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An Empirical Analysis of the Impact of the Contract Book of the Civil Code on Labor Dispute Trial Practices: A Study of Four Hundred Judgments

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Abstract: *Interpretation (I) of the Supreme People's Court of Issues Concerning the Application of Law in the Trial of Labor Dispute Cases* allows for the application of pertinent laws and regulations, including the *Civil Code of the People's Republic of China* (hereinafter referred to as the "*Civil Code*"), in labor dispute cases. This has resolved the controversy over the relationship between civil law and labor law in academic and practical communities. In view of this development, we examined four hundred judicial documents, analyzing the focal points of disputes, the reasoning behind judgments, applicable laws, and judgment results. Our study identified seven impacts of the Contract Book of the *Civil Code* on labor dispute trial practices, exploring the underlying logic behind these changes and proposing policy suggestions to promote consistent judgments across jurisdictions, enhance judicial credibility, and encourage employers to govern enterprises in compliance with the law while empowering employees to safeguard their rights in accordance with relevant laws and regulations.

Keywords: *Civil Code*, Contract Book, labor dispute, applicable laws, trial practices

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Research Questions

Controversy Over the Relationship Between Civil Law and Labor Law

The *Civil Code* is a significant milestone in Chinese law, as it is the first Chinese fundamental law to be titled "Code" since the founding of the People's Republic of China in 1949. Civil law governs personal and proprietary relationships among the subjects of civil law that are considered equal in status, with subject equality demonstrated through personality independence, status equality, and party autonomy. In contrast, labor law regulates the employment relationships between employers and employees, where the subject status is primarily manifested in the personal and economic subordination between management and the workforce. Since the Standing Committee of the National People's Congress has incorporated civil law, commercial law, and social law into the scope of seven major laws, which constitute the basic framework of China's legal system, there have been ongoing debates and divergent opinions regarding how to clarify and define the relationship between civil law and labor law, as well as whether to apply the theory and rules of civil law in labor dispute cases prior to the promulgation and implementation of the *Civil Code*.[①]

Some scholars argue that labor law, which is rooted in civil law, compensates for the deficiencies of civil law in regulating labor contract relationships. However, it is incorrect to incorporate labor law into the civil law system or consider labor law as a subcategory of civil law, as this negates the independent status of labor law in the modern legal framework (Feng, 2001, pp. 199–200). Some scholars contend that the fundamental legislative concept of China's *Civil Code* requires civil law to be established as a general law, with labor law as a specialized law within private laws. This creates a relationship pattern where labor law and civil law integrate and separate from each other in terms of legislative technique (Shen, 2017, p. 1520).

Other scholars argue that, from a theoretical and comparative perspective, there are three legislative modes for civil and labor laws, namely, respectively regulated by civil law and labor law, uniformly regulated by civil law, and uniformly regulated by labor law. Considering China's traditions and realities, adopting a "two-step" legislative approach would be advisable. This entails first implementing separate regulation modes, followed by adopting a unified regulation mode of labor law when conditions are favorable (Zhan, 2018, p. 106).

① The promulgation of the General Provisions of Civil Law marks the first step in China's two-step compilation process for the *Civil Code*, and the General Provisions Book of the *Civil Code* generally uses the original text of its predecessor. Therefore, we did not make a comparison between their respective contents.

Some scholars suggest that civil law can be applied to labor contracts within certain limits, regardless of the positioning of the *Labor Contract Law*. However, the specific application mode of civil law depends on how the *Labor Contract Law* is positioned. To achieve cross-legal application, China should view the *Labor Contract Law* as an integral component of labor law in social legislation and apply civil law to labor contracts through analogy (Liu, 2018, p. 146).

Furthermore, prior to the promulgation and implementation of the *Civil Code*, there were divergent perspectives and practices in trial proceedings regarding the direct applicability of civil law provisions, rules, or principles for resolving labor dispute cases (Table 1).

Table 1 Adjudication Opinions Regarding the Applicability of Civil Law in Labor Dispute Cases

No.	Adjudication opinions	Reasons behind judgments	Applicable laws	Reference cases
1	Applicable	Non-competition agreements that contravene Article 5 of the *Contract Law* and Article 23 of the *Labor Contract Law* are deemed invalid.	*Contract Law* and *Labor Contract Law*	(2015) JZFMSZZ No. 115
2	Not applicable	Standard terms are only stipulated in the *Contract Law*, and therefore do not apply to this labor contract dispute case.	*Labor Contract Law*	(2017) Y03MZ No. 22767

Legislative Changes Concerning the Relationship between Civil Law and Labor Law

The current *Labor Law* and *Labor Contract Law* have not yet incorporated civil law provisions like those pertaining to the adjustment of liquidated damages, revocation of civil juristic acts, exercise period for revocation right, liability for contract negligence, standard terms, liens, and others, into their frameworks. Nevertheless, as per the principle of "the judge must not refuse to adjudicate," when hearing labor dispute cases involving the aforementioned issues, judges cannot refuse to adjudicate even if there is no explicit provision in labor law. Therefore, it is particularly necessary to apply civil law to the trial under specific circumstances. The inclusion of provisions on the revocation of civil juristic acts in Article 10 of the original *Interpretation (III) of the Supreme People's Court of Issues Concerning the Application of Law in the Trial of Labor Dispute Cases* and the provisions on the adjustment of liquidated damages in Article 28 of the *Minutes of the Eighth Work Conference of the Courts Nationwide on Civil and Commercial Trials (Civil)* indicate a trend towards referencing these provisions and principles in labor dispute cases. On the other hand, the *Civil Code* may serve as a supplementary source of adjudication rules in labor dispute cases. This does not imply that provisions in the Contract Book of the *Civil Code* can fully replace or take precedence over those in the *Labor Contract Law*. Otherwise, there would be no need for promulgating and implementing both the *Labor Law* and the *Labor Contract Law*. At the same time, after the promulgation and implementation of the *Civil Code*, it is imperative to address and rectify any inappropriate tendencies in judicial practice that

disregard special provisions of labor law (Table 2).

Table 2 Inappropriate Tendency and Practices Resulting from Failure to Prioritize the Application of *Labor Contract Law*

No.	Adjudication opinions	Number of cases	Provisions of *Labor Contract Law*
1	A labor contract may be terminated or dissolved upon fulfillment of legal or mutually agreed-upon conditions for termination.	11	A labor contract can be rescinded or terminated only when certain legal requirements are met.
2	If an employee violates any provision related to household registration or any other provision regarding the service period, he or she shall be liable for paying liquidated damages in accordance with the agreed terms.	7	Employees shall not be subject to liquidated damages, except in cases where they breach provisions related to special training service periods or non-competition.
3	The unilateral post-transfer clauses in the labor contract shall not contravene any mandatory provisions stipulated by laws and administrative regulations.	4	The contents agreed in the labor contract can be changed upon the negotiation of both parties hereto.
4	The agreement reached via WeChat is considered a legally binding written contract.	1	The labor contract shall be made in written form and come into effect upon the signatures or seals of both parties.
5	The application submitted by an employee for an extension of their probationary period is deemed valid.	1	An employing unit and an employee may agree upon only one probation period.

As can be deduced from Articles 11 and 198 of the *Civil Code*, if any provisions in the Labor Law involve civil-law relations, such as the limitation period for arbitration and application of liquidated damages, pertinent provisions in the Labor Law shall prevail. In terms of legislative mode, labor contracts are not included in the Contract Book of the *Civil Code*, which contributes to a pattern where civil law and labor law are both integrated and separated in form. In terms of legal application, as a kind of civil dispute, labor dispute cases should be handled in accordance with the Labor Law since it is a specialized law for addressing such disputes. Without specific or special provisions stipulated, such disputes can be examined and adjudged by combining the legislative purpose of labor law and following general rules and principles of civil law.

Establishment of a Normative Relationship between *Civil Code* and Labor Law: A Logical Analysis

Basis for Integrating and Unifying Norms in the *Civil Code* and Labor Law

The Contract Book of the *Civil Code* consists of twenty-nine chapters divided into three subparts. Although labor contracts and disputes may not be explicitly mentioned, they are actually covered within the contents. Labor relations fall under the category of civil relations, and the establishment of such relations itself constitutes a type of civil juristic act. The state will refrain from imposing compulsory intervention in general civil contracts, including sales, entrustment, intermediary contracts, and labor agreements, provided that the autonomy of both parties does not

violate mandatory legal provisions or administrative regulations nor infringe upon public order or good morals. Both general civil activities and labor employment activities must follow the principles of equality, voluntariness, fairness, and good faith. In particular, internal contractual relationships established through voluntary and equitable consultation, in addition to the employment relationship, are not prohibited by law. The disputes arising from the labor contract shall be resolved in accordance with labor law norms, while those non-labor disputes arising from the contract should be handled according to the Contract Book of the *Civil Code*. Civil law and labor law norms exhibit a relationship of cross-functionality and complementarity rather than being mutually exclusive. Under the context of the implementation of the Contract Book of the *Civil Code*, clarifying and defining their relationship is conducive to bridging the gap of imperfect norms for judgment rules in current labor law, eliminating judicial localization, and promoting consistent judgments across similar cases.

Necessity of Promoting the Parallel Application of the *Civil Code* and Labor Law While Viewing Them Separately

The Labor Law aims to address the inequality between parties in labor relations, and the intervention of public power is necessary to rectify these imbalances. The coexistence of the ternary subject leads to both public and private legal effects (Liu, 2021, pp. 4–14). With the legislative purpose of protecting employees' legitimate employment rights and interests, and due to the recognition of employers' dominant position in the labor employment process, labor law norms cannot fully adhere to the principle of ensuring the autonomy of both parties and employer's autonomy is restricted by the compulsory state intervention. For example, in various stages of a labor contract, such as conclusion, performance, modification, dissolution, or termination, employers must comply with the *Labor Standards Act* without any exemptions. Regarding working hours, rest, and vacation, it is imperative to uphold the workers' rights to adequate rest and vacation. The agreed-upon labor remuneration must not fall below the minimum wage standard.

Furthermore, it is essential to strictly enforce laws and regulations such as the *Work Safety Law of the People's Republic of China* and the *Law of the People's Republic of China on the Prevention and Control of Occupational Diseases* to ensure the safety and health of employees. Special protection measures for women and underage employees should be implemented, including a complete ban on child labor. Neither the *Civil Code* nor its Contract Book can fully replace the Labor Law and *Labor Contract Law*, as labor laws have their own independent norms.

Influence of the Contract Book of the *Civil Code* on Labor Dispute Trial Practices

Changes on Whether the "Two Committees" Are Qualified Employers

According to Article 1 of the *Notice on Establishing Labor Relationships* issued by the Ministry of Labor and Social Security (now the Ministry of Human Resources and Social

Security of the People's Republic of China), the first criterion for determining whether a labor relationship exists between an employer and a worker is to examine their respective qualifications prior to scrutinizing their personal and economic subordination. This entails verifying that the employer is authorized to hire workers and ensuring that the worker meets age requirements. The villagers' and residents' committees, known as the "two committees," are grassroots mass self-governance organizations that facilitate self-management, self-education, and self-service for the local population, as stated in the *Organic Law of the Villagers' Committees of the People's Republic of China* and the *Organic Law of the Urban Residents' Committee of the People's Republic of China*. Before the implementation of the original *General Provisions of the Civil Law of the People's Republic of China*, the "two committees" were not identified as qualified employers, which was not a significant issue in trial practice[①] (Figure 1). Meanwhile, local normative documents generally stipulate that disputes between the "two committees" and their members (directors, deputy directors, and commissioners) or external personnel fall outside the scope of labor and personnel disputes. Furthermore, it is specified that the two sides do not constitute a labor relationship (Figure 2).

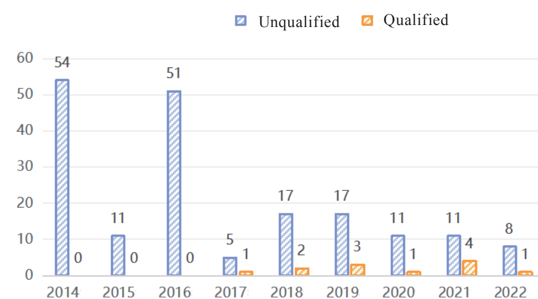

Figure 1 Judgment on Whether the "Two Committees" are Qualified Employers

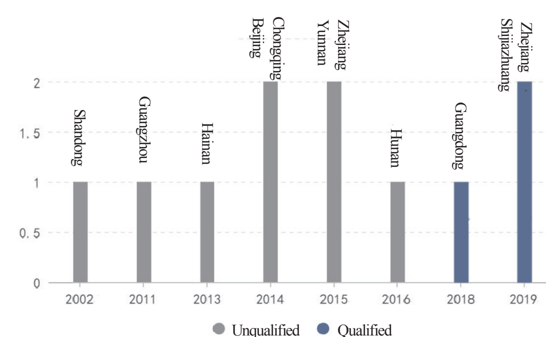

Figure 2 Identification of "Two Committees" in Local Normative Documents

According to Item 1 of Article 464 in the Contract Book of the *Civil Code*, "A contract is an agreement on the establishment, modification, or termination of a civil juristic relationship between persons of the civil law." The "two committees" are classified as "special legal persons" under Section IV "Special Legal Person" of Chapter III "Legal Persons" in Book One, "General Part" of the *Civil Code*, indicating that they are civil subjects. Since the implementation of the original *General Provisions of the Civil Law*

① There are also special cases. For example, according to documents such as Civil Judgment (2015) JZFMSZZ No. 422 and Civil Ruling (2015) FZFMSZZ No. 1061, the villagers' committee generally lacks the qualifications of being an employer. However, if both parties sign a labor contract or voluntarily specify their rights and obligations in accordance with labor laws, the case can be handled by referring to the procedures related to labor relations.

② It should be noted that in accordance with the fundamental principle that laws and regulations do not have retroactive force as stipulated in the Legislation Law of the People's Republic of China. As such, the "subdivision theory," rather than the "retroactivity theory," should be implemented. Therefore, it would be inappropriate to consider the "two committees" as qualified employers and the relationship between the committee and relevant personnel as labor relations prior to October 1, 2017.

and the *Civil Code*, there has been a growing controversy over whether the "two commissions" are qualified employers, and opinions on this matter are divided.[②] The fundamental reason for this alteration lies in the explicit endowment of legal person status to the "two commissions" in the original General Provisions of Civil Law and the *Civil Code*, enabling them to engage in civil activities necessary for fulfilling their functions. The current labor legislation typically employs a combination of generalization and enumeration approaches to delineate the scope of employing entities. Positive opinions have emerged in judicial practice regarding whether the "two committees" established by law can be included in the "organizations" stated in Article 2 of the *Labor Contract Law* and whether they can be defined as qualified employers. As highlighted by the Supreme People's Court, "With the changes in the definition of legal persons within the territory of the People's Republic of China stipulated in the *General Provisions of the Civil Law* and *Civil Code*, which differ from those outlined in the *General Principles of Civil Law of the People's Republic of China*, there is a need for corresponding adjustments to be made to labor dispute subjects. In the future, it is imperative to make amendments to the *Labor Contract Law* in order to maintain consistency with the *Civil Code*" (The First Division of Civil Trial of the Supreme People's Court, 2021, p. 38). Furthermore, it is crucial to give urgent attention to further improving labor norms legislation.

Issues Regarding Whether Partners Can Claim Compensation for the Conduct of Partnership Affairs

Partners, as civil subjects, collaborate for a common purpose and share benefits and risks for a common cause. According to Articles 33 and 67 of the *Partnership Enterprise Law of the People's Republic of China*, partners are entitled to share the profits of the partnership and receive compensation as agreed upon for their involvement in partnership affairs. These two provisions do not appear to be contradictory or conflicting. However, in the case of individual partnerships, it remains unclear whether partnership and labor relations can coexist simultaneously. It is uncertain whether a partner can claim the double-wage difference on the ground of failure to conclude a written labor contract, obtain accrued but unreimbursed annual leave pay, overtime pay, economic compensation or indemnity for dissolving or terminating labor relations as an employee of the partnership. Prior to the implementation of the *Civil Code*, there were significant disparities in judicial practice regarding the viability of claims made by partners based on labor relations.

The prevailing perspective suggests that partners work together based on an agreement of shared interests and responsibilities. Their work should be viewed as the execution of partnership affairs and their pursuit of self-benefits. While this allows for greater autonomy, it

① For example, Case III of the Four Typical Cases of Labor Disputes Issued by the Haizhou People's Court in 2020: Labor Dispute between Zhang XXX and a Real Estate Company.

lacks the fundamental element of labor relations, subordination.① As there is no hierarchical or economic subordination between the partners and the partnership, there is no labor relationship between the two.① Some perspectives suggest that the identities of shareholders, partners, and workers are not inherently contradictory. The key factor is whether there is a management and managed relationship, and a domination and subordination relationship among employers, shareholders, and partners. Additionally, a comprehensive assessment can be conducted based on factors such as equity ratio, articles of association, and the provision of labor.② Others argue that partnerships between individuals do not affect the establishment of labor relations between workers and employers.③ In judicial practice, there is a lack of clear adjudication rules regarding whether partners can claim labor remuneration, economic compensation, and other rights and interests from the partnership based on their labor relations.

It is stipulated in Article 971 of the *Civil Code* that "A partner may not request remuneration for management of the partnership business, unless otherwise agreed in the partnership contract." This is a newly-added provision of the *Civil Code*, which clarifies that partners derive their income from partnership profits and their involvement in partnership affairs is for the collective interests of the entity. Therefore, in principle, they are not entitled to the corresponding remuneration. However, if certain partners are involved in managing partnership affairs or providing extra labor for the partnership organization, it is permissible for the parties to mutually agree on remuneration, standards, and withdrawal methods as labor compensation in the partnership contract, labor contract, or employment contract, as long as it is not prohibited by law. Therefore, even after the promulgation and implementation of the *Civil Code*, partners may still encounter difficulties in asserting their rights and interests based on labor relations if no other agreements have been reached.④

Changes in the Identification of Written Labor Contracts

According to Articles 10 and 82 of the *Labor Contract Law*, employers must enter into a written labor contract with their employees within one month of the worker's employment, known as the "grace period." Failure to do so may result in legal liabilities, including paying double the wage difference. However, labor laws and regulations do not clearly define what constitutes a "written labor contract" or how it should be presented. In combination with Item 1 of Article 16 of the Labor law, judicial practice has shown that determining whether a written labor contract has been concluded between an employer and a worker, and whether the

① For example, Labor Disputes Between Zhang XXX and an Institution included in the seventh edition of the Top Ten Typical Cases of Labor and Personnel Disputes in 2019 issued by the Intermediate People's Court of Nanjing, Civil Judgment (2013) HYZMS(M)ZZ No. 1809, and Civil Judgment (2017) Y0156MC No. 3751.

② For example, Article 1 of the *Interpretation (V) of the First Division of Civil Trial of Zhejiang High Court and the Labour and Personnel Disputes Arbitration Commission to Several Questions Concerning the Trial of Labor Dispute Cases* (ZGFMY [2019] No. 1).

③ For example, Civil Judgment (2019) X11MZ No. 1892.

④ For example, Civil Judgment (2021) Y0231MC No. 5766.

concluded agreement or document constitutes a labor contract, cannot solely rely on the title "labor contract" stated in the signed document. Instead, according to the *Labor Contract Law*, a written labor contract must encompasses both formal and substantive elements of a contract.

On the one hand, Article 16 of the *Labor Contract Law* outlines the formal elements required by a labor contract, stating that a labor contract becomes effective when the employing unit and the worker reach an agreement through consultation, sign, or affix their seals on the copies of the contract. The employing unit and the worker shall each keep a copy of the labor contract. On the other hand, Item 1 of Article 17 of the *Labor Contract Law* outlines the substantive elements required by a labor contract, which stipulates that a labor contract must encompass several indispensable elements, including the basic information of both parties, term of the labor contract, work content, labor remuneration, and social insurance. Therefore, it is widely accepted in trial practice that documents and texts encompassing the indispensable elements of a labor contract, confirmed in written forms with the signatures and seals of both parties, can be considered as written labor contracts.

Article 469 of the *Civil Code*'s Contract Book essentially aligns with the provisions of Articles 10 and 11 of the *Contract Law*, which explicitly states that contracts can be concluded via electronic data exchange and email. However, this provision has caused confusion in both society and legal practice (Table 3). In society, there is a misconception that "a labor contract can be confirmed through email or WeChat" (Shantou Radio and TV Center, 2021), leading to misunderstandings and exposing employers to increased legal risks regarding labor employment. In judicial practice, some courts consider a labor agreement reached through WeChat chat as a written labor contract, while others deem an offer letter sent via email that covers the substantive elements of a labor contract as a valid form of written labor contract. This clearly deviates from the legislative intent of both the *Labor Contract Law* and the *Electronic Signature Law of the People's Republic of China*.

Table 3 Adjudicative Opinions on Expanding the Manifestation Forms of the Written Labor Contract

No.	Adjudicative opinions	Applicable laws	Case No.
1	The agreement reached via WeChat chat is considered a legally binding written contract.	Article 469 of the *Civil Code*	(2022) X 1021 MC No. 412
2	Entry registration files that cover the substantive elements of a labor contract shall be considered written labor contracts.	Articles 10 and 11 of the *Contract Law*	(2021) L 03 MZ No. 3301
3	Offer letters sent via email that cover the substantive elements of a labor contract shall be considered written labor contracts.	Articles 11 of the *Contract Law*	(2019) EMS No. 2707

Changes in Strict Determination of Joint and Several Liability of the Parties

Article 91 of the *Labor Contract Law* stipulates that employers and employees are jointly and severally liable for compensation. But this provision only applies to infringement disputes and disputes arising from the recruitment of in-service workers by new employers.

So, if a worker violates a non-competition obligation and joins a new employer after the termination or revocation of the previous labor contract, should both the new employer and the worker be held jointly and severally liable for breach of contract in case of a claim by the original employer? The prevailing opinion holds that the original employer's request for the new employer to assume joint and several liability for the liquidated damages resulting from the worker's breach of the non-competition agreement lacks both contractual and legal basis. Although Article 8 of the *Contract Law* clarifies the relativity of contracts, some courts in trial practice have ruled that joint and several liability for liquidated damages is legally applicable when a new employer knowingly hires an employee who has previously signed a non-competition clause with their former employer① (Figure 3). Under the principle of concurrent liability, when an employee breaches a non-competition agreement, the original employer has the option to initiate legal action for breach of contract or infringement. However, if the original employer initiates legal action for breach of contract and claims liquidated damages, the new employer, who is not bound by the relevant agreement, is not obligated to share joint and several liability for such damages. This is because the terms of the labor contract or non-competition agreement only restrict the behaviors of the original employer and employee. The aforesaid adjudicative opinion goes beyond the relativity of contracts and is worth discussing.

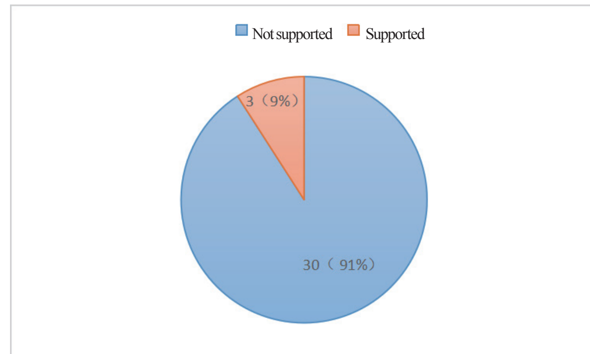

Figure 3 Adjudicative Opinions on Whether the New Employer Should Assume Joint and Several Liability for Liquidated Damages

Compared to Item 1 of Article 8 in the *Contract Law*, Item 2 of Article 465 in the Contract Book of the *Civil Code* reiterates that a contract formed in accordance with law is legally binding only on the parties thereto, unless otherwise provided by law. In combination with such provisions as "joint and several liability shall be either imposed by law or stipulated in the agreement of the parties," current labor norms only provide for joint and several liability under Article 99 of the Labor Law, Articles 91, 92, and 94 of the *Labor Contract Law*, and Article 35 of the *Regulation on the Implementation of the Labor Contract Law of the People's Republic of China*. Therefore, if an employee violates

① For example, according to Article 35 of the *Regulations of Shenzhen Special Economic Zone on the Protection of Technical Secrets of Enterprises*, in the event that an employee, who is bound by a non-competition obligation, breaches the terms of such agreement, he or she shall be liable to pay liquidated damages to the employer in accordance with the agreement. If the enterprise involved in the business competition knows or should have known that the employee has assumed a non-competition obligation and still choose to hire him or her, it shall bear joint and several liability. Some courts have held that both the new employer and the worker should share joint and several liability for liquidated damages as stipulated by law. As a matter of fact, the new employer is not bound by the terms of the labor contract or non-competition agreement between the original employer and employee. As a non-party to the said contracts, the "joint and several liability" in this context shall be strictly interpreted as joint and several liability for compensation in case of an infringement action.

a non-competition obligation and joins a new employer, the original employer lacks both a factual and legal grounds to file a lawsuit for breach of contract against the new employer, claiming joint and several liability for liquidated damages.

Determination of Causes of Action and Changes in Case Procedures for Liability for Contract Negligence

Liability for contract negligence refers to the civil compensation liability that one party should bear when it violates the pre-contractual obligation under the principle of good faith, resulting in the other party suffering a loss of reliance during the contract formation process (Gao & Sui, 2005, p. 377). In trial practice, if, after the employer has delivered the employment notice, the employer unilaterally terminates the contract, the judges usually take into account factors such as the wage income standard of the worker, the time of reemployment and the degree of fault of the employer, and based on the aforesaid, holds the employer liable to the employee for damages equal to several months' salary, the actual transportation expenses, accommodation expenses, medical examination fees and reasonable expenses and losses. The employment notice is of a pre-contractual nature in labor relations. If any dispute arises from the breach of contract after the employer gives the employment notice, there are differing opinions on whether such disputes should be considered as labor disputes, contractual negligence liability, or contractual disputes. Additionally, it is controversial whether they should be resolved pursuant to labor norms or civil laws. In other words, if they are treated as labor disputes, the relevant cases shall follow the pre-arbitration procedure of one mediation and two hearings. Otherwise, direct civil litigation will be dismissed. If these disputes are solely subject to the regulation of labor laws and regulations, the labor dispute arbitration

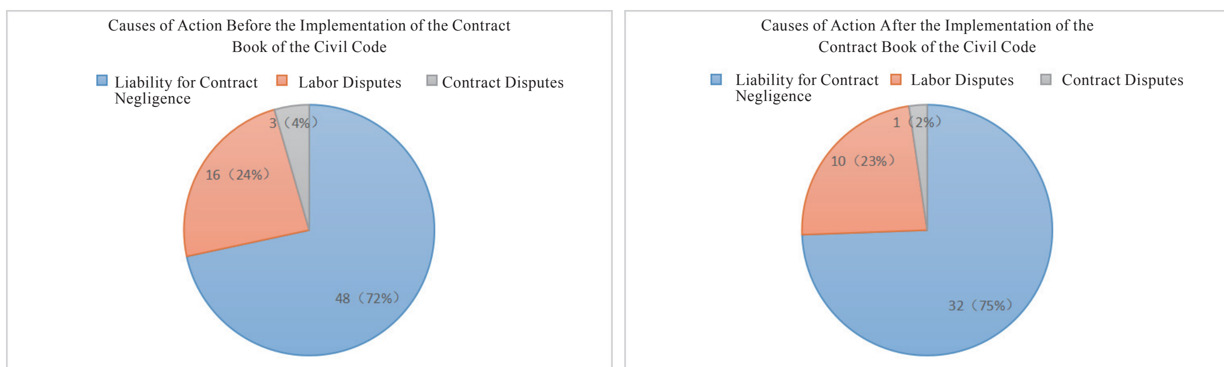

Figure 4 Comparison of the Number and Proportion of Causes of Action before and after the Implementation of the Contract Book of the Civil Code

① At present, civil law has a relatively comprehensive theoretical framework and adjudication rules for the liability of contract negligence, but this does not imply that labor norms do not cover such liabilities. According to Articles 2 and 3 of the *Measures for Economic Compensation Due to Violation of Labor Contract Provisions* issued by the Ministry of Labor (now the Ministry of Human Resources and Social Security of the People's Republic of China), in cases where an employer violates the principle of good faith and breaches a labor contract, it is obligated to compensate workers for their salary loss, with a relatively small scope of compensation.

institution and the people's court should not apply civil law for reasoning and judgment.[①]

The view regarding the co-occurrence of labor disputes, liability for contract negligence disputes, or contractual disputes in the trial practice does not show significant changes before and after the implementation of Article 500 in the Contract Book of the *Civil Code* (Figure 4). The fundamental reason is that actual employment serves as the sole criterion for establishing labor relations. Therefore, according to the prevailing view, disputes that arise before the formation of labor relations are not considered labor disputes. However, as per Item 2 of Article II of the *Labor Dispute Mediation and Arbitration Law of the People's Republic of China*, "A dispute arising from the conclusion, performance, modification, rescission or termination of a labor contract" shall be considered as a labor dispute. As a result, some argue that disputes arising from the performance of pre-contractual labor relations should be classified as labor disputes rather than ordinary civil disputes. The current compensation scope for liability arising from the contract negligence in the labor regulations has proven ineffective in adequately safeguarding the employment and rights of workers. Although the Contract Book of the *Civil Code* has not achieved uniformity in causes of action, its promulgation and implementation are beneficial in filling gaps in recognition rules for compensation for damages and gradually clarifying the relationship between civil law and labor law in terms of law application.

Changes in the Reasonable Time Limit for Unilateral Contract Termination

According to the Labor Law, *Labor Contract Law* and other relevant labor regulations, the termination of a labor contract can be categorized into three types: Mutual termination agreed upon by the employer and employee, unilateral termination by the employee, and unilateral termination by the employer. While the Labor Law and *Labor Contract Law* allow for the unilateral termination of a labor contract by the employer or employee under certain legal circumstances, it is not always permissible to terminate the contract unilaterally at any time. In the theoretical realm of civil law, the right to rescind a contract falls under the right of formation, which encompasses an individual's right to initiate, alter, and terminate legal relationships based on his or her own intentions as a rights holder (Wang, 2013, pp. 94–100). Item 2 of Article 95 in the *Contract Law* stipulates that the time limit for exercising the right to terminate a contract is subject to a scheduled period, but it does not specifically define what constitutes a "reasonable time limit." Item 1 of Article 20 in the original *Regulations on Rewards and Punishments for Enterprise Workers and Staff Members* previously stipulated a time limit for employers to exercise their right to dissolve.[①] However, the *Regulations* was

① According to Item 1 of Article 20 in the original *Regulations on Rewards and Punishments for Enterprise Workers and Staff Members*, "The period for reviewing employee sanctions shall not exceed five months from the date of confirming that employees have made mistakes, while other sanctions shall not exceed three months."

abolished in 2008 with the implementation of the Labor Law and the *Labor Contract Law*. Due to the prolonged absence of legislation, there exist primarily five perspectives (as shown in Table 4) regarding the determination of time limits for parties to unilaterally terminate labor contracts prior to the promulgation and implementation of the Contract Book of the *Civil Code*.

Table 4 Practical Perspectives on Reasonable Time Limit for Exercising the Right to Terminate Labor Contracts

No.	Adjudicative opinions	Applicable law/Reference cases
1	In the event that a worker breaches any rules or regulations, the employer is generally entitled to terminate the contract within five months from the date on which it becomes aware or should have become aware of such breach.	ZGFMY [2014] No. 7
2	In the event that a worker breaches any rules or regulations, the employer is generally entitled to terminate the contract within one year from the date on which it becomes aware or should have become aware of such a breach.	*Regulations of Chongqing Municipality on the Protection of Employees' Rights and Interests*, *Regulations of Liaoning Province on the Protection of Employees' Labor Rights and Interests*, and *Regulations of Shantou Special Economic Zone on the Protection of Employees' Rights and Interests*
3	The reasonable time limit for an employer to terminate a labor contract under Article 39 of the *Labor Contract Law* should be one year.	Refer to the one-year time limitation period for arbitration as stipulated in the *Labor Dispute Mediation and Arbitration Law*/ (2018) L 02 MZ No. 6592
4	The reasonable time limit for an employer to terminate a labor contract under Article 39 of the *Labor Contract Law* should be one year.	Refer to the one-year revocation right in the original Contract Law/ (2016) H 0604 MC No. 5627
5	The termination of a labor contract beyond the reasonable time limit is deemed as an illegal termination without a clear legal basis.	(2019) L 05 MZ No. 2294

According to Article 564 of the Contract Book of the *Civil Code*, "Where a time limit for exercising the right to rescind the contract is provided by law or agreed by the parties, if the party with the right to rescind has not exercised such right upon expiration of the period, such a right is extinguished. Where no time limit for exercising the right to rescind the contract is provided by law or agreed by the parties, such a right shall be extinguished if the party with the right to rescission has not exercised the right within one year after he knows or should have known the causes for rescission, or within a reasonable period of time after being demanded by the other party." On this basis, the time frame for exercising the right to rescind the contract is determined by three rules. First, where there is a legal provision or agreement between the parties, that provision or agreement shall take precedence; second, in the absence of legal provisions or a mutual agreement, the right to rescind must be exercised within one year; third, if there is no legal provision or agreement between the parties but one party demands it, the other party is only allowed to exercise its right to rescind within a reasonable time. The promulgation and implementation of the Contract Book of the *Civil Code* have addressed the previously unaddressed issue of time limits for exercising termination rights in labor contracts.

Changes in the Time Limit for the Parties to Exercise the Revocation Right Due to a Major

Misunderstanding

The revocation right is an integral part of the right to form a contract and is subject to the legally prescribed time period. According to Article 10 of the *Interpretation (III) of the Supreme People's Court of Issues Concerning the Application of Law in the Trial of Labor Dispute Cases*, which came into force on September 14, 2010,[①] "An agreement reached between an employee and his employer on the relevant formalities for rescinding or terminating the labor contract, paying wages, remunerations, overtime pay, economic indemnity or compensation, etc. shall be deemed valid as long as it does not violate the mandatory provisions of laws and administrative regulations and is not reached by fraud or threat or by taking advantage of the opposite party's hardship. Where a party concerned requests revocation of an agreement as mentioned in the preceding paragraph because there is any major misunderstanding therein or it is an obviously unfair agreement, the people's court shall support such a request." In combination with the relevant provisions of Articles 54 and 55 of the original Contract Law and the *Provisions of the Supreme People's Court on Several Issues concerning the Application of Statute of limitations during the Trial of Civil Cases*, where major misunderstandings, flagrant injustices, fraudulent behaviors, or coercive measures are present in the separation agreement, work injury compensation agreement, unpaid leave agreement and other relevant documents signed by either party, then the right to rescind these agreements must be exercised within one year from the date when such causes for rescission is known or should have been known. Failure to do so will result in the extinguishment of such right.

Table 5 Number of Judgments Exercising the Right to Rescind Due to Major Misunderstandings after the Implementation of the *Civil Code*

Term	Number of judgments in 2021	Number of judgments in 2022
Within 90 days	7	12

As per Article 508 of the Contract Book of the *Civil Code*, "The validity of a contract which is not covered by the provisions in this Book shall be governed by the relevant provisions in Chapter VI of Book One of this Code." In combination with Articles 147 and 152 of the *Civil Code* and Article 35 of the *Interpretation (I) of the Supreme People's Court of Issues Concerning the Application of Law in the Trial of Labor Dispute Cases*, in the event that either the employer or employee requests the revocation of the separation agreement or work injury compensation agreement due to a major misunderstanding, the revocation right shall be exercised under legal procedures within 90 days from the date

① This provision has been replaced by Article 35 of the *Interpretation (I) of the Supreme People's Court of Issues Concerning the Application of Law in the Trial of Labor Dispute Cases*.

when such causes for rescission is known or should have been known. This implies that the time limit for rescinding a contract due to a major misunderstanding has been substantially shortened (Table 5).

Influence of the Contract Book of the *Civil Code* on Labor Employment and Corresponding Suggestions

Necessity for the "Two Committees" to Perform Employer's Obligations

Given that the "two committees" are neither clearly listed as employers nor explicitly excluded in the existing labor laws and regulations, some disputes have arisen in trial practices. Considering the discretionary power of judicial adjudicators, it is recommended that, prior to the second amendment of the Labor Law, *Labor Contract Law* and the *Regulations for the Implementation of Labor Contract Law*, the "two committees" sign labor contracts or employment contracts with those who meet the requirements for establishing labor relations by referring to local normative documents and judicial regulations, such as *Several Opinions of Guangdong High Court and the Labor and Personnel Disputes Arbitration Commission on the Connection between Arbitration and Litigation in respect to Labor Disputes*, *Interpretation (V) of the First Division of Civil Trial of Zhejiang High Court and the Labor and Personnel Disputes Arbitration Commission to Several Questions Concerning the Trial of Labor Dispute Cases*, *Guidelines for New Enterprises to Standardize Labor Employment in Shijiazhuang City*. Meanwhile, it is imperative for them to clarify the rights, responsibilities, and interests of both parties. They should also purchase work injury insurance or employer liability insurance based on actual needs under local regulations. This will mitigate legal risks such as paying double wages due to the absence of a written labor contract and being held accountable for all losses related to work-related injuries.

Necessity to Ascertain the Entitlement of Labor Rights and Interests for Partners

Article 971 of the Contract Book of the *Civil Code* does not provide a clear stance on whether partnership and labor relations can coexist. However, based on the general legal principle that "Everything which is not forbidden is allowed," there is currently no legal prohibition against establishing labor relations between partners and partnership enterprises. The relationship between shareholders, partners and workers is not mutually exclusive. Excluding all shareholders and partners from the category of workers would hinder the

① For example, some shareholding or partnership agreements explicitly specify that some shareholders and partners, acting as the responsible parties, possess the right to manage the human resources, properties and materials of the enterprises as well as the right to make the ultimate decision, while other shareholders and partners are only entitled to the right to know and oversee. When other shareholders or partners mentioned above provide regular labor services as arranged by the enterprise and follow the daily labor management of the enterprise, shareholders or partners who participated in the management of the enterprises can also obtain monthly labor remuneration from the enterprises in addition to their share of partnership profits, since they have personal and economic subordination relationships with the enterprise, which shall be recognized as labor relations.

effective protection of labor rights and benefits for certain shareholders and partners who have management or employment relations with the enterprise. This would also contradict the basic attributes of recognizing labor relations.① In particular, partnership enterprises are classified as qualified employers. To determine whether there exists a *de facto* labor relationship between a partnership enterprise and its partners, it is necessary to have a comprehensive assessment of whether both parties exhibit essential attributes of labor relations, such as personal and economic subordination, based on the specific circumstances. Therefore, it is imperative for the partnership and partners to clearly stipulate in advance, within the partnership agreement, labor contract or employment contract, whether labor relations will be established and if remuneration will be paid. Additionally, payment objects, standards, conditions, and timing must be specified to avoid any potential disputes related to partnership or labor issues that may negatively impact business collaboration and production processes, while also avoiding any adverse legal consequences.

Requirements for the Use of Electronic Signatures in Signing Labor Contracts

The Contract Book of the *Civil Code* does not introduce essential amendments to the formal and substantive elements of labor contracts as stipulated in the *Labor Contract Law*. It merely confirms that electronic labor contracts hold the same legal weight as traditional contracts. However, this does not imply that legal procedures and standards can be disregarded when entering into such agreements.

Employers are allowed to enter into electronic labor contracts with employees, in accordance with the *Civil Code*, *Electronic Signature Law*, *Letter of the General Office of the Ministry of Human Resources and Social Security on Issues Concerning the Conclusion of Electronic Contracts*, *Notice by the General Office of the Ministry of Human Resources and Social Security of Issuing the Guidelines for the Conclusion of Electronic Employment Contracts* and other relevant provisions. Nevertheless, it is mandatory to use legal and reliable electronic signatures when concluding a labor contract. The entire process of generating, transmitting, and storing electronic labor contract information must comply with applicable laws and regulations, ensuring the accuracy, completeness, validity, and traceability of the information.

In other words, if the third-party electronic platform entrusted by the employer fails to achieve the associated notarization (conducted by a joint notary office and judicial authentication agency) of the electronic labor contract, it may lead to difficulties in providing evidence for labor arbitration and litigation, it is still advisable to prioritize the signing of paper labor contracts whenever possible.

Basic Norms on Demanding the Employer to Bear Joint and Several Liability

According to the General Provisions and the Contract Book of the *Civil Code*, judgments

imposing joint and several liability on employers must align with contractual agreements or legal provisions. If the original employer can prove that the new employer has knowingly and intentionally recruited a worker who violated the non-competition obligation, it may file an infringement lawsuit against both the new employer and the worker as co-defendants. In such cases, both parties shall bear joint and several liability for compensation for loss in accordance with Article 1168 of the *Civil Code* and other relevant provisions. These provisions serve as the basic normative basis for such claims.

The term "basic normative norms," referreds to the substantive legal norms that support one party's claim against the other. In the context of litigation, they are the legal norms that form the foundation of a plaintiff's claim (Zou, 2010, p. 71). In practice, whether an employee is solely liable for breaching a contract or jointly liable with the new employer depends on the claim made by the original employer. Only one of these situations is legally supported. Therefore, it is essential to comprehensively examine the original employee's litigation claims, taking into account factors such as non-competition clauses, the scope of right claims, the difficulty in presenting evidence and the specific loss scope. This will enable accurate identification of the causes of action and the parties liable for the claims.

Procedure for Demanding Employers' Liability for Contract Negligence

According to Item 2 of Article 1 of the *Interpretation (I) of the Supreme People's Court of Issues Concerning the Application of Law in the Trial of Labor Dispute Cases*, "A dispute arising after a worker and his or her employer have formed a labor relation without concluding a written labor contract" is considered a labor dispute. This implies that disputes between job seekers and employers prior to the establishment of labor relations do not constitute labor disputes. Given the current legislative system and judicial adjudication status in China, it is advisable for workers or employers to initiate labor pre-arbitration procedures when claiming that the other party should bear the liability for contract negligence before the amendment of Article 2 of the current *Labor Dispute Mediation and Arbitration Law of the People's Republic of China* and Article 2 of the *Rules for Handling Arbitration Cases about Employment and Personnel Disputes*, which will help improve procedural efficiency.[①] Meanwhile, in the event that the labor dispute arbitration institution declines to accept a case due to it being outside the scope of labor disputes, the parties may initiate civil litigation in the people's court by identifying the causes of action as the liability for contract negligence or contractual disputes. Alternatively, the parties can also modify the causes of action and foundation of claims during the trial after the presiding judge ascertains the case and executes the rights to interpretation.

① For example, the civil rulings of (2021) C 0193 MC No. 12217 and (2021) H 0118 MC No. 21921 have held that disputes arising from employment stem from the conclusion of labor contracts, and litigation initiated without performing labor pre-arbitration procedures does not conform to the legal provisions governing the acceptance of such cases by the people's court.

Strict Control of Time Frame for the Exercise of Unilateral Termination Rights

As the saying goes, "The law assists only those who are vigilant, and not those who sleep over their rights." Both employers and employees should exercise their rights in a timely manner. During the process of labor employment, the employer and worker may mutually agree upon a specific period for exercising their right to terminate the contract in accordance with the terms outlined in their labor contract. However, the fact that a contract can be terminated does not guarantee that it will be terminated for sure. If there is no specific agreement, and if the conditions for rescission are met, either party has the right to rescind within one year from the date when the causes for rescission are known or should have been known. Considering the legislative purpose of "establishing and developing a harmonious and stable labor relationship" of the *Labor Contract Law*, the formulation status of normative documents in certain regions, and the trial practice that the failure of a party to exercise the right of rescission for an extended period may be construed as relinquishing the right of rescission, while subsequently retracting it could be deemed a violation of the principle of good faith, the one-year period established in the Contract Book of the *Civil Code* is still relatively long.[①] Therefore, it is recommended that employers and employees carefully consider the appropriate time limit for exercising their right to terminate the contract unilaterally. The shorter the duration of investigation and handling, the lower the legal risk will be.

Enforcement of the Time Limit for Exercising Right of Rescission According to Law

It should be noted that the period of 90 days stipulated in Article 152 of the *Civil Code* is a fixed term and does not apply to the suspension, interruption, or extension of the statute of limitations. The revision of the *Civil Code* and its Contract Book aims to remind employers to uphold the principles of autonomy, fairness, and rationality when making agreements. This also reminds workers to approach individual rights with caution when signing relevant agreements. Taking the dismissal of pregnant female workers as an example, although labor laws and regulations provide special protection for female employees and minors, when a female employee submits a resignation or terminates the labor contract upon mutual agreement with the employer, it will not affect her understanding of the behavior, fact, nature and consequences of the termination of the labor contract, regardless of whether she is aware of her pregnancy. Therefore, such cases are usually not supported in trial practices. "Major misunderstanding" concerns the safety and stability of civil activities, thus requiring stricter

① For example, Civil Judgment (2020) S 0205 MC No. 5120 holds that according to the abolished Article 20 of Regulations on Rewards and Punishments for Enterprise Workers and Staff Members issued by the State Council, the employer is prohibited from terminating a labor contract based on provisions in the Employee Manual until 8 months have passed since issuing a written warning, which exceeds the reasonable time limit.

and more cautious treatment in judicial practice. Therefore, either the employer or employee experiencing a major misunderstanding must exercise the right to revocation within 90 days from the date when the causes of action are known or should have been known. The right to revocation is extinguished if the party fails to exercise it within five years from the date when the civil juristic act has been performed.

Conclusions

Although the Contract Book of the *Civil Code* exerts a positive impact on the trial practice of labor disputes, there remain certain deficiencies. Therefore, it is necessary to gradually unify the internal provisions of labor norms on the basis of the *Civil Code*, reconstruct a legal system for resolving labor disputes, and start the compilation of labor codes as appropriate, to adapt to the new trend of social development and achieve the due purpose of the legislation.

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