

The Governance Dilemma and Solution Path of Implicit Overtime in the Digital Era

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Abstract: As a new pain point in the digital era workplace, implicit overtime work is characterized by its concealment, ubiquity, fragmentation, and high frequency. It not only encroaches on workers' leisure time and infringes upon their legitimate rights and interests, but also incurs high costs for workers to safeguard their rights. At the same time, it also has positive impacts such as improving work efficiency and enhancing workers' skills. This article systematically examines the governance dilemmas of implicit overtime work in the digital era. The study suggests that to address the issue of implicit overtime work, it is necessary to base on its generation logic, consider its dual impacts, and construct a diversified collaborative governance system featuring "clear boundaries in legislation, strengthened constraints in law enforcement, optimized management by enterprises, and reshaped social concepts." On the basis of balancing enterprise development and workers' rights, efficiency and fairness, a virtuous development of the workplace ecosystem can be achieved.

1. Introduction

The latest data from the National Bureau of Statistics shows that the weekly average working hours of employed personnel in enterprises nationwide have reached 48.2 hours, exceeding the statutory standard by 8.2 hours, which constitutes recorded explicit overtime. At the same time, with the popularization of digital technology, the spatial and temporal boundaries of traditional work have been broken. Phenomena such as "offline standby" and "fragmented overtime" have become increasingly common, gradually becoming prominent issues that erode workers' right to rest and affect the workplace ecology. Different from traditional explicit overtime, implicit overtime is characterized by its concealment, ubiquity, fragmentation, and high frequency. This uniqueness makes it difficult to be captured by traditional labor supervision systems, and it is also easily packaged in terms such as "struggle culture" and "professional dedication", forming complex workplace governance challenges.

In terms of impact, the dual nature of implicit overtime is particularly prominent: on the one hand, it occupies workers' leisure time, infringes on their legitimate rights and interests, and due to its strong concealment and difficulty in securing evidence, leads to high costs for workers to

safeguard their rights. In the long run, it can also affect workers' physical and mental health as well as their career development; on the other hand, in certain scenarios, implicit overtime also has positive value, as it can improve work efficiency in the short term, provide workers with more practical opportunities, and help them enhance their professional skills and business abilities, especially for positions that require continuous investment such as creativity and management^[1].

2. The governance dilemma of implicit overtime in the digital era

Currently, the governance of implicit overtime in China faces numerous challenges, which are intertwined, making it difficult to effectively advance the governance work. Firstly, influenced by the characteristics of implicit overtime, such as concealment, fragmentation, and high frequency, there is no need for fixed attendance records. It often manifests as scattered online work, on-call during holidays, and other forms that do not rely on a fixed workplace. Traditional labor inspection models primarily target explicit overtime, making it difficult to capture the true situation of implicit overtime, resulting in a large number of implicit overtime behaviors going undetected and unregulated.

Secondly, the current legal definitions of "working hours" and "overtime" still remain at the physical attendance level, failing to fully encompass new forms of work in the digital era, such as online work, fragmented work, and flexible work. There is a lack of unified standards for identifying implicit overtime, especially regarding the conversion of fragmented work hours and the distinction between online work and personal time. There is no clear legal basis for these, making it difficult to identify implicit overtime^[2].

Thirdly, evidence of implicit overtime often consists of electronic data such as chat records, work group messages, and online work traces. Such evidence is easily deleted or altered, making it difficult to fix. Additionally, the burden of proof primarily rests on the employee, requiring significant time and effort to collect and fix evidence. The high cost of safeguarding rights leads many employees to give up on protecting their rights even when their interests are harmed, due to the difficulty in providing evidence^[3].

Fourthly, the low cost of illegal recessive overtime in enterprises, coupled with insufficient labor supervision and lenient penalties, makes it difficult to form an effective deterrent. Some enterprises even have a perverse incentive of "benefiting from violations and suffering losses from compliance", actively arranging recessive overtime in violation of regulations. At the same time, due to the ubiquity of recessive overtime, regulatory authorities find it difficult to achieve comprehensive coverage and precise supervision, further exacerbating the dilemma of difficult punishment.

Fifthly, implicit overtime work has a dual impact. Simply prohibiting it would overlook its positive value in terms of efficiency improvement and skill empowerment, affecting the progress of work in certain positions and the career development of employees. On the other hand, allowing it unchecked would exacerbate the infringement of employees' rights and interests, leading to an imbalance in the workplace ecosystem. Balancing the negative harm and positive value of implicit overtime work has become an important challenge in governance efforts.

3. The generation logic of implicit overtime in the digital age

The emergence of implicit overtime is not accidental, but rather the result of a long-term interplay of multiple factors, including economic structure, management model, technological change, legal supervision, social culture, and individual differences. It has a profound realistic foundation behind it^[4].

3.1. Economic and industrial structure factors

From the perspectives of economy and industry, implicit overtime work is a passive choice for enterprises to control costs and cope with competition, as well as a helpless measure for some workers to increase their income. On the one hand, some enterprises, especially small and medium-sized enterprises (SMEs), currently face significant market competition pressure. To control labor costs, they prefer to complete work tasks by extending the working hours of existing employees rather than hiring new employees. Implicit overtime work has become an important means for enterprises to "expand at low cost". On the other hand, in some industries, the basic wage level is relatively low, and workers' income mainly depends on overtime pay, forming a passive cycle of "actively accepting implicit overtime work". If implicit overtime work is simply prohibited, it may affect the actual income of some workers and trigger their resistance. In addition, the rapid iteration characteristics of industries such as the internet, technology, and service industries require enterprises to respond quickly to market changes. Employees need to extend their working hours to complete urgent tasks and cope with market competition, which objectively promotes the emergence of implicit overtime work.

3.2. Management model and efficiency factors

The extensive and inefficient management model of enterprises is a significant internal cause of hidden overtime. Some enterprises lack scientific management planning, with unclear workflows, unreasonable task allocation, and outdated assessment mechanisms, leading to a prominent phenomenon of "uneven workload distribution." Some employees need to work overtime to compensate for their work. At the same time, some managers lack professional management skills, and situations such as temporary tasks and repeated revisions of work plans occur frequently, increasing the additional workload of employees and leading to frequent hidden overtime^[5]. Furthermore, the "results-oriented" assessment model has been distorted, with some enterprises focusing solely on work output and disregarding the work process, completely shifting the work pressure to employees, and tacitly assuming that "if you can't complete it, you should work overtime yourself," further exacerbating the phenomenon of hidden overtime.

3.3. Technological and work form changes

The popularization of digital technology and the transformation of work patterns have provided technical conditions for the emergence of implicit overtime, breaking the spatial and temporal boundaries of traditional work. This is the core reason for the hidden, fragmented, and high-frequency characteristics of implicit overtime. With the widespread use of mobile office tools such as DingTalk and WeChat Work, work has extended from traditional offices to various scenarios such as home, commuting, and holidays. "Being online at any time" has become the norm for some positions, making it difficult for workers to distinguish between work and private time. The scenarios of implicit overtime are more flexible and concealed^[6]. At the same time, creative, design, consulting, management, and other mental labor positions are characterized by continuity and uncertainty. Work is difficult to measure with fixed hours, and the output of results often requires continuous thinking and polishing. Implicit overtime is more likely to occur, and to a certain extent, it can improve work efficiency and the quality of results, which is reasonable. In addition, under the trend of globalization, the existence of scenarios such as cross-border business, 24-hour service, and emergency response objectively requires some positions to remain flexible and on standby, further blurring the boundaries between work and rest and promoting the normalization of implicit overtime.

3.4. Legal and regulatory factors

The lagging current legal system and insufficient regulatory efforts provide room for the proliferation of hidden overtime. On the one hand, the current labor laws and regulations still center around traditional physical attendance in defining "working hours" and "overtime", failing to fully cover new forms of work such as online work, fragmented work, and flexible work in the digital era. This results in a lack of clear legal basis for identifying hidden overtime, making it difficult to form effective constraints. At the same time, the compensation standards and punishment rules for hidden overtime are not detailed enough to adapt to the particularities of hidden overtime^[7]. On the other hand, the imbalance in the burden of proof and the high cost of safeguarding rights are prominent issues. Workers face the dilemma of "difficulty in providing evidence, difficulty in arbitration, and difficulty in litigation" when safeguarding their rights against hidden overtime. Meanwhile, the low cost of illegal activities for enterprises, insufficient labor supervision, and lenient punishments make it difficult to form effective deterrence, leading some enterprises to dare to violate regulations and force hidden overtime. In addition, labor supervision departments lack digital law enforcement capabilities, making it difficult to accurately supervise online hidden overtime behavior, further exacerbating the regulatory dilemma.

3.5. Social culture and conceptual factors

Deep-rooted workplace culture and values are significant social reasons why hidden overtime is difficult to eradicate. For a long time, the concept that "overtime equals dedication" and "striving equals overtime" has been widely spread in society. Some companies beautify hidden overtime as "striving culture" and "growth opportunities", using moral coercion to force employees to accept overtime. At the same time, against the backdrop of fierce competition in the job market, employees have weaker bargaining power. In order to retain their jobs and strive for promotion opportunities, they often dare not refuse the hidden overtime requirements of companies, forming a "silent majority". In addition, society lacks sufficient understanding of the dual impact of hidden overtime. It either overemphasizes its negative harm and ignores its positive value, or regards hidden overtime as "the norm in the workplace", lacking attention and protection for employees' right to rest, further exacerbating the proliferation of hidden overtime. Some employees themselves also have the perception that "the more overtime, the more growth", actively accepting hidden overtime in pursuit of skill improvement and career development, which also contributes to the emergence of hidden overtime to some extent.

3.6. Individual and job differences

The differences in individual choices of workers and the varying attributes of positions determine that it is difficult to prohibit implicit overtime through a "one-size-fits-all" approach. From the perspective of position attributes, standard working hours management can be implemented for production positions, while management positions, creative positions, emergency positions, and other positions inherently have flexible characteristics. Implicit overtime is more common in such positions, and moderate implicit overtime can improve work efficiency and ensure the normal operation of business. Completely prohibiting implicit overtime will affect the normal progress of business and is not conducive to enterprise development. From the perspective of individual choices, some workers voluntarily accept flexible overtime in pursuit of higher income and faster career development. Simply prohibiting implicit overtime will deprive workers of their autonomy and choice, and is also inconsistent with market rules; while some workers are deeply troubled by implicit overtime and urgently need protection of their rights and interests. This

individual difference makes it difficult for a single prohibition measure to accommodate the needs of various groups, potentially leading to new contradictions. In addition, different workers have varying family situations and career plans, and their acceptance of overtime also differs, further highlighting the practical limitations of a "one-prohibition-fits-all" approach.

4. Rational paths to overcome hidden overwork in the digital age

Based on the generation logic, dual impacts, and governance dilemmas of implicit overtime, addressing the issue of implicit overtime cannot rely solely on the "prohibition" approach. Instead, we should adhere to the principle of "combining regulation and guidance, and systematic governance", taking into account both its negative harms and positive values. We should build a diversely collaborative governance system involving "legislation, law enforcement, enterprises, and society", and gradually achieve standardized governance of implicit overtime on the basis of balancing enterprise development and labor rights, efficiency and fairness. This will not only curb its negative harms but also rationally leverage its positive values^[8].

4.1. Improve the legal system and delineate the boundaries of rights

Legislation serves as the fundamental safeguard against hidden overtime. It is imperative to further refine the relevant legal framework, clarify the rights and obligations of all parties, and adapt to the unique characteristics of hidden overtime in the digital era. Firstly, we should expedite the improvement of legislation pertaining to hidden overtime, defining its definition and identification criteria. Considering its hidden, fragmented, and high-frequency nature, we should refine the conversion method for online fragmented work hours, delineate specific scenarios of "disguised mandatory overtime," and provide a clear basis for the identification and protection of rights in hidden overtime. Drawing from the judicial experience of the first case of hidden overtime nationwide, we should clarify the core identification criteria of "substantive labor + obvious occupation of rest time" and unify the standards for judicature and law enforcement^[7]. Secondly, we should clarify the "right to offline rest," incorporating it into relevant laws and regulations such as the "Labor Law." This will specify the offline rights of workers beyond statutory working hours, prohibit enterprises from mandating employees to be on standby online in non-emergency situations, establish clear punishment standards for non-compliant enterprises, and delineate the boundaries between work and private time. Thirdly, we should optimize compensation and punishment rules, clarify the calculation standards for overtime pay in hidden overtime, and ensure reasonable compensation for workers. We should increase the cost of corporate violations, intensify penalties for illegal behaviors such as forced hidden overtime and non-payment of overtime pay, establish a blacklist system for offending enterprises, and strengthen the deterrent effect of the law. Simultaneously, we should formulate a unified labor benchmark law, integrate labor standards, and address issues of regional differences and inconsistent standards^[3].

4.2. Strengthen supervision and enforcement, and reduce the cost of safeguarding rights

Strengthening law enforcement and judicial efforts is crucial to ensuring the implementation of laws and addressing the challenges of safeguarding workers' rights against hidden overtime. Firstly, we should optimize the rules of evidence presentation, fully implement the system of reversing the burden of proof, clarify the responsibility of enterprises for retaining and presenting evidence such as work arrangements, online work traces, and attendance records, and reduce the burden of proof on workers. At the same time, we should establish a digital evidence recognition mechanism, standardize the collection, fixation, and admissibility of electronic evidence, enhance the

effectiveness of evidence, and overcome the difficulty of presenting evidence. Secondly, we should unify the standards of judicial judgment, release typical cases related to hidden overtime, clarify the identification criteria and judgment rules for hidden overtime, avoid the occurrence of different judgments for the same case, and enhance the operability of the law. Thirdly, we should improve the channels for safeguarding rights, establish a convenient, efficient, and confidential reporting and complaint mechanism, simplify the labor arbitration and litigation processes, and shorten the period for safeguarding rights. At the same time, we should strengthen legal aid, provide free legal assistance to workers with financial difficulties, enhance their ability to safeguard their rights, and reduce the cost of safeguarding rights. Fourthly, we should enhance regulatory capabilities, strengthen the construction of labor supervision teams, improve the digital law enforcement capabilities of supervisors, utilize big data, artificial intelligence, and other technologies to conduct precise supervision of online hidden overtime behaviors, expand the coverage of supervision, and solve the problems of difficult detection and supervision^[8].

4.3. Optimize management mode and implement principal responsibility

As the primary setting for implicit overtime, enterprises must optimize their management models to address this issue. It is essential to acknowledge the dual impact of implicit overtime and balance efficiency with rights and interests. Firstly, differentiated management should be implemented, with a flexible working hours system tailored to job attributes. Standard working hours should be implemented for production positions, while a combination of flexible working hours and performance evaluation should be adopted for management and creative positions to avoid a one-size-fits-all management approach. Additionally, the time range and compensation standards for flexible work should be clarified to regulate implicit overtime and fully leverage its positive value in enhancing efficiency and empowering skills. Secondly, workflows and task allocation should be optimized, and meticulous management should be strengthened. Work objectives and processes should be clearly defined to reduce ineffective work and temporary tasks, and human resources should be allocated reasonably to avoid uneven workload distribution. Furthermore, the "time-based" evaluation model should be abandoned in favor of a performance-centered evaluation system that guides employees to improve work efficiency, thereby reducing unnecessary implicit overtime at its source. Thirdly, safeguard mechanisms should be improved by clarifying online work rules and overtime compensation standards in labor contracts, establishing clear mechanisms for recording implicit overtime and paying overtime compensation, and protecting the legitimate rights and interests of workers. Meanwhile, employee care should be strengthened, with attention paid to their physical and mental health. Systems such as paid leave and compensatory leave for overtime work should be implemented to create a balanced work-life environment and prevent excessive implicit overtime from harming employees^[5].

4.4. Reconstruct workplace culture and strengthen public opinion guidance

Collaborative efforts at the societal level are crucial in fostering a healthy workplace ecology and eradicating hidden overtime. It is imperative to guide society to correctly perceive the dual impacts of hidden overtime and break down erroneous workplace beliefs. Firstly, we should reshape workplace culture by promoting awareness of the dual impacts of hidden overtime and the legitimate rights and interests of workers through media campaigns, public welfare activities, and other means. This will help dispel the misconception that "overtime is glorious" and advocate for a workplace culture that prioritizes efficiency and balances work and leisure. This will guide enterprises and workers to establish correct work and rest attitudes and rationally view hidden overtime^[4]. Secondly, we should leverage demonstration and leadership roles, encouraging

state-owned enterprises, central enterprises, and large platform enterprises to take the lead in regulating employment practices, strictly enforcing working hours systems and compensation standards, and incorporating employee rest rights protection into corporate social responsibility reports. This will create a demonstration effect and drive small and medium-sized enterprises to regulate their employment practices. Thirdly, we should strengthen social supervision, encouraging media, industry associations, social organizations, etc. to monitor enterprises' hidden overtime practices, expose non-compliant enterprises, and foster a social atmosphere where "violations will be investigated and illegal activities will be punished". Simultaneously, we should enhance education on workers' rights, raise workers' awareness of their rights and their ability to safeguard them, guide workers to legally protect their own rights, and rationally choose whether to accept hidden overtime^[1].

5. Conclusion

Hidden overtime in the digital era is characterized by its concealment, ubiquity, fragmentation, and high frequency. It possesses both negative drawbacks and positive values. On one hand, it infringes on workers' rest rights and creates difficulties in safeguarding these rights. On the other hand, it can meet the needs of certain positions, enhance work efficiency, and facilitate personal growth. Hidden overtime is a result of the overlapping factors of economic competition, technological transformation, enterprise management, and societal culture and institutional lag. It faces governance challenges, including difficulties in discovery, identification, evidence collection, punishment, and balance. Therefore, it cannot be simply prohibited in a one-size-fits-all manner.

To address hidden overtime, we should adhere to the principle of combining regulation and facilitation, and adopt a systematic governance approach to build a diversified collaborative governance system. By improving legal regulations, we can clarify the criteria for identifying hidden overtime and workers' offline rest rights, and delineate the boundaries of rights and responsibilities. By strengthening precise law enforcement and judicial protection, we can optimize the rules of evidence presentation and reduce the cost of safeguarding rights. By compelling enterprises to optimize their management models, we can promote differentiated employment and results-oriented assessment, thereby regulating overtime behavior from the source. By reshaping a healthy workplace culture, we can guide society to rationally view flexible work arrangements.

Collaborative measures taken by multiple parties can not only effectively curb the risk of infringing on the rights and interests of hidden overtime work, but also fully leverage its reasonable value, truly achieving work with boundaries, rest with guarantees, and labor with dignity. This will help build a harmonious and efficient new labor relationship, and contribute to high-quality economic and social development.

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