

Study on the Protection of Workers' Right to Personality from the Perspective of Civil Code

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Abstract

In recent years, their personal information has often been leaked, and there have been many discussions about their personal information in the academic community. Because the personal information is restricted by the employing unit, so the laborer is in a negative position in a labor relationship. By analyzing the concept of the right to personal information in the Civil Code, this paper discusses the definition of the right to personal information, and clarifies that the application of labor law to protect workers better than the relief model of civil law.

Keywords

Personal Information Rights; Workers; Legal Remedies.

1. Overview

In 2018, Facebook was a major data scandal in the United States, about 87 million Facebook users were reported illegally obtained and used for political purposes, and the incident was seen as a watershed where people really began to value personal information protection. In 2017, the owner of an employer in Anhui Province embezzled the personal information of 21 employees for loans, with a total amount of more than 2 million yuan. In 2019, JD required its employees to provide their relatives and classmates, and it would be regarded as a violation of the principle of honesty and credit. Life and academic discussion on personal information focused in recent years, all kinds of people's personal information is improperly used cases, workers, as citizens, personal information, but due to the specific context of labor relations, on the one hand, more vulnerable workers under the restriction of labor relations from attributes, difficult to refuse strong employers unlimited request and use their personal information requirements, make their personal information is often improper or even illegal, such as employers to include the "workplace blacklist" on the grounds of workers passive resignation. On the other hand, employers are also neglected to protect the personal information of workers. It can be seen that the right of personal information is abused, infringement is more serious in the world, social development is changing with each passing day, network development is gradually improving, the unit of choose and employ persons for the use of personal information is also expanding, hurt the behavior of laborer personal information is also deepening.[1] At the same time throughout the legislative process in recent years, the country is also introduced relevant laws and regulations to protect personal information, the ministry of human resources and social security issued the employment service and employment management provisions article 13: " the unit of choose and employ persons should keep the personal data of workers confidential. The disclosure of the personal data of the laborer and the use of the technical and intellectual achievements of the laborer shall be subject to the written consent of the laborer himself." This legal provision shows that the scope and depth of citizens' personal information protection are constantly expanding, but there are still blind spots in how to protect it, which is not conducive to the protection of workers.

1.1. Concept Definition of the Right to Personal Information

Personal information in the Civil Code is various information recorded in electronic or other ways that can be identified separately or combined with other information, including the name, date of birth, identification number, biometric information, address, telephone number, email, health information, whereabouts information, etc. [2] Professor Wang Liming, a Chinese scholar, believes that the right to personal information refers to "the right of the information subject to control their own information and exclude the illegal use of personal information". [3] It adopts a dominant right (or control) of personal information, plus a negative denial of others to deny the illegal use of personal information. However, this paper believes that the requirement of "illegal use of others" may be high. The labor law often causes third parties to collect, use or abuse the personal information of specific subjects, which often has not reached the standard of "illegal", and it is difficult to achieve the purpose of protecting the right of personal information.

To sum up, I think the right to personal information should refer to the right of the information subject to independently control their personal information. And in different legal relations, the rights content and protection degree should be adjusted to a certain extent.

1.2. Concept Definition of Workers' Right to Personal Information

Throughout our country's labor legislation, the existing provisions on the protection of workers are more for a physical protection of workers' property rights and physical rights, and the protection of the spiritual personality rights of workers is relatively lacking. However, as a spiritual right of personal information to the workers, it should still enjoy the right.

Because the labor relationship is a very special a kind of relationship, so this article thinks that the identification of the laborer's personal information right should be the following idea, can make the laborer can freely dominate his any information, if the unit of choose and employ persons must take the measure of interference, then the laborer has the right to raise an objection to this. The reasons for this definition are as follows: First, "the laborer is free to control any information" is an expanded interpretation of the rights mentioned above; moreover, "if the employer has to intervene, the laborer is entitled to object" because the labor relationship is very special, the employer can collect a wide variety of personal information about the laborer, but the employer should exercise such right within a certain reasonable extent, can not interfere with the legitimate independent control of the laborer. On the other hand, employers are often based on the consideration of maximizing the interests, want to learn to use as much personal information as possible, so the personal information unrelated to labor relations should also be protected, and the employers are prohibited to interfere improperly.

2. The Particularity of the Workers' Right to Personal Information

2.1. Labor Relations from the Attributes

In the survival stage of labor relations, workers have to disclose their personal information because of the risk of being treated differently or even fired. After the termination of labor relations, workers may also have to allow the employer to long-term occupy and abuse its personal information because of their fear of retaliation. The slave attribute of labor relations makes it difficult for workers to negotiate with the employing unit, and they cannot compete with the employing unit. [4] At the same time, the laborer and units of choose and employ persons and absolute economic force and asymmetry in information, workers for the personal information actually out of control of rights, it is difficult to know whether its personal information is collected and handled by the unit of choose and employ persons, processing, how to save, whether passed to a third person, who is using the information. These circumstances unfairly suppressed the right to personal information. "Therefore, if it is regulated completely

in accordance with the civil principle of 'freedom of contract', workers may become the object of clever luxury of resource owners." It is necessary for the law to intervene in the labor contract to protect the basic rights of the workers.

2.2. The Legitimacy of the Employer's Right to Know

On the one hand, the particularity of the labor relationship makes the right of personal information unfairly suppressed, and on the other hand, employers have the legitimacy of the exercise of informed use right. [5] However, it should be noted that employers are limited to the collection and utilization of the personal information related to the workers can not exceed the reasonable scope and can not be abused, so that the workers' right to personal information is infringed. For example, the existence of labor relationship is bound to need to collect, use and deal with workers and work-related information. In addition, because of the subordinate attributes of the labor relationship person, the unit of choose and employ persons has the laborer to protect and take care of the attached obligation. On the one hand, it is based on the essential needs of work, such as some high-risk industries, employers need to know the previous medical history and even the current health condition to prevent the workers to know the relevant personal information. If the employer can not grasp the personal information of the laborer, it may be difficult to fulfill the obligation of protection and care.

The study of the particularity of workers 'right to personal information is to protect workers' rights to personal information, but not the absolute confidentiality of their personal information, but only the protection of reasonable information of workers' personal information.

3. Problems Caused by the Particularity of Workers' Right to Personal Information

Personal information for workers is common in labor relations, based on the different rights and obligations, economic situation, status, the problems caused are also different.

In the job-seeking stage, the labor relationship is not established, the employment stage of the informed use right of the employer focuses on the informed part, mainly the employer to inquire about the workers. This requires the employer to have a full understanding of the laborer and work-related personal information. [6] And the laborer 's family, marriage, health and property status, when the employer can not prove the rationality of its collection, such collection behavior should be regarded as a violation of the laborer' s personal information. Moreover, due to the certain information asymmetry between both sides, the informed use right of the employer is the most prominent for the restriction and even the threat of the workers ' personal information right compared with other stages. Whether the job search is successful or not, the worker's right to personal information is on the risk of infringement.

In the stage of continuous labor relationship, the management authority of the employing unit enjoys the management power of the laborer based on the above instructions. Not only the management of workers, but also need to take management and supervision of their personal information and other measures, but also in order to make the workers better obey the arrangement of the unit. At this time, a large amount of time in the workplace of the employing unit, using the equipment provided by the employer to work for office, the probability of being collected by the employer and using personal information is greatly improved. If the relevant use scope is exceeded. It is also the infringement of workers' personal information.

After the post-departure stage, the labor relationship has been terminated, because the purpose of reasonable use of workers 'personal information is greatly weakened, the storage of workers' personal information has become the core of this stage. In principle, it can no longer obtain other personal information of the laborer, at the same time, if the laborer personal information

obtained in the first two stages does not fall within the scope of its legal and labor relationship obligations, the employing unit shall inform the laborer, after the return or delete. But custody of often often frequently. For example, people who have contact with relevant personal information are mixed. Or some units in order to make money, or even package and sell their personal information to the head hunting company, at the same time, because the labor relationship has been terminated, workers are difficult to seek relief through rules and regulations or relevant laws and regulations.

4. Build a Protection Mechanism for Workers' Right to Personal Information

The protection of the right of personal information, the protection mode of general civil law and the effect of labor law will be obviously different. Compared with the protection model in civil law, the labor law protection model can play a more effective relief effect on workers.

Because "who claims, who proves", the laborer bears the legal burden of proving the labor relationship between the two parties. [7] This has the limitations of a strong burden of proof. In addition, there are also the limitations of liability complexity, liability limitation and the limitations of relief procedures, which will not be repeated here.

The right to personal information belongs to the scope of legal protection of the Labor Law, and the right to personal information should be focused on protection, which is conducive to the workers' individual rights to obtain actual relief. Establish the principle of protection of workers' personal information rights, adopt the principle of minimum injury, and pay attention to the protection of workers. [8] In addition, the one-yuan relief in civil tort litigation is difficult to fully protect workers' right to personal information. [9] According to the relief mode of labor right, construct the multiple relief mode of workers' personal information rights from complaints, arbitration and litigation to ensure that workers' right to personal information can fully obtain relief. [10] [11]

5. Conclusion

As Professor Wang Liming said, "Individuals are the best inductors of private gain, and they can truly feel and intuitively grasp the existence and lack of rights." Workers not only fulfill labor obligations as labor, but also as a human beings to enjoy the rights at work. The legislative thinking of workers' right to personal information should be carried out with the idea of "protection", giving workers the right to independent control of self-decision and exclude improper interference.

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