

The rules of benefit connection of endowment insurance: focusing on the basic endowment insurance for urban employees

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Abstract: the benefit docking rules of endowment insurance centering on the basic endowment insurance for urban workers include the vertical rules of deemed payment, supplementary payment, extended payment and the horizontal rules of mutual transfer between the basic endowment insurance and urban and rural residents. The current pension insurance interest docking rules damage the interests of enterprise workers with strong liquidity. The benefits of old-age insurance are related to the material basis of workers' decent life after retirement, and have the nature of constitutional property rights. Therefore, legislators should not make rules that infringe on workers' benefits of old-age insurance. Due to the diversification of China's employment system and the long-term policy operation of endowment insurance system, we can establish the property right nature of endowment insurance benefits by means of the national overall planning of basic endowment insurance.

Keywords: pension benefits; docking rules; basic pension insurance for urban workers; property rights

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1. Introduction

According to xinhuanet. com reported on February 24, 2016, President Xi Jinping has made important instructions to strengthen the work of ageing, stressing that the effect of aging is related to the overall development of the country and the well-being of millions of people. ① According to the National Bureau of statistics, 2016, According to the data released on February 26, 2015, by the end of 2015, the number of citizens over 60 years old in China has exceeded 200 million. ② At the same time of industrialization and urbanization, the aging problem has become an urgent problem to be solved, and the insurance benefits of endowment insurance is the most concerned problem of the society. The old-age insurance system of our country has been tortuously followed and evolved so far, and

there has been a turning point of the connection between the old and the new system centered on the basic old-age insurance for urban workers. However, the connection between the new and old systems is not smooth, and the rules hidden in various legal documents have obviously damaged some of them. The interests of workers. Taking the basic endowment insurance for urban workers as the breakthrough point, this paper explores the rules and causes of endowment insurance benefits in the system docking, analyzes the property rights nature and protection of endowment insurance benefits, and expounds the relationship between endowment insurance benefits and the basic endowment insurance for urban and rural residents through the three links of vertical deemed payment, supplementary payment and extended payment, and the mutual conversion between endowment insurance benefits and the basic endowment insurance for urban and rural residents. This paper explains the direction of reshaping the rules of interest docking of China's pension insurance.

2. The current rules on the connection of pension benefits

In modern Chinese society, migrant workers as the main body of the labor mobility is strong, and it is common to change the workplace in their career. At the same time, the old-age insurance relationship must be transferred correspondingly, so whether the old-age insurance benefits will be lost in the process of transfer? This part intends to analyze the docking rules of the old-age insurance benefits from the vertical and horizontal levels.

2.1 The rules of benefit connection of endowment insurance at the vertical level

Taking the time factor of endowment insurance payment as the standard and taking the basic endowment insurance for urban employees as the center, the docking system involves three links, namely, deemed payment, supplementary payment and extended payment, which is also the docking rules of endowment insurance interests at the vertical level. Due to the developed private industry and Commerce in the municipalities directly under the central government and special economic zones, and the large number of mobile workers, this section selects the relevant

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laws and regulations of Beijing, Chongqing, Shenzhen and Xiamen as the analysis objects.

2.1.1 Deemed payment

As the name suggests, it refers to the working years of workers who have not actually paid the endowment insurance premium before, and the law assumes that they have paid in this period. For example, Shenzhen stipulates that during the period before the implementation of the individual payment system of endowment insurance, the objects of payment shall be regarded as the fixed employees in the state-owned or collective ownership units above the county level. For another example, Xiamen city has made restrictive provisions on the payment period. If the registered permanent residence is insured after moving into the city, whether it is insured locally or not before moving in, the continuous length of service before moving in is not counted as the payment period; if the enterprise employees are recruited without the approval of the labor administrative department above the county level, only the actual payment period after joining the insurance is counted. Therefore, from the provisions of the two special economic zones in Shenzhen and Xiamen, whether the working hours of the employees before the city's personal payment are regarded as payment depends on two factors, namely, the approval of the labor administrative department and the registered residence of the city.

At present, there are also cases of deemed payment in France, but the extension of deemed payment in this country includes the period when a woman stops working due to illness, childbirth, disability, work injury, military service and unemployment. For example, for every child born by a woman, the insured period is increased by 1-8 quarters.

2.1.2 Supplementary payment

Due to the lack of previous laws and regulations, some workers have not paid endowment insurance premiums within a period of working years, which can be supplemented according to the latest laws and regulations. For example, Shenzhen City stipulates that voluntary payment and compulsory payment should be jointly undertaken by employers and workers. The period of compulsory payment required by social security departments is two years. In short, beyond this legal period, the supplementary payment becomes the freedom right of workers, which has

nothing to do with employers. Again, Chongqing will limit the compensation object to the registered residence (except the so-called “small boss”). In the four category, only a part of the unemployed persons in the government and institutions can be paid back by the unit. In other words, the laborer can only pay in his personal status, but the employer needs to make up the payment without explicit provision.

According to the social insurance law, the basic endowment insurance premium of urban workers must be paid by both employers and workers, and the individual contribution of workers shall be withheld and paid by employers from workers’ wages. The original intention of the design of the endowment insurance system emphasizes that the employer’s payment responsibility is inevitable and rigid. The reason why workers are required to pay the same is to encourage them to work hard. On the one hand, the employer has the tendency of intentional omission. If the laborer makes up the personal part, the employer part and the overdue fine, it will greatly increase the laborer’s economic burden and have to choose to give up. The working years of the unpaid stage can not be counted as the payment period; On the other hand, the endowment insurance fund is composed of individual account and co-ordination account. The government has to pay certain financial subsidies to the co-ordination account. The period when the workers have worked is not counted as the payment period. Accordingly, the government’s financial responsibility will be reduced, which will lead to the negative law enforcement attitude of slow down. Therefore, the supplementary payment rules here violate the basic principles of the endowment insurance system and infringe on the interests of workers, while employers and local governments become beneficiaries.

2.1.3 Extension of payment

The extension of payment refers to the workers who have reached the legal retirement age and have not participated in the basic endowment insurance for employees during the working period, and can receive the endowment insurance benefits after making up the endowment insurance premium for 15 years. For example, Beijing has set up different rules for extending the payment rules for registered residence workers and foreign personnel in this city. The registered residence personnel in this city will be insured before July 1, 2011, and the payment will be less than 15 years after 5 years of extension, and the payment can be paid to 15 years at

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a time. The other people will pay the whole month to 15 years. For another example, Xiamen City stipulates that when the city's personnel reach or exceed the legal retirement age, they only need to make up the pension insurance premium for 15 years at one time; for foreign personnel, they can only extend the payment to 15 years on a monthly basis.

The purpose of endowment insurance system is to ensure that workers leave work Enjoy old age. The workers in this city can extend the payment to 15 years at one time, but the workers in other places can only extend the payment to 15 years by month. If the workers in other places die during the extended payment period, they can not enjoy the pension insurance treatment during the extended payment period after leaving their posts, and their families can only inherit the personal account balance of the deceased. The basic theory of social insurance is based on the concept of self-confidence and mutual trust of social joint and several liability. Joint and several liability means the function of redistribution of resources, and it is also a kind of social cohesion and community. China's endowment insurance coordination account should have the function of risk sharing and mutual aid, and also shows the social value of workers' labor. The extended payment rules are not compatible with the nature of the overall account. In the case of the death of the migrant workers during the extended payment period, the pension benefits inherited by their family members do not reflect the social value of the deceased's labor.

2.2 The rules of benefit connection of endowment insurance at horizontal level

From the perspective of the composition of China's practitioners, the labor group with migrant workers as the core occupies the mainstream and has strong mobility. Therefore, the horizontal transformation between the basic endowment insurance for urban workers and the basic endowment insurance for urban and rural residents is more frequent. Our country has specially stipulated the docking rules between the two. The old-age insurance relationship of workers can be transferred between the basic old-age insurance for urban workers and the basic old-age insurance for urban and rural residents. The former is transferred to the latter, and the payment period is calculated together; the latter is transferred to the former, and the payment period is neither calculated together nor converted.

The basic old-age insurance treatment of urban workers is much more than

that of urban and rural residents. The author thinks that the basic old-age insurance of urban and rural residents in China does not have the nature of social insurance, but belongs to the project of social assistance, because the social insurance requires both labor and employees to pay together, and the payment responsibility of urban and rural residents' old-age insurance does not need to be borne by the employer. Social insurance is different from social assistance. Social insurance is to prevent workers from becoming poor, while social assistance is to help people who are already poor; In order to get social assistance, applicants have to prove some negative situations related to themselves - they are not able to support themselves, while beneficiaries of social insurance have to prove something positive - they have worked for enough years. In practice, most migrant workers come from rural areas or third tier cities, and generally work in enterprises in third tier cities after leaving their original places of work. The vast majority of private enterprises in third tier cities will not pay endowment insurance premiums for workers. At this time, they can only participate in endowment insurance for urban and rural residents. The old-age insurance relationship of workers is transferred from the basic old-age insurance for urban workers to the basic old-age insurance for urban and rural residents. Only the amount of individual account is transferred, and the amount of overall account is left in the original place of work. However, the amount of basic old-age insurance for urban and rural residents is very low except for individual payment, which can't be compared with the amount of original overall account.

3. The causes of the current rules of pension insurance interest docking

Through the analysis of the current pension insurance benefit docking rules, we can clearly find that the loss of pension insurance benefits in the process of transfer has damaged the rights and interests of a large number of mobile workers, and made a small number of workers with special status, employers and local governments become beneficiaries. How to create such a strange situation? This part intends to explore the reasons for the loss of pension benefits from the perspective

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of employment system and governance strategy.

3.1 Transformation of employment system from solidification to diversification

From 1949 to 1979, China's urban and rural areas are basically isolated from each other. In the urban pattern, there are two kinds of political identities: cadres and workers. Cadres belong to the personnel administrative department, and workers belong to the labor administrative department. During this period, with the implementation of the low wage policy, the workers can hardly save for the aged, and their pension benefits are transformed into state-owned assets, so as to obtain the elderly living security without payment as consideration. After 1979, a variety of economic components began to appear, accompanied by a flexible and diversified employment system. "The extension of workers' identity includes fixed workers, contract workers, private enterprise employees, employees in self-employed enterprises, Chinese personnel in foreign-funded enterprises, and temporary workers." among them, fixed workers, contract workers, and temporary workers coexist in state-owned enterprises. In 1986, the state took the contract workers as the object of social planning for retirement and old-age care in state-owned enterprises, that is, the enterprise, employees and the state raised funds, and then gradually extended to fixed workers and temporary workers. Compared with the great change of employment system, the reform of registered residence system is obviously lagging behind. In 1979, a large number of rural labor force poured into city enterprises, mainly to enter the booming private enterprises to make a living. This constitutes the historical background of the pension insurance interest docking rules that regard the basic pension insurance for urban workers as the center, such as the deemed payment, supplementary payment, extended payment, and the exchange between the basic pension insurance for urban workers and the basic pension insurance for urban and rural residents.

China's endowment insurance system is transformed from the endowment insurance for employees of state-owned enterprises and is based on the long-term stable employment of workers. Only long-term fixed in a specific employer's position

Workers can relatively easily be embedded in the basic endowment insurance system, otherwise, even if they are not migrant workers, when other workers with strong mobility participate in the endowment insurance system, their payment con-

tinuity and endowment insurance benefits will encounter difficulties. Therefore, China's endowment insurance system is only the benefit system of a few people. Different identities of workers carry different pension benefits. In China, the institutionalized concept of "workers" has been marginalized. From the perspective of economic globalization, the political sense of workers is weakening. In terms of social security system, for industrial workers, there should be no distinction between registered residence and migrant workers' identity transformation. Therefore, the diversification of employment system leads to the diversification of workers' identity, and then leads to the diversification of pension benefits, which is reflected in the bizarre rules of pension benefits docking.

3.2 Long term Policy Governance of endowment insurance system

Before 1979, the governance of the national endowment insurance system was mainly based on policy operation, and then some regulations were issued one after another. Until 2010, the first national law in the field of social insurance law, the social insurance law, was formulated. Although the law defines the institutional framework of endowment insurance for enterprise employees, the provisions are relatively rough. In addition, China's endowment insurance system has been adjusted by the "policy", the policy and system are far from finalized, and the systems and practices vary greatly from place to place. The level of legalization of endowment insurance is very low. The policy has limitations such as adjusting measures to local conditions, and lacks predictability, operability and relief. As the most important arrangement of social security system, endowment insurance system has a fundamental impact on the whole social security system because of its long-term accumulation characteristics and payment scale. However, for such an important endowment insurance system in China, the number of laws and regulations at the central level is small, too principled, simple and difficult to operate, while local laws and regulations have a strong color of local protectionism. Right is defined or implied in the legal norms, realized in the legal relationship, and a means for the subject to obtain interests by relatively free action or inaction. It was only after the 1950s that Chinese legal circles began to pay attention to the right standard, and mainly to the right in the sense of private law. The interest of endowment insurance is closely related to the basic survival of citizens, and has the na-

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ture of property right. But in fact, the right of endowment insurance has not been recognized as property right in the constitution. In practice, the disputes related to the interest of endowment insurance have not been fully included in the channel of administrative and judicial relief. In the industrial injury insurance system, the identification of industrial injury is included in the procedure system of administrative reconsideration and administrative litigation, while there is no obvious relief channel for similar payment disputes and insurance payment disputes. This will cause double damage to workers' rights. The first is the discrimination in legislation. The Constitution does not specify the property right status of endowment insurance right. The formulation of State Council regulations and local regulations and rules does not violate the constitution. As mentioned above, it is not unconstitutional to regard endowment insurance as payment, extension of payment, supplementary payment, and mutual transfer of basic endowment insurance for urban workers and basic endowment insurance for urban and rural residents; Second, the way of relief is blocked. Without relief, there is no right. It is difficult for pension insurance interest disputes to be included in administrative and judicial relief procedures, let alone unconstitutional review procedures. The superimposed effect of dual rights damage will increase the pessimistic expectation of the injured workers for social development, which is not conducive to the construction of the rule of law.

4. The property right nature and law of endowment insurance interest guarantee

The benefit of endowment insurance is related to the payment of premium in the employment stage and the payment in the retirement stage, which is a kind of money benefit. The nature of property right of endowment insurance interest has been established by legislation or judicial procedure, and citizens have been given corresponding claim right. This part discusses the benefits of endowment insurance from two aspects: the nature of property rights and legal protection.

4.1 The property right nature of pension insurance interest

On the eve of the change of dynasties in China's history, there were two lev-

els of social contradictions, such as land annexation, people's poverty and so on. The fuse of modern western democratic revolution, whether it was about taxation or uneven material distribution, was related to the protection of ownership. After human beings entered the industrial society from the agricultural society, with the progress of industry and commerce, the extension of ownership began to expand, and gradually extended from the ownership in the sense of real right to all private rights with property value in the sense of civil law, including ownership, intellectual property, creditor's rights and other rights. After the judicial rights are included in the scope of constitutional property rights protection, whether the rights in public law can be protected by constitutional property rights has aroused fierce controversy in academic and practical circles.

Take Germany and the United States. As to whether the right of social insurance should be included in the constitutional protection, there has been a long-standing debate in German society. Finally, the German court established the property right nature of pension insurance interest in public law through the case law, and developed the concept of "public law property right" in the constitutional judgment on statutory pension insurance in the 1980s, bringing the legal status of statutory pension into the scope of constitutional property right protection; Since then, if the government takes measures to reduce the amount of annuity payment or the right of payment expectation of the insured, it may infringe on the constitutional protection of property rights of the parties. In the United States, Reich published in 1964. The article "the new property" strongly advocates the concept of "new property". In the 1970 welfare hearing case, the court established the property right nature of social welfare, and the government must go through due process before deprivation.

4.2 The legal protection of the benefit of endowment insurance

The interest of endowment insurance is closely related to every citizen's right to life. From the perspective of social contract, there is a broad contractual relationship between citizens and the state. The state must fulfill the obligation to safeguard citizens' basic life; the obligations and rights of the state must be determined by the constitution. We live in a society where personal economic security is constantly threatened by external forces The function of property right is to give in-

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dividuals the power to control their own lives and maintain their survival. Citizens are independent individuals with free will and should be respected at all times. Human dignity is the foundation of constitutional order, the core scope of basic rights and the absolute obligation of the state.

As a basic constitutional right, social security right is an institutionalized right and legal right, not just a moral right. The interest of endowment insurance belongs to specific property right, which should be embodied by legislation, guaranteed by administration and relieved by judicature. The protection of constitutional property rights in western developed countries includes two ways: Legislative Protection and judicial protection. Legislative activities belong to the first threshold. Legislators must protect property rights, so that property owners can still have the right to “use” and “benefit” economically according to the types of output objects and the general social situation. Legislators must implement the spirit of protecting human rights in accordance with the principles of the constitution. The procedure of administrative and judicial relief is the second barrier to protect civil rights. When legislators violate the Constitution and damage citizens’ property rights, citizens should have a right of claim to resist the infringement of public power on their legally owned and specific property rights. The specific way is constitutional relief - unconstitutional review.

5. The reshaping direction of the current pension insurance interest docking rules

In order to correct the disadvantages of the current pension insurance interest docking rules, we must establish the constitutional property right nature of the pension insurance interest in the long run. From the technical operation level, we can use the path of national overall planning of the basic pension insurance to solve the problem of the loss of pension insurance interest.

5.1 Establishing the nature of constitutional property rights of endowment insurance interests

The dignity of human beings is based on an appropriate standard of living.

Recognizing and protecting rights is the essence of the rule of law. Respecting and protecting human rights is the essence of national governance and the fundamental embodiment of national modernity. To respect and protect human rights, the most important thing is to protect the basic rights of citizens. The right to subsistence is the primary human right. The benefit of endowment insurance is the property right related to the survival of citizens, which belongs to the basic right of the constitution. In Germany, more than 80% of the population is covered by the statutory pension system. Statutory pension insurance is far ahead in the pension security, accounting for the most important proportion. In the whole pension payment, the proportion of statutory pension insurance is 85% on average. Since China's reform and opening up, with the continuous advancement of urbanization and industrialization, the agricultural population has decreased sharply, and the proportion of workers working in enterprises has increased sharply. The pension insurance benefits docking rules involving the survival of workers "deduct" the pension insurance benefits of a large number of mobile workers in vulnerable areas in the form of legal rules. Therefore, it is urgent and necessary to emphasize and promote the interest of endowment insurance as the constitutional property right.

China's constitution stipulates that citizens have the right to material help from the state and society when they are old, but strictly speaking, the concept of "material help right" is not rigorous enough, because the word "help" implies the concept of "non obligation", and the meaning of "responsibility" cannot express the meaning of "legal constraint" of the right to the state and society. Therefore, China's constitution has not yet established the status of social security rights as property rights, so it is not unconstitutional for lower level laws and regulations to formulate rules that infringe the interests of labor pension insurance. If the state's protection obligation determined by legislation does not correspond to the citizen's right to claim and the court's right to relief, then the protection of civil rights is only a paper declaration, and this state obligation is not reliable. Due to the lack of constitutional review system, when the public power organs make rules to infringe on the rights and interests of citizens, the infringed can only be arrested.

5.2 Promote the national overall planning of endowment insurance

Under the background of urbanization and industrialization, a large number of

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farmers have flocked to cities to become industrial workers. The proportion of urban population has surpassed that of rural population and will continue to rise. Citizens will be engaged in industrial labor either actively or passively. The endowment insurance system is the product of the industrial revolution and an important measure of civilization in modern society. As the most important social insurance project, endowment insurance is different from the social assistance with the characteristics of government endowments. The statutory benefits of endowment insurance should meet the appropriate living needs of workers after retirement, and it is the fundamental material basis for self-development and self realization. The statutory endowment insurance system should cover the vast majority of citizens and provide sufficient benefits. The change of the employment system and the policy operation of the endowment insurance system have resulted in the abnormal benefit docking rules of the endowment insurance, which hinders the reasonable flow of workers and the freedom of choosing jobs.

The current rules of interest connection of endowment insurance protect the private interests of local governments and encourage the employers to evade their responsibilities. Therefore, the implementation of national overall planning is the fundamental solution to the fundamental defects of the basic endowment insurance system for employees. The national overall planning can make the basic endowment insurance system return from the local system arrangement of “contract system” to the national legal unified system arrangement. In the 1920s-1930s, the endowment insurance system in the United States had a very similar distress to that in China. In the early days of the social insurance act, the frequent flow of rural labor force, the phenomenon of agricultural labor force being rejected or terminated by social endowment insurance often occurred, and the problem of endowment insurance continuity was very serious. But at last, all walks of life have reached a consensus: the low-income floating groups need social endowment insurance more, and the redistribution principle of social insurance is beneficial to them; the unification of social insurance system can avoid the overlapping and blank brought by the separation of systems, and eliminate the confusion and inequality of social insurance treatment; the unification of social insurance system can avoid the overlapping and blank brought by the separation of systems; The long-term nature of

social basic endowment insurance and population mobility require the federal government to directly and uniformly manage it. It can be seen that the national overall planning of basic endowment insurance is a feasible way to realize the property rights of citizens' endowment insurance interests.

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