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我国退休返聘人员劳动权益保障研究

Research on Labor Rights Protection of
Post-retirement Employment Personnel in China

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内容摘要

本文以我国退休返聘人员劳动权益保障研究为题，共分为三章进行论述：

第一章论述退休返聘人员劳动权益保障的理论问题。首先，明确退休返聘的概念与类型。其次，介绍并评述五种退休返聘关系学说，同时依据劳务关系与劳动关系的本质区别在于用工关系是否具有从属性，结合退休返聘关系的特殊性，认为退休返聘关系宜认定为特殊劳动关系。最后，从应对人口老龄化问题、促进退休返聘关系的良性发展及退休返聘人员的生存与发展的需求，对劳动权的发展价值理念、倾斜保护与衡平利益的劳动立法价值取向以及退休年龄的意义的法理论证，指出保障退休返聘人员劳动权益有其必要性与合理性。

第二章论述我国保障退休返聘人员权益的现状。首先，我国退休返聘的法律规制现状存在规范效力层次低、内容狭窄、缺乏整体性和系统性等问题。其次，根据特定时期内我国退休返聘相关案例的统计数据反映，我国司法实践中同案不同判现象泛滥，退休返聘人员的合法权益无法得到有效救济。最后，总结出我国对退休返聘人员劳动权益的保障存在三个问题：直接套用现有用工关系规则、以劳务关系的处理模式为主流与忽视社会保险权益协调问题。

第三章论述我国退休返聘人员劳动权益保障体系的构建。首先，明确以倾斜保护与利益平衡为基本理念，并强调实体规则与程序规则并行。其次，在具体保障方案上指出应对退休返聘人员的劳动者身份进行确认，肯认退休返聘关系可成立劳动关系，同时，根据退休返聘主体的特殊性，从劳动基准保护、合同的解除与终止、养老保险权益、工伤保险权益等方面进行合理设计与调整。

关键词：退休返聘；退休返聘人员；权益保障

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ABSTRACT

This paper conducts an in-depth study on labor rights protection of post-retirement employment personnel in China, which is divided into three chapters:

The first chapter discusses the theoretical problems of labor rights protection of post-retirement employment personnel. First, clearing the concept and types of post-retirement employment; Secondly, introducing and commenting five kinds of relationship theory on post-retirement employment, at the same time based on subordination of essential difference between service relations and labor relations and particularity of post-retirement employment relations, post-retirement employment relations should be recognized as special labor relations. Finally, in consideration of needs of replying population aging problems, promoting benign development of post-retirement employment relations and satisfying demands of post-retirement employment personnel to survive and develop and jurisprudential arguments of value concept of labor rights about development, legislation value orientations of labor law about tilt protection and benefit balance and meanings of retirement age, it's necessary and reasonable to protect labor rights of post-retirement employment personnel.

The second chapter discusses the status quo of labor rights protection of post-retirement employment personnel in China. First of all, with the study of our country's legal regulation on post-retirement employment, it is found that there are some problems, such as the low level of effectiveness, the narrow content, the lack of integrity and systematicness and so on. Secondly, the statistical data of related cases about post-retirement employment in a certain period reflects that "similar cases, different judgments" is widespread in China's juridical practice, and lawful rights of post-retirement employment personnel can't get effective remedy. Finally, summed up that labor rights protection of post-retirement employment personnel in China have three problems: applying existing employment relation rules directly,

taking the processing model of service relations as the mainstream and overlooking the coordination of social insurance rights and interests.

The third chapter discusses the construction of China's labor rights security system for post-retirement employment personnel. Firstly, making clear that tilt protection and benefit balance is the basic idea, and entity rules should run in parallel with procedural rules. Secondly, the specific security scheme points out to acknowledge post-retirement employment personnel as labors so that they can establish labor relations with employers; on this basis, making reasonable designations and adjustments on labor standards protection, dissolution and termination of contracts, old-age insurance benefits and industrial injury insurance benefits.

Key words: post-retirement employment; post-retirement employment personnel; rights and interests protection

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