personal dignity. It goes without saying that no job acquisition or completion should come at the expense of the erosion of workers’ sexual autonomy rights.

2. With reasonable restrictions in specific circumstances as an exception — from the perspective of personal freedom

Personal freedom, as the value basis of personality rights, can be interpreted as a private law expression of the citizens’ basic rights stipulated in Article 37 of the *Constitution*. Since personal freedom is regarded as a private law concept responsible for adjusting extensive civil acts, it should be interpreted more broadly, not only including the freedom of action mentioned in Articles 1003 and 1010 of the *Civil Code* but also covering the mental elements of personality. Personal freedom as the content of general personality rights should be interpreted as personal freedom.⁵¹ Furthermore, if the term “freedom” here is understood in the sense of “by oneself,” it should also include the meaning of self-determination, and some argue that a person’s decision to act is the core value of personal freedom. “The understanding of personal freedom first needs to return to the interpretation of free will, and this free will is mainly reflected in the self-determining status of the subject.”⁵² In the workplace where employers lead production and operation, their will is reflected in all aspects of the labor process. Workers’ self-determination of personality is subject to external restrictions by employers under specific circumstances. The following is a detailed description divided into material personality rights, mental personality rights, and general personality rights:

(1) Material personality rights

The category of material personality rights is relatively fixed and is a crucial part of workers’ rights. It is also the most obviously restricted category of personality rights. Articles 1002 to 1004 of the *Civil Code* stipulate the entire content of material personality rights, including the right to life, the right to health, and the right to corporeal integrity of natural persons. According to the wording of the articles, “no organization or individual may infringe upon” such material personality rights, but they are restricted in the labor relationship. The value of the right to life is the highest among many rights, and even in the labor field, employers are not allowed to deprive workers of their lives. However, the situation of “karoshi” (death from overwork) is worth considering. Excessive work pressure leads to

⁴⁹ The civil judgment of the People’s Court of Yantai Economic and Technological Development Zone, Shandong Province (2020) Lu 0691 Civil Initial No. 1825.

⁵⁰ The civil judgment of the People’s Court of Tianqiao District, Jinan City, Shandong Province (2018) Lu 0105 Civil Initial No. 4329.

⁵¹ Yang Lixin, “Innovative Development of Personality Rights Legislation in China’s Civil Code,” *Studies in Law and Business* 4 (2020): 25-26.

⁵² Wen Shiyang, “‘Personal Freedom’ from the Perspective of Civil Code,” *Law and Social Development* 3 (2022): 34.

overloading of the body, causing sudden death, but it is difficult to obtain relief methods in current law, which is indeed a disguised threat to the right to life.⁵³ Correspondingly, the right to corporeal integrity is more severely restricted in the labor field, which is also the most intuitive result of the impact of labor subordination on personality rights. For example, in the health rights dispute case between Wang and XJ Electric Corporation, after receiving a letter of complaint, the company had multiple conversations and investigations with the worker, and the court held that the worker “has a necessary obligation to tolerate.”⁵⁴ At this time, the employer’s restriction on the right to corporeal integrity is considered reasonable. In new types of labor, the worker’s body still cannot be completely liberated. For example, in the emerging remote work, workers still need to give up a period of behavioral freedom to complete set labor tasks. The extent of restriction on the body and action may be somewhat alleviated with the improvement of the labor environment, but the nature of the restriction on the right to corporeal integrity has not changed.⁵⁵ In addition, the right to health is also obviously restricted during the labor process. It is precisely because legislators have noticed the possible physical and mental damage that heavy and lengthy work affairs may bring to workers that they have enacted a series of rules based on the concept of corrective justice to clarify the protective care obligations of employers, and established work injury insurance systems and occupational disease prevention and control systems to care for and protect workers’ right to health.⁵⁶ These efforts aim to minimize and prevent the general reduction of workers’ right to health.

(2) Mental personality rights

In the labor field, the restrictions of employers on mental personality rights are mainly concentrated on the two dimensions of the right to privacy and personal information. Based on the value guidance of personal freedom, the rights extended from the rules of privacy and personal information belong to the domineering civil rights and interests. The right holder has the freedom to control privacy and personal information, i.e. the freedom to autonomously choose to consent or not to others’ collection and processing. Once the right holder becomes a worker, the reasonable expectation to control their own privacy and personal information is affected by the dual intervention of the employer’s right to know and the right to manage,⁵⁷ which in turn leads to “a closer personal dependence on the employer, and their personal

⁵³ China’s laws have not yet included “karoshi” (death from overwork) within the scope of work-related injury (fatality) recognition, which results in workers and their families not having the right to receive statutory compensation according to work injury standards. Due to the lag in legislation, judicial precedents cannot support social insurance compensation claims in cases of karoshi. For related cases, see the administrative judgment of Ji’an Intermediate People’s Court of Jiangxi Province (2020) Gan 08 Administrative Final No. 180, the civil judgment of Chaoyang District People’s Court of Beijing (2017) Jing 0105 Civil Initial No. 9495, and the administrative judgment of Ankang Intermediate People’s Court of Shaanxi Province (2014) An Zhong Administrative Final No. 00003. For discussion of karoshi, see Hu Dawu and Zhao Zheshan, “Affirmation of Occupational Injury Caused by Death of Illness at Home,” *People’s Judicature • Case 2* (2019): 11.

⁵⁴ The civil judgment of the Henan Province Xuchang Intermediate People’s Court (2022) Yu 10 Civil Final No. 1164.

⁵⁵ Teleworkers are prone to work-related diseases associated with prolonged sitting, posing health risks, and these diseases are difficult to be categorized under the scope of occupational diseases. See Ban Xiaohui, “Dilemma and Response: Research on the Occupational Safety System of Telework,” *Journal of Gansu Political Science and Law Institute* 5 (2019): 152.

⁵⁶ The *Work Injury Insurance Law* and the *Law on Prevention and Control of Occupational Diseases* contain concerns and protections for the health rights of workers. See the civil judgment of Suzhou Intermediate People’s Court of Jiangsu Province (2022) Su 05 Civil Final No. 7614 and the civil judgment of Chongqing First Intermediate People’s Court (2021) Yu 01 Civil Final No. 3258.

⁵⁷ Wang Jian, “Legal Protection of Laborers’ Privacy in Social Media — A Comparative Study Based on EU and China’s Judicial Practice,” *Journal of Huazhong University of Science and Technology (Social Science Edition)* 4 (2019): 119-121.

freedom is more restricted by the employer.”⁵⁸ Due to the incidental obligations embedded in the labor contract, workers should accept the labor order management of the employer, and this restriction on personality interests has theoretical legitimacy. For example, in the privacy dispute appeal case between Guo and Changde Weixing Real Estate Co., Ltd.,⁵⁹ the court determined that the company’s organized physical examination, which included hepatitis B testing, did not constitute an infringement of the right to privacy. It actually endorsed the existence of the worker’s incidental obligations, confirming the worker’s self-proving obligation to prove to the employer that they are in good health and capable of performing their duties. Furthermore, from a theoretical standpoint, personal information autonomy in the labor field is subject to two legitimate means of restriction: “necessity for the conclusion or fulfillment of the labor contract” and “replacement of the worker’s consent with a collective agreement.”⁶⁰ However, due to the weaker position of workers compared to employers, coupled with the more ambiguous value scale and legal interest hierarchy represented by mental personality rights, they are more susceptible to infringement.

(3) General personality rights

General personality rights have a broader range than the specific personality rights listed in the *Civil Code*. Due to the lack of actionable behavioral norms and adjudicative rules in current legal provisions, whether general personality rights deserve legal protection in judicial practice needs to be comprehensively judged based on the specific case. General personality rights in the labor field are mainly concentrated in a few aspects such as freedom of speech and the right to rest and tranquility, all of which stem from personal freedom. In reality, workers’ control over their personal time or the publication of media speeches cannot reach the level of self-determination in the general civil field, as they are all intermingled with the intervention of the employer’s will.⁶¹ In a series of cases, the court has emphasized in detail that the workers’ freedom of speech should be limited by the general principles of the labor relationship.⁶² For example, in the labor dispute case between Xi’an Well-Sun Electronic Technology PLC and Fan,⁶³ the court held that the worker’s public speeches on social software should take into account the image of the enterprise. There are two reasons why general personality rights are subject to many restrictions. On the one hand, the management needs of the employer are necessary for operation and profit, which have legitimacy in labor law, and workers are also obliged to cooperate with the employer’s instructions faithfully. To some extent, the restrictions on workers’ freedom of speech and other general personality rights become the source of creating a corporate common personality and achieving the production goals of the labor organization. On the other hand, the scope of general personality rights is uncertain, and some personality interests such as the right to tranquility and the right to disconnect have not yet been recognized by the labor law sector. When these general personality rights and interests collide with the employer’s statutory rights to employment autonomy and management, it will inevitably come at the cost of restrictions on general personality rights and interests.

B. The second point of the specificity: the incidental nature of rights infringement

⁵⁸ Liang Guiping, “An Analysis of Laborers’ Right to Personal Information and the Legal Remedy,” *Journal of Chongqing University of Posts and Telecommunications (Social Science Edition)* 3 (2016): 56.

⁵⁹ The civil judgment of Changde Intermediate People’s Court of Hunan Province (2012) Chang Civil Final Fourth Court No. 167.

⁶⁰ Wu Wenfang, “The Application and Limitation of Consent in the Processing of Employees’ Personal Information,” *China Legal Science* 1 (2022): 227-231.

⁶¹ Xie Zengyi, “The Significance and Structure of the Compilation of the Labor Code,” *China Legal Science* 3 (2023): 9.

⁶² For cases involving workers’ freedom of speech, see the civil judgment of the Third Intermediate People’s Court of Beijing (2019) Jing 03 Civil Final No. 12053; and the civil judgment of the Second Intermediate People’s Court of Beijing (2018) Jing 02 Civil Final No. 970.

⁶³ The civil judgment of Eyi County People’s Court of Xi’an City, Shaanxi Province (2018) Shaanxi 0118 Civil Initial No. 5428.

Infringement of personality rights often occurs alongside the infringement of workers' economic and property rights. The labor relationship has both personal and property attributes, and labor law rules are created to meet these structural legal needs based on these two attributes. From the historical development and legislative objectives of labor law, the protection of workers' life safety and health is the first to be considered and determined, followed by rights to obtain economic benefits, material guarantees, and welfare, and finally, attention is given to mental personality rights such as privacy and reputation. In actual employment, economic benefits are the goals of employers, and in the pursuit of maximizing profits, they may infringe upon or deprive workers of their property rights, which in turn affects personality rights. For example, in the personality rights dispute case between Wei and Luoyang Nengjian Equipment Installation Engineering Co., Ltd., the company conducted illegal surveillance recordings of workers, "with the purpose of proving that the relationship between the two parties is actually a non-full-time employment relationship to achieve the goal of being able to terminate the employment relationship at any time without paying economic compensation."⁶⁴ It can be seen that the company's intention was to profit itself and deprive workers of their rights to economic compensation, but the method adopted damaged the personality interests of the workers. Generally speaking, in the field of labor relations, pure torts such as sexual harassment that mainly infringe upon workers' personality rights are relatively rare and are basically derived from property torts. To reduce recruitment costs, labor costs, and dismissal costs, employers, driven by profit-seeking nature, often ignore or even forget workers' personality rights. In general, the infringement upon workers' personality rights is secondary to the infringement upon economic rights, and the pursuit of economic interests by employers is often the main reason for the entanglement of workers' personality rights. From the perspective of legislative purpose, the labor law sector focuses on adjusting the interest exchange relationship between workers and employers, but it cannot ignore the protection of workers' personality interests while dealing with economic property disputes. Article 3 of the *Labor Law* summarizes the specific rights enjoyed by workers, pointing to both the personal rights and interests and property rights and interests in the labor relationship. Correspondingly, the main obligations that employers fulfill in the employment process include the obligation to pay, the obligation to ensure safety and health, the obligation to provide assistance, the obligation to use, the obligation to train, and the obligation to provide institutional guarantees,⁶⁵ which respond to legislative demands regarding personal interests and property rights and interests. Although personality rights are not explicitly reflected in writing, they are actually attached to the specific rights of workers. If an employer infringes upon a specific right of a worker, it may also disrupt the peace and completeness of the worker's personality. For example, the obligation to issue a certificate for the termination or dissolution of a labor contract stems from the obligation to provide workers with opportunities for upward economic status.⁶⁶ If the employer fails to fulfill this obligation or even provides false certification, there may be a possibility of infringing upon the worker's right to reputation. If the infringement only harms the personality rights of workers and does not involve various rights and obligations under labor law, then the infringement dispute often becomes an ordinary civil dispute. In this case, it lacks the specificity of workers' personality rights, and can be remedied through simple civil law systems.

C. The third point of the specificity: the extensibility of the scope of rights

The scope of workers' personality rights is not limited to the period of employment but also extends to the recruitment and hiring stage before the establishment of the labor relationship, the resignation stage after the establishment of the labor relationship, and the personal life field. These fields are closely related to the labor process, and their long-term

⁶⁴ The civil judgment of the First Instance of the People's Court of Jianxi District, Luoyang City, Henan Province (2009) Jian Civil Initial No. 202.

⁶⁵ Wang Quanxing, *Labor Law*, 117.

⁶⁶ Huang Yueqin, *New Theory of Labor Law*, 180.

impact and subordinate characteristics generated by work content or commands will inevitably affect them. Essentially, the legal relationship of personality rights in these fields is based on the binary pattern of workers-employers and possesses the specificity of the labor field.

1. Hiring stage

Before the conclusion of the labor relationship, employers and workers need to fully understand each other's intentions and detailed information, and should follow the recruitment principles of equal treatment and equal competition, which is closely related to the value concept contained in personality rights. China's equal employment rights "generally follow the two trial paths of general tort liability of typical private law and labor contract liability of special private law."⁶⁷ In the field of civil law, it is also regarded as general personality rights for protection.⁶⁸ In addition, Article 41 of the newly revised *Law on the Protection of the Rights and Interests of Women* stipulates that women have equal labor rights and social security rights with men. It can be seen that legislators have paid attention to the "continuous and dynamic" characteristics of labor relations and have covered the scope of anti-discrimination in various aspects such as recruitment, employment, promotion, labor conditions, training, transfer, retirement, and dismissal.⁶⁹ At the same time, workers' privacy and personal information may be exposed to the investigation or collection scope of employers. Labor law restricts the information that employers can inquire about to the scope related to work content. If an employer asks about personal information that is irrelevant to the job position, such as marital status, hobbies, and family structure, it will constitute an invasion of privacy before the formal conclusion of the contract.

2. Resignation stage

When the labor relationship is terminated or dissolved, if the employer fails to issue the appropriate documentation in accordance with regulations, it may not only hinder the worker's opportunities for future employment and contract formation but may also damage the worker's reputation. Paragraph 2 of Article 1024 of the *Civil Code* supplements the concept of reputation, describing it as "a social evaluation of the moral character, prestige, talent, credit, and other attributes of a person of the civil law." An employer's evaluation of a worker's job performance, work conduct, or professional skills undoubtedly falls under this concept of reputation, and if the resignation certificate is sent to the worker's new employer, it constitutes the dissemination of this social evaluation. If the evaluation contains false or maliciously derogatory statements, it clearly constitutes an infringement upon the worker's right to reputation. According to Article 24 of the *Regulations on the Implementation of the Labor Contract Law*, a resignation certificate "shall specify the term of the labor contract, the date of termination or dissolution of the labor contract, the position held, and the length of service at the company." The text does not include a phrase such as "etc." or other catch-all provisions that would allow the employer to record additional information beyond what is explicitly stated. Based on the interpretation favorable to the worker, the law does not support the employer in providing a written assessment of the worker's job performance, conduct, or professional skills. Judicial interpretations have previously closed off avenues for workers to seek court relief in such cases, stipulating that courts should not accept reputation-related disputes arising from "conclusions or decisions made by companies about the employees they manage."⁷⁰ This judicial interpretation, issued in 1998, has since been repealed and cannot be

⁶⁷ Zhou Yuan, "Dilemma and Solution for Relief in the Right to Equal Employment — From the Perspective of Rectifying Private Law with Social Law," *Human Rights* 2 (2023): 142.

⁶⁸ See the "Notice of the Supreme People's Court on the Issuance of the Revised 'Regulations on the Causes of Action of Civil Cases'" (Law [2020] No. 347). The "right to equal employment" is placed under "Disputes over General Personality Rights" as a fourth-level cause of action.

⁶⁹ Rao Zhijing, "Judicial Review Methods for Employment Discrimination," *Legal Method* 1 (2017): 444.

⁷⁰ See Article 4 of the "Supreme People's Court's Interpretation on Several Issues Concerning the Trial of Cases Involving the Right to Reputation" (Law Interpretation [1998] No. 26).

incorporated into the normative framework of the *Civil Code* or the *Labor Contract Law*. Excluding the influence of the previous judicial interpretations, clarifying the scope of reputation protection under existing legal norms also leads to the conclusion that resignation certificates should respect and protect the worker's right to reputation. In other words, the protection of a worker's reputation following their resignation should be governed by the general rules of civil law. Unfortunately, considerations of reputation protection in relation to resignation certificates are rarely reflected in court rulings. Courts tend to focus solely on the worker's economic losses, such as "disadvantages to re-employment" caused by the employer's tort actions and typically order the employer to re-issue the termination or dissolution certificate. These rulings emphasize the worker's economic harm, but in practice, fail to implement the original intent of protecting personality rights.⁷¹

3. The domain of life outside of work

During the existence of the labor relationship, the worker's time is divided into working time and living time. The widespread use of information technology and the prevalence of overtime have led to various forms of extension of working time, encroaching on the workers' living time, which inevitably infringes upon the workers' physical and mental health and other personality rights and interests. To this end, France, Spain, and Belgium have successively introduced legal provisions for the right to disconnect, which guarantees the workers' right not to reply to work messages after work. The initiative to include the right to disconnect in legislation has also been proposed domestically.⁷² The right to disconnect has the attribute of freedom rights, manifesting as a negative right ability of "mainly not being disturbed by the employer and having the right not to provide labor,"⁷³ to ensure that the personal freedom of workers during their living time is not affected. In addition, the boundary of workers' freedom of speech on online media in non-working areas is also a focus of judicial regulation and academic discussion. As it also involves the interests of workers' personality rights, it will not be repeated here.

IV. Responses to the Specificity of Workers' Personality Rights: Building a Judicial Adjudication Path Distinct from Civil Law

Indeed, the specificity is highlighted in workers' personality rights, but there is no doubt that the *Civil Code* has established the basic framework for the protection of personality rights. The rights collection formed by the personality rights chapter applies to all civil subjects, and there is no need for labor law to stipulate separately. Article 990 of the *Civil Code* adopts a typical and general dichotomy for personality rights, which not only determines the clear boundaries of specific personality rights and the extension space of general personality rights from a static perspective but also proposes a "dynamic system theory" from a dynamic perspective to provide rules for defining civil liability for personality rights.⁷⁴ The concept and connotation of workers' personality rights do not exceed the scope of the *Civil Code*, nor have they given rise to entirely new personality rights due to different basic ideas and protected legal interests. Even if labor law regulations on the protection of personality rights are added, they can only reiterate and emphasize some personality rights based on the *Civil Code*, which does not contribute to the protection of workers' rights and interests in essence.

⁷¹ The civil judgment of the Yanqing District (County) People's Court of Beijing (2020) Jing 0119 Civil Initial No. 2728; the civil judgment of the People's Court of Hongshan District, Wuhan, Hubei (2020) E 0111 Civil Initial No. 2416; and the civil judgment of the Chaoyang District People's Court of Beijing (2015) Chao Civil Initial No. 56323.

⁷² Wang Jian, "Necessary Disappearance: On Employees' Right to Disconnect," *Journal of Shanghai Jiaotong University (Philosophy and Social Sciences)* 6 (2023): 87-88.

⁷³ Xie Zengyi, "The Legal Nature of the Right to Disconnect and Its Rules Construction," *Political Science and Law* 11 (2022): 42.

⁷⁴ Zhang Pinghua, "Personality Rights' Interest Structure and Its Legalization," *China Legal Science* 2 (2013): 49-52. The ambiguity of the boundaries of personality rights can be explained from both a static and dynamic perspective.

However, from a practical standpoint, the specificity arising from labor subordination objectively exists in the legal relationship of personality rights. It is necessary to adapt to the transformation of the relationship between labor law and civil law from “transcendence and inheritance” to “division of labor and cooperation.”⁷⁵ On the basis of continuing to use the personality rights chapter of the *Civil Code* and using it as the substantive law rules, a supporting judicial review system should be provided to alleviate the difficulties of workers' personality rights. Article 128 of the *Civil Code* stipulates that where there are laws particularly providing for the protection of the civil rights of minors, the elderly, the disabled, women, or the consumers, etc., such provisions shall be followed. Through the expansion of this article, other legal norms for special groups as special laws should be given priority, which also reserves space for special norms or mechanisms to intervene in the protection of workers' personality rights. Labor law is not a pure entity law or procedural law department. China has established a labor dispute resolution procedure marked by “arbitration first, trial later.” By giving full play to the judicial value of the labor dispute procedure, a unique protection path for workers' personality rights may be created.

A. The macroscopic view: expand the scope of labor dispute cases and improve the mechanism for incidental examination of personality rights disputes

Based on the discussion above, the infringement of workers' personality rights is incidental to the infringement of various economic and property rights in labor contracts, which is the justification for entrusting labor personality disputes to the labor dispute resolution mechanism for incidental adjudication and review. Legislators, focusing on the specificity of labor debts, use the labor arbitration pre-procedure to deal with the heterogeneity brought by labor subordination. Due to the incidental nature of workers' personality rights infringement, personality rights disputes and labor contract disputes have a symbiotic nature. The legal basis for both types of disputes comes from labor subordination, and the facts of the cases and the evidence materials for both types of disputes are highly overlapping. If the court generally refuses to hear the personality rights series of requests of the parties and adheres to the judgment result of the scope of acceptance, it is not conducive to the protection of the parties' personality interests and also affects the efficiency of trial and litigation. If the “barrier”⁷⁶ of civil mechanisms intervening in the private relief of workers can be broken, and incidental personality rights disputes are also included in the labor dispute resolution mechanism, achieving “joint filing and joint acceptance,” then judicial efficiency can be improved and the cumbersome procedures for workers to sue separately under ordinary civil causes of action can be avoided.

Certainly, to prevent the unlimited expansion of the scope of labor dispute cases, classification standards should still be established based on the types of workers' personality rights. Workers' personality rights derived from the value concept of personal freedom should be included in labor disputes. This is because such personality rights are deeply influenced by labor subordination, and it is necessary to use the professionalism of labor dispute handling agencies and the non-confrontational nature of labor dispute procedures to determine the extent of restrictions imposed by employers. Adjudicating authorities can grasp the provisions of labor contracts, labor regulations, and industry practices on the basis of reviewing contract disputes, clarify the facts of personality rights disputes, and try and adjudicate them together. As for personality rights based on the foundation of human dignity, which have not been externally restricted and retain their original content, it is not inappropriate to continue to be handled by ordinary civil dispute resolution. Thus, a diversion mechanism for handling workers' personality rights disputes can be established (see Figure 1).

⁷⁵ Wang Quanxing and Wang Xi, “Recognition of Labor Relations and Protection of Rights and Interests of ‘Online Workers’ in China,” *Law Science* 4 (2018): 68.

⁷⁶ Wo Yun, “The Application of Civil Law on Labor Disputes in the Perspective of Civil Codes: from the Perspective of Employees' Self-remedies,” *Journal of Political Science and Law* 5 (2017): 123.

B. The microscopic view: investigate the reasons for rights restrictions in individual cases, and determine the methods and extent of rights restrictions during adjudication

In the specific details of adjudicating and reviewing cases, the limited nature of the exercise of rights is the key to distinguishing workers' personality rights disputes from ordinary personality rights disputes, and the flexible determination and case-by-case evaluation of labor subordination are the measures to define the scope of restricted personality rights. By summarizing the adjudicative views of similar cases, it is possible to refine the weighing factors that courts consider when hearing workers' personality rights cases, establishing a set of reference criteria to measure the reasonableness of employers' restrictions on these rights, and forming a more unified concept of adjudication and review.

Personality Rights Type		Example	Current Handling Method	Suggested Handling Method
Personality rights arising from personal freedom	Material personality rights	Right to life, right to corporeal integrity, and right to health	Labor disputes with work injury insurance as the cause of action	Labor disputes
	Mental personality rights	Personal information and privacy rights	Civil disputes with personality rights as the cause of action	Labor disputes
	General personality rights	Right to disconnect, freedom of speech, etc.	Both civil and labor disputes	Labor disputes
Personality rights arising from human dignity		Right to equal employment, right to sexual autonomy, and right to reputation	Civil disputes with personality rights as the cause of action	Civil disputes

Figure 1: Summary of Dispute Resolution Mechanisms for Workers' Personality Rights Disputes

1. Reasons for restraining personality rights: restricted and limited

When reviewing disputes related to workers' personality rights, there are two reasonable grounds for limiting such rights: first, the employer's management authority; second, the employer's duty of care toward the employee. The former refers to the lawful rights granted to the employer under the labor contract, while the latter arises from the employer's obligations under labor law based on the principle of human-centered care. No other reasons beyond these two should obstruct the proper possession and exercise of workers' personality rights.

Regarding management authority, it can be further subdivided into employment autonomy, the right to information, and other rights that collectively maintain labor order. This "bundle of rights" often comes into conflict with workers' personality rights. During legal proceedings, employers need to provide evidence proving the necessity of labor management, and such external justifications are subject to the court's reasonableness review. From the perspective of rights, unlike the management authority of the employer, the duty of care serves as a justification for limiting personality rights to protect the worker's own rights or to balance the hierarchy of those rights. For instance, in the labor contract dispute case between Liu and Qiming Company,⁷⁷ the court criticized Qiming Company's arbitrary transfer of Liu's job, stating that it "diminished the dignity of the worker within their industry, and the employer's action violated their duty of care toward the worker." In other words, the

⁷⁷See the typical labor dispute case released by Xuzhou Court in 2017, Case No. 4: Liu vs. Qiming Company labor contract dispute case — the clerk was transferred to be a "packer" for not having a proper attitude.

court emphasized that the disregard for the worker's dignity constituted a breach of the employer's duty of care and harmed the worker's personality interests. Moreover, when an employer issues labor regulations prohibiting workers from engaging in specific dangerous behaviors or collects personal information to avoid assigning workers to jobs that could harm their physical well-being, such restrictions on personal freedom are justified by the need to protect the worker's physical safety. In this context, personality interests, as lower-ranking legal interests, must yield to the higher-ranking interest of physical safety. The justification for limiting personality rights based on the duty of care lies in the protection of other rights of the worker, making such restrictions more legitimate and more likely to be upheld in legal proceedings.

2. Method of restricting personality rights: reasonable application of the principle of proportionality

Having only reasons for restriction without reasonable methods of restriction also cannot meet the protection needs of workers' personality rights in the workplace. As an extension of management will, employers concretize their management rights through means such as the formulation of labor regulations and the issuance of labor commands. To unify the review standards for the rationality of specific management rights implementation in different cases, the principle of proportionality can be used as a measurement tool for adjudicating authorities. This principle of proportionality is derived from the concept of restraining state intervention behavior in administrative law, with the "core being to emphasize the moderation of intervention and oppose excessive intervention."⁷⁸ In the workplace, the labor law principle of prohibiting employers from excessively interfering with workers' freedom is highly similar to the principle of proportionality, creating the possibility of citation and transformation application. Therefore, based on the three sub-principles, namely, the principle of appropriateness, the principle of necessity, and the principle of proportionality, the rationality of the restriction of workers' personality rights should be established from the following dimensions.

First, the purpose of restricting personality rights is the overall interest of the enterprise or the order of production and operation (appropriateness). Second, to achieve the above purpose, the enterprise should choose the means that restrict the personality interests of workers to the least extent (necessity). Last, a "balancing of interests" should be carried out for the conflicting rights, requiring the economic benefits and management efficiency pursued by the enterprise not to be less than the costs paid by the workers (proportionality). Applying the "three-step theory" of the principle of proportionality, the actions of employers restricting workers' personality rights must be examined one by one according to the above to be considered reasonable. The appropriateness standard requires the court to focus on examining the subjective intent of the employer, excluding illegal purposes such as unilateral retaliation or disguised coercion of workers by the enterprise. The necessity standard points to the scientific nature of the employer's specific management methods, requiring that the impact on workers' personality rights after the implementation of management is minimized. The determination of the first two standards can be completed through the facts and evidence of the case, and the parties can prove or refute whether the employer's actions meet the standards through evidence. Nowadays, some courts have noticed the importance of these two discretionary factors, but they have omitted the exposition of legal logic in the judgment reasoning part.⁷⁹ The proportionality standard, which involves the value judgment aspect of

⁷⁸ Zheng Xiaojian, "The Application of the Principle of Proportionality in Civil Law," *China Legal Science* 2 (2016): 144.

⁷⁹ The civil judgment of the People's Court of Dongli District, Tianjin (2021) Jin 0110 Civil Initial No. 9083. The reasoning part of the judgment states, "Employers have the right to understand the basic situation of workers that is directly related to labor contracts, and workers should explain truthfully... Marriage and fertility status are not necessarily related to the performance of labor contracts and belong to personal privacy. The plaintiff's misrepresentation of personal marriage and fertility status at the time of

balancing interests,⁸⁰ appears to be more complex. The sacrificial cost of workers' personality rights being restricted is abstract and cannot be estimated in economic terms. Whether the restriction of personality rights is proportionate to the pursued purpose depends on the judge's inner judgment. To make the proportionality standard easier to grasp, the court can start with the different degrees of tension between different types of personality rights and employment management rights, and grasp the "degree of interference with interests in the specific circumstances of the case."⁸¹ The core element of judgment is the degree of loss and gain for both labor and capital under the two states of existence and removal of management actions. Assuming that the removal of the management means involved in the case and the rebound of personality rights to a full state have a serious impact on the employer, with a significant reduction in economic benefits or widespread chaos in management order, it indicates that the connection between the employer's means and purpose is close. The balance of loss and gain can be considered based on the parties' evidence, as well as a comprehensive judgment based on the parties' expectations of rights, common practices in the industry, etc.

3. The extent of restricting personality rights: distinguishing protection levels based on the type of rights

The types of personality rights vary with the methods of protection, reflecting different thresholds for permitting limitations imposed by employers. From the perspective of the focus on legal interests protection in China's labor law and the current situation of labor dispute judicial adjudication, material personality rights, mental personality rights, and general personality rights, which point to different rights objects, belong to different protection levels. The focus of judicial adjudication is different, and the corresponding protection methods also vary.

(1) Transforming the protection of material personality rights. The life, body, and health of workers, as established protection objects in the labor law sector, are also the basic elements to maintain the continuous operation of labor behavior and should be given the highest priority for protection. Apart from the necessary physical restrictions to complete labor tasks, the life, health, and physical freedom of workers are, in principle, fundamental rights that should not be restricted. The protection method of material personality rights within the workplace is not limited to the scope of claims in personality rights law, but achieves the protection purpose through the internal transformation of workers' rights. Labor health and safety rights and work injury insurance rights, as individual rights of workers, cover the functions of material personality rights and enrich the protection methods of material personality rights. Judicially, the frequent use of the two has refined the employer's personality right protection obligations into more specific behavioral obligations and financial compensation obligations, maintaining the health and safety of workers through preventive measures and post-incident relief. In response to employers who evade or shirk their obligations to protect material personality rights, the labor law sector has corresponding civil liabilities, administrative responsibilities, and criminal liabilities to serve as a warning and punishment.

(2) Dynamic protection of mental personality rights. The current law protects the mental interests of workers at a lower level than material interests, and employers have a larger range of restrictions. The corresponding protection methods mainly revolve around the claim rights

employment does not constitute fraud." In fact, when reasoning, the court has already used the principles of appropriateness and necessity in the principle of proportionality to refine some factors for adjudication and review.

⁸⁰ Some scholars believe that these three principles belong to two levels, with the principle of appropriateness and the principle of necessity belonging to empirical issues, while the principle of proportionality belongs to value issues. See Jiang Hongzhen, *On the Principle of Proportionality — Judicial Evaluation of Government Regulatory Tool Selection* (Beijing: Law Press • China, 2010), 70-71.

⁸¹ Zhang Chao, "Balance of Interests for New-Rights: An Analysis on the Background of Individual Cases Infringing Personal Interests," *Law and Social Development* 3 (2022): 76.

of personality rights stipulated in Article 995 of the *Civil Code*. Adjudicating authorities should focus on the timeliness of protecting mental personality rights. When determining the infringement of mental personality rights, they should refer to Article 998 of the *Civil Code* and use the “dynamic system theory” to define the scope of restrictions, considering the impact of multiple factors on the scope of restrictions. Although there are significant differences in individual cases, the basic level of rights protection remains unshakable: the economic property interests and personal safety interests of workers are given priority over mental interests for protection. For example, in the labor contract dispute case between Hirata General Merchandise (Shanghai) Co., Ltd. and Cai,⁸² the court held that during the epidemic period, employees have the responsibility to provide emergency contact information, and the company’s practice of collecting information is to protect the physical safety of employees. Therefore, mental personality rights need to be restricted by higher legal interests. In addition, the continuity and long-term nature of the labor relationship are always the focus of judicial measurement. Even if mental personality rights have been slightly threatened and infringed, efforts should be made to repair the trust relationship between labor and capital, and both the possibility of the continuation of the labor contract and the necessity of personality rights protection should be included in the consideration of the judgment.

(3) Exploring the protection of general personality rights. The content and scope of general personality rights are vague, and legislation does not provide ready-made answers on whether workers have corresponding rights, which requires continuous attempts and exploration in the judiciary. For example, when courts consider the boundaries of workers’ freedom of speech, they should consider various factors such as the content of the speech, the target audience, the impact of the speech on the employment order, and the company’s expectations for trust interests. They should review whether the disciplinary measures are appropriate and make judgments based on specific circumstances. For employees whose speech does not result in serious consequences but is inappropriate, “warning and education” should suffice, reflecting the maximum protection of the mental interests of workers⁸³; if an employee makes inflammatory and publicly detrimental remarks, it should be permissible for the employer to unilaterally terminate the employment, reflecting the maintenance of the employment order and the overall interests of the enterprise.⁸⁴ In the context of digital information and the emergence of new rights such as the right to disconnect and the right not to respond in the workplace, it is difficult to fill the institutional void with judicial means alone. It is necessary to rely on labor law to establish substantive norms and put in place corresponding workers’ rights to “protect the peaceful interests and the rights to personal freedom and development to which workers are entitled.”⁸⁵

Workers’ personality rights should not be diminished in principle and are only subject to reasonable restrictions by employers under special circumstances. Judicial authorities should focus on examining the employer’s reasons and methods for restrictions when reviewing the employer’s restrictive actions. They should comprehensively consider the subjective understanding of workers and the general social concept to measure the extent of personality rights restrictions. On the basis of respecting the substantive norms of personality rights in civil law, they should be flexible and responsive to the specificity of workers’ personality rights.

V. Conclusion

⁸² The civil judgment of the People’s Court of Minhang District, Shanghai (2021) Hu 0112 Civil Initial 10322.

⁸³ The civil judgment of Guangzhou Huangpu District People’s Court of Guangdong Province (2021) Yue 0112 Civil Initial No. 13670.

⁸⁴ The civil judgment of Shanghai Second Intermediate People’s Court (2016) Hu 02 Civil Final No. 1128 Judgment.

⁸⁵ Zhu Xiaofeng, “Labor Rights Protection in the Digital Age,” *Journal of Zhejiang University (Humanities and Social Sciences)* 1 (2020): 47.

As some scholars have pointed out, “In labor law, the debt relationship centered on human beings, in addition to the transaction of labor services as the subject matter and property transactions, also places great emphasis on personal relationships.”⁸⁶ Since 2014, the Supreme People’s Court has been releasing classic cases involving workers’ personality rights to play a normative and guiding role,⁸⁷ and judicial practice has gradually begun to pay attention to the adjustment of personality rights relationships in the labor field. The specificity of workers’ personality rights stems from the subordinate relationship between labor and capital, which requires further theoretical exploration and attention. In the future, a dispute resolution mechanism different from that of ordinary civil subjects’ personality rights should be constructed to protect the personality rights and interests of workers and the long-term interests of both labor and capital in a more comprehensive manner. The substantive law rules of the personality rights chapter in the *Civil Code* have taken shape, and the labor law sector should explore a unique path to protect the personality interests of workers based on the *Civil Code*. Considering the sustainability, recoverability, and coordination of labor relations, the principle of labor coordination should be used as the main principle for protecting workers’ personality rights and resolving disputes related to workers’ personality rights. A special paradigm for the protection of workers’ personality rights should be established to resolve the overlapping legal issues between civil law and labor law.

(Translated by *LI Donglin*)

⁸⁶ Huang Yueqin, *New Theory of Labor Law*, 36.

⁸⁷ The Supreme People’s Court has issued classic cases involving workers’ personality rights, including “Case No. 3 of the 15 typical cases released by the Supreme People’s Court of the court’s efforts to achieve fairness and efficiency and practice the core values of socialism: Luo vs. a certain sanitation company for tort liability dispute,” “Case No. 9 of the ten typical cases released by the Supreme People’s Court to promote the core values of socialism: Deng vs. a certain express delivery company and a certain labor service company for general personality rights dispute,” “Case No. 6 of the top ten typical cases of women and children’s rights protection released by the Supreme People’s Court: Zhao vs. a certain company for illegal termination of labor contract dispute,” “Case No. 4 of the second batch of nine typical civil cases released by the Supreme People’s Court to vigorously promote the core values of socialism: Yan vs. a certain company for equal employment rights dispute,” etc.