

# 論中國大陸係勞動關係之判斷 及新工作型態相關法規範之探討

## The Criteria for Judging Labor Relations in Mainland China and the Laws and Regulations Related to New Work Patterns

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### 摘 要

本文以中國大陸共享經濟下平臺工作者之權利保障體系構築方式為研究對象，對中國大陸勞動法規及其與民法之相互關係的特徵、傳統勞動關係認定基準及從屬性理論於學說和法院判決層面的具體展開，事實勞動關係、勞務關係、雇傭關係等傳統意義上的「準勞動關係」與勞動關係之辨析及適用法律之區別，平臺經濟之特徵與勞動保護法層面的主要問題，制度應對等進行了系統整理，根據2021年公佈的「關於維護新就業形態勞動者勞動保障權益的指導意見」，歸納出針對平臺工作者的「一個尊重三重保障網」的保護模式，以供借鑒。

### 關鍵詞：

共享經濟 新就業形態 勞動關係認定 從屬性理論

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## **Abstract**

This article explores the ways in which the rights of platform workers are protected in mainland China. In this paper, the following issues are discussed: the characteristics of labor laws and regulations in mainland China and their interrelationship with civil law, the criteria for determining labor relations and the development of the theory of subordination in doctrine and court decisions, the identification of "quasi-labor relations" and labor relations, the differences in applicable laws, the characteristics of the platform economy and the issues on labor protection law, and the institutional responses to them. According to the "Guiding Opinions on Safeguarding the Labor Protection Rights and Interests of Workers in New Employment Patterns" published in 2021, the protection model of "One Respect and Triple Protection Network" for platform workers is summarized for reference.

### **Keywords :**

sharing economy, new employment patterns, labor relationship determination, subordination theory