

Research on Employees Negotiate Benefits and Strategies During Layoffs

Songyang He *

University of Wollongong College, New Territories, Hong Kong, 852, China

* Corresponding Author Email: 1809020208@ stu.hrbust.edu.cn

Abstract. The COVID-19 pandemic has led to economic downturns globally, with many companies resorting to layoffs as a primary cost-cutting measure, resulting in a sharp increase in unemployment rates. However, improper termination of employment can have detrimental effects on the social economy, environment, and social security and can damage a company's reputation, hindering its development. There is an ongoing debate about whether employees will choose to leave quietly or fight for their rights in the face of improper termination and the necessity of negotiation in such situations. Moving forward, it is crucial for governments to enhance relevant laws and regulations to protect workers' rights. Companies must prioritize integrity and ethical practices in their employment decisions. Employees, on their part, should clearly understand their rights and engage in interest-based negotiations to protect their interests. By addressing these issues, the negative impacts of layoffs can be mitigated, leading to better outcomes for both employees and employers. This paper emphasizes the importance of a balanced approach to layoffs, advocating for stronger legal frameworks, corporate responsibility, and employee empowerment.

Keywords: Termination of Employment; Employee Negotiation; Interest Protection.

1. Introduction

1.1. Research Background

In 2018, the appalling COVID-19 virus swept the globe, affecting the economies and societies of countries around the world to varying degrees. In this context, most companies choose to lay off employees to reduce their own expenses. According to a survey by the International Labor Organization, by 2023, the global employment gap during the epidemic will reach 453 million people, accounting for 11.7% of the total [1]. The National Bureau of Statistics of China also conducted a survey on the unemployment rate of the urban population in China, and the highest unemployment rate reached 6.2%, and 6% of the employed people entered the labor market [2]. This article will focus on how these employees facing dismissal can negotiate and use some techniques to secure their due benefits, as well as how to maximize the benefits. Some highly developed countries do not need to study this issue because their national laws and labor protections allow them to get the benefits they deserve without negotiation. However, the defects of policies and human and social problems in some countries will lead to the lack of protection of workers' interests, so this article will mainly focus on employees in these environments.

1.2. Literature Review

In his Research on Employee Turnover Behavior Decision Making, Tian proposed that employee turnover is a process of bargaining with employers based on the interests of both parties. In his opinion, due to the improvement of modern labor legislation, labor law and contract law have intensified the long-term stable relationship between employers and workers [3].

In the paper "Research on Wrongful Dismissal Compensation Mechanism Based on Cooperative Game Model", Zuo took the wrongful dismissal compensation of Nokia China Suzhou Branch as a case and concluded that the amount of compensation for both parties is affected by the negotiated risk interest of labor and employer [4].



David also described in his article “Managing the Exit: Negotiating an Employment Termination” that employment termination is governed by a series of complex interrelated negotiations among different relevant stakeholders [5].

In the Legal Daily of November 29, 2022, Zhang and Zhao concluded through interviews that the practice of forcing employees to resign voluntarily is aimed at avoiding the relevant legal provisions that enterprises should pay corresponding economic compensation to employees who are dismissed. This practice of forcing employees to resign not only causes harm to employees but also constitutes an illegal act. However, in reality, there are problems such as difficulty in obtaining evidence and safeguarding rights, etc. It is urgent to improve relevant laws and regulations and system design so as to eliminate such phenomena gradually [6].

Nowadays, it is not uncommon for enterprises to dismiss employees by a series of means in order to protect their own interests. Most scholars have conducted a lot of research on relevant legal issues, but only a few scholars have conducted research on effective negotiation with relevant responsible persons of relevant enterprises. Therefore, this article will focus on how to negotiate for their own interests rather than through legal penalties to cause greater impact and loss.

1.3. Research Framework

This article will first take a private company in Guangdong Province of China as a case to introduce and analyze the reasons for this situation and the advantages and disadvantages of the employees involved in the negotiation. The implications and problems arising from this phenomenon are then discussed, both for society and for the company itself. Then, it will make recommendations on the situation and how the fired employees can defend their rights through negotiations. Finally, come to a conclusion.

2. Case Description

It is reported that Liu (a pseudonym), who works in Guangzhou, Guangdong Province, has been promoted from a general salesperson to a sales supervisor in a private medical institution through her own efforts for 4 years. This should have been something to be thankful for, but everything changed under the new leadership. After taking office, in order to clean up the employees, the new leader will negate the employees who will be cleaned up by constantly suppressing and excluding them. After Ms. Liu Nian submitted the work, it was quickly rejected, and the leadership never proposed any effective solution to this problem. She went to the leader to communicate, hoping that the other side could give accurate tips, but the other side only emphasized that her work did not meet the requirements of the post. Without a specific plan, it is difficult for Ms. Liu to continue the follow-up work. In the subsequent communication, the leader used various immoral behaviors, including but not limited to insulting language and verbal abuse against Ms. Liu, which caused Ms. Liu to fall into deep self-doubt [6].

According to a netizen “Meng” (a pseudonym), in order to force her to leave on her own, the company used various means to ask whether the client had any intention of leaving, then put pressure on high-performance assessment, and then publicly said that she did not recognize her workability and called on other colleagues to isolate her [6]. A search of the “forced to leave” note revealed that the same experience was not rare, with the company forcing employees to leave through job transfers, underpayment, abuse, and assigning difficult tasks. Most of these situations occur when companies or businesses need to lay off workers to save money.

According to Article 47 of the Labor Contract Law of China, the economic compensation shall be paid to the laborer based on the number of years he/she has worked in the unit and the standard of one month’s salary for each full year [7]. If the employee resigns for his own reasons, the company does not need to pay any compensation. Therefore, the main reason why enterprises use some “means” to force employees to leave is to save the corresponding economic compensation for the company.

3. Analysis of the Problem

3.1. Influence Factor Identified

3.1.1. The Influence on Society

Large-scale downsizing of enterprises will lead to a rapid increase in social unemployment, and these unemployed people scattered in society will cause great hidden dangers to the economy, social environment, and social security problems. Layoffs will leave many families in a “no income, only expenses” dilemma, so some unemployed employees may have to commit acts that endanger social security. Similarly, the resigned employees have no source of income, resulting in a decline in their purchasing power and impacting the economy of the entire market. In addition, in order to ensure the basic living ability of these unemployed workers, the state and the government need to transfer funds for relief and subsidies, which will put additional pressure on the government and the demand for social services. While layoffs won’t accelerate a recession for now, the trend increases the risk of one. As people spend less on goods and services, commodity prices fall, but these risks trigger a recession.

3.1.2. The Influence on Company

Suppose an enterprise forces employees to leave by themselves through immoral means. In that case, such behavior will cause an immeasurable negative impact on the reputation of the enterprise, and such impact will cause harm to the future development of the enterprise, cooperation with other enterprises, future work, and future recruitment of employees, resulting in greater losses for the enterprise. Suppose the enterprise conducts layoffs through formal means in addition to paying a certain amount of compensation. In that case, other employees who have not been cut will also have different degrees of psychological pressure, worrying about whether the next one will be cut. After layoffs, even if there are follow-up replacement employees, the corresponding training and adaptation of employees will become uncertain, leading to the instability of enterprise work. In the article “How layoffs impact culture, team dynamics and those left behind”, the author proposed that because layoffs lead to fewer employees in the company, the sudden increase in workload will cause the work to be overwhelmed. Not only does it lead to a decline in performance, engagement, and quality of work, but it also leads to resentment and burnout among the remaining surviving employees [8].

3.1.3. The Influence on Fired-Employee

Regardless of whether the method of dismissal is legal or not, employees who are fired can suffer greatly psychologically and spiritually. They lose their jobs suddenly, making them unable to earn income, and the pressure of life can cause them to collapse in an instant. Even if they receive the appropriate compensation, it takes a lot of energy and time to find the right job and adjust to the new work environment and the new company culture. In addition, dismissing employees will also damage their self-esteem, especially the employees who are forced to leave by themselves in an immoral way. They are likely to become the object of ridicule by others, they will also fall into deep self-doubt, and what is more, it is likely to cause immeasurable psychological trauma. In addition, waiting for a layoff notice can be the most difficult time. Aliya Hamid Rao in his article “When You Know Layoffs Are Coming...” writes about this: Months of uncertainty and nervous expectations can also take a heavy toll on employees’ happiness and mental health: one study of 63 countries found that suicide rates rose six months before unemployment rates rose [9]. Therefore, it can be concluded that the dismissal of employees, no matter whether it complies with laws and regulations, will cause great distress to the physical and mental health and life of the dismissed employees.

3.2. Problem identified Analysis

3.2.1. Problem 1: Many Employees Do Not Choose to Protect Their Rights

After experiencing the company’s “unethical methods”, many employees choose to quit rather than defend their rights. This problem ultimately comes from the relatively weak awareness and cognition of relevant laws of employees, who are unable to acquire relevant knowledge in their own cognition,

resulting in loopholes for the company to exploit. On the other hand, the country's relevant laws and follow-up actions are not perfect. Appeals take a long time to defend their rights, and the related costs, such as legal fees, are relatively expensive, so many employees choose to leave on their own rather than appeal. In addition, the "improper means" of many enterprises are very difficult to obtain evidence of, such as verbal abuse, insults, etc. Even if some employees choose to appeal, there is still a great probability of losing. Sun and Zhao said in an interview: "Labor arbitration has gone through many months, and if you want to pursue litigation further, the time and energy cost is not small." Even if they succeed in defending their rights, they will get the rights that workers should enjoy, and the company will not suffer any loss." [6]. To sum up, many former employees are reluctant to appeal mainly because of three factors: weak awareness of relevant laws, long and expensive appeal cycle, and difficulty obtaining evidence for the company's improper behavior.

3.2.2. Problem 2: The Necessity for Fired Employees to Negotiate

The answer is yes. Despite a series of unfriendly behaviors, it is necessary to negotiate with the company. Only through negotiation can employees strive for greater benefits for themselves or get back the compensation that is rightfully for laborers. Article 23 of the Universal Declaration of the United Nations states that everyone who works has the right to a just and adequate remuneration that guarantees him and his family living conditions consistent with human dignity, supplemented, if necessary, by other forms of social security [10]. Therefore, fired employees must bravely stand up for their own interests and rights. The focus of this issue is what kind of method and mentality should be used to negotiate effectively with the relevant responsible persons.

4. Suggestions

4.1. Legal Aspect

Relevant countries should first improve the relevant laws, whether it is the protection of the interests of fired employees or the punishment of enterprises and business owners who use unethical means to dismiss employees, should be improved, and learn from other countries. By contrast, some developed countries, such as the United Kingdom, the United States, and Germany, all adhere to the characteristics of "respecting the basic principles of social justice", "integrating the protection of civil rights and the efficiency of economic operation", and "taking into account the interests of both employers and employees in the dispute over compensation for wrongful dismissal" when aiming at the scope of employers' responsibility for wrongful dismissal. Secondly, in the United States and France, when calculating wrongful dismissal compensation, the calculation period of the compensation of the dismissed employee is the gap between the termination of the labor contract and the expiration date of the labor contract between the two parties, which reflects the concept of "compensation must be paid if you breach the contract".

The Chinese Labor Law mainly regulates compensation in accordance with the principle that "compensation and compensation are exclusive". That is, an employee who claims compensation for wrongful dismissal should not claim economic compensation for dismissal. China's labor law binds the amount of wrongful dismissal compensation to economic compensation rather than to the salary. Such defects make many dismissed employees unable to get the benefits they deserve, and the goal of employee dismissal protection is difficult to achieve.

Therefore, the legal system should be improved to clarify the definition, scope, and specific types of wrongful dismissal, re-structure the calculation method of economic compensation, strengthen the protective role of trade unions and relevant labor protection agencies, supervise and regulate relevant companies and departments, and vigorously punish enterprises and business owners who violate the regulations, so as to safeguard the legitimate rights and interests of workers, and to prevent improper dismissal of employees.

4.2. Enterprise Level

When an enterprise improperly dismisses employees, both the reputation of the enterprise and the emotions of the employees who have not been fired will be affected to varying degrees, and the more serious result is likely to cause the enterprise to lose a large number of potential partners and new employees who are able and willing to join. Therefore, in order to avoid these losses, the enterprise should strictly implement the relevant provisions under the supervision of the law and never arbitrarily use illegal means to dismiss employees. Even if the employee has to be dismissed, the enterprise should communicate and negotiate with the dismissed person in advance to ensure that the dismissed party can get corresponding adequate compensation and have enough time to find the next division of labor. And companies should not put any obstacles in the way of laid-off workers finding new jobs. Only when an enterprise faces its customers and employees with an honest attitude will other enterprises be willing to cooperate, capable employees will be willing to join, and customers in need will buy goods.

4.3. Individual Level

Most employees will panic and lose their ability to think straight when facing dismissal, and in this case, staying calm and steady will have a better chance of winning. For employees, the first thing is not to regard HR as the enemy, and everyone is doing their own work, which is not deliberately difficult. Therefore, in the process of negotiation, employees should calmly show employees professional attitude and participate in the negotiation with understanding and respect. Make it clear where employee stand and what employee need, and avoid using vague or overly emotional language out of anger. Second, before the negotiation, employees should have a full understanding of the current situation of the company and themselves, make clear the reasons for the occurrence of this situation, and clarify the legal provisions involved in this matter. Meanwhile, employees can collect and sort out their own evaluation of the company, their own performance, and customers' evaluation so as to be a major guarantee for obtaining due interest. Third, clarify the minimum conditions (BATNA) that employee can accept, including the amount of compensation employee want to receive, renewal of insurance, and compensation for unused vacation days. Consider the most desirable outcome and some possible compromises. Finally, other solutions can be proposed during the negotiation process, such as agreeing to accept job transfers, installments, and so on. There should be a third party monitoring and testifying to subsequent agreements during the negotiation process, ensuring that all agreements are documented in writing and not just verbal agreements.

5. Conclusion

When the COVID-19 pandemic swept the world, many employees were laid off. In this environment, some layoffs were necessary, but many were forced terminations, adversely affecting the interests of these employees. Wrongful dismissals lead to a rapid increase in unemployment, which poses significant risks to the economy, social environment, and social security. Furthermore, such actions can severely damage a business's reputation, hindering its future development, cooperation with other enterprises, and its ability to attract and retain talent. Employees who remain with the company may also experience a strong sense of distrust and a lack of belonging, leading to decreased morale and productivity, ultimately harming the company's long-term success.

This situation raises two critical issues: First, why do many employees choose to leave rather than protect their own interests? Second, is it still necessary to negotiate in such cases? To address these issues, countries should continue to enhance relevant labor laws to ensure better protection and valuation of the workforce. Strict penalties should be imposed on enterprises that violate these regulations. Companies must prioritize integrity, recognizing that only by maintaining ethical practices can they ensure sustainable success. Employees, on their part, should approach dismissal situations calmly, clearly articulate their positions and needs, and engage in negotiations with a respectful and composed demeanor.

Many businesses, in an attempt to protect their own interests, resort to unethical means to force employees to quit. This paper aims to offer new perspectives and suggestions for workers experiencing such challenges. The current analysis highlights the importance of understanding and leveraging existing laws to safeguard employees' rights effectively.

This study acknowledges its limitations, particularly a lack of in-depth understanding of the diverse legal frameworks across various countries. Future research should delve deeper into the specific labor laws and regulations worldwide to provide more comprehensive insights and actionable recommendations. By doing so, it can better guide employees in navigating dismissal situations and empower them to stand up for their rights effectively.

In conclusion, wrongful dismissals during the pandemic have underscored the need for robust legal protections, ethical business practices, and proactive employee engagement. By addressing these areas, we can mitigate the negative impacts on individuals and society and foster a more stable and fair labor market. This research contributes to the ongoing discourse on labor rights and corporate responsibility, offering valuable insights for policymakers, businesses, and employees alike.

References

- [1] H. Steve. The international labour organisation. *New Political Economy*, 2005, 10(3), 413-425.
- [2] H. Liu, Y. Wang, D. He & C. Wang. Short term response of Chinese stock markets to the outbreak of COVID-19. *Applied Economics*, 2020, 52(53), 5859-5872.
- [3] H. Tian. Determinants of employee turnover intentions: A review. *Management Today*, 2015, 9(2).
- [4] C. Z. Luo. Research on compensation mechanism of wrongful dismissal based on cooperative game model. Pearson Education, 2017.
- [5] D. P. Zin. Managing the exit: negotiating an employment termination. *Harv. Negot. L. Rev.*, 2012, 17, 289.
- [6] P. Cappelli. *Change at work*. Oxford University Press, USA, 1997.
- [7] S. Cooney. Making chinese labor law work: the prospects for regulatory Innovation in the People's Republic of China. *Fordham Int'l LJ*, 2006, 30, 1050.
- [8] D. M. Noer. *Healing the wounds: Overcoming the trauma of layoffs and revitalizing downsized organizations*. John Wiley & Sons, 2009.
- [9] S. Wetlaufer. After the layoffs, what next. *Harvard business review*, 2021, 76(5), 24-42.
- [10] United Nations. General Assembly. (1949). Universal declaration of human rights (Vol. 3381). Department of State, United States of America.