Proceedings of the 4th International Conference on Global Politics and Socio-Humanities
DOI: 10.54254/2753-7048/2026.33632

The Dilemma and Solution of the Protection of the Rights and Interests of Overage Migrant Workers under Incomplete Labour Relations

Yitong Jin

Department of Law, Shandong University, Qingdao, China
2513765708@qq.com

Abstract. Under the background of the policy of population ageing and delayed retirement, over-age farmers work as a special group with the dual characteristics of "overage" and "not enjoying social security for employees". They face multiple dilemmas such as difficulties in labour relations certification, imbalance in the distribution of the burden of proof and lack of ability to prove. The root cause lies in the conflict of upper and lower laws and justice in the current legislation. The geographical division of the referee standard. In this regard, we should introduce the identification standard of "substantial subordinate attribute" and establish typified adjudication rules; standardise the retention of evidence for informal employment, strengthen the burden of proof of the employer and optimise the rules for evidence identification; and supplemented by the differentiated application of professional legal assistance and advantageous evidence rules, so as to effectively protect the core rights and interests of overage migrant workers.

Keywords: Incomplete labour relations, overage migrant workers, flexible employment

1. Introduction

The "15th Five-Year Plan" outline emphasises "promoting the healthy development of flexible employment and new employment forms". The work of overage farmers is a key group in this grand strategic narrative, and the urgency of protecting their rights and interests is becoming more and more prominent. In the legal context, over-age migrant workers refer to rural household workers who have reached the statutory retirement age and continue to engage in non-agricultural labour. The employment relationship between this group and the employer is difficult to be fully covered by the traditional "standard labour relations" due to the special nature of the main qualification, but it also has significant subordinate characteristics and falls into the vague zone of "incomplete labour relations". The so-called incomplete labour relationship means that although the standard full-time labour relationship has not been established between the worker and the employer, it has certain characteristics in terms of personality, economic or organisational subordination, resulting in an atypical and incomplete state of their rights and obligations.

At present, the academic community has a wealth of research on the protection of the rights and interests of migrant workers [1].However, there are few systematic studies on the special difficulties

© 2026 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2753-7048/2026.33632

of over-age migrant workers from the perspective of "incomplete labour relations". This article will follow the logical chain of "problem investigation - cause analysis - countermeasure construction", build a rights and interests protection system that adapts to the characteristics of incomplete labour relations, and promote the healthy and orderly development of flexible employment patterns.

2. Practical investigation and dilemma of protecting the rights and interests of overage migrant workers

2.1. Practical investigation on the protection of the rights and interests of overage migrant workers

In terms of the recognition of labour relations, various places gradually break the single solidification recognition model and pay more attention to the judgement of substantive employment relations. For over-age migrant workers who have not received pensions, accept the daily management of the employer, and receive labour remuneration on a monthly basis, many local labour arbitration institutions and courts have determined that they constitute a "substantial labour relationship" with the employer, and the relevant provisions of the Labour Contract Law shall apply; for those who have received pensions but are still managed by the employer, from For over-age migrant workers who work for remuneration, "over-age special employment relations" are established in various places, making it clear that the employer must pay for them work injury insurance, ensure wage payment and labour safety.

In terms of employment standards and labour security, most regions such as Hunan and Guangdong require employers to sign a written employment agreement with over-age migrant workers, clarify the core provisions of work content, working hours system, labour remuneration, rest and leave, work injury liability, etc., eliminate disputes on rights and interests caused by oral agreements, and reduce to a certain extent It has the burden of evidence and questioning of overage migrant workers when protecting their rights, effectively protecting the basic labour rights and interests of overage migrant workers, and improving the "passive" status of overage migrant workers in the process of protecting their rights.

2.2. The practical dilemma of protecting the rights and interests of overage migrant workers

2.2.1. Difficulty in determining labour relations

The recognition of labour relations between overage migrant workers and employers is the prerequisite for their enjoyment of labour remuneration, work injury protection and other relevant rights and interests. However, in practice, the criteria for the recognition of labour relations are not uniform, and there are different judgement results in similar cases. The main differences focus on the three types of judgement of labour relations, labour relations and special labour relations. Between the judgement results.

Some scholars' empirical research shows that there are inconsistencies in views and applicable standards between different provinces and even within the same province on the identification of employment relations of overage workers. About 57% of the referees determined that it was a labour relationship, believing that overage means losing the main qualification of labour relations; about 27% determined that it was a labour relationship, mainly based on the fact that it did not enjoy endowment insurance benefits or did not go through retirement procedures and still work in the original unit; only about 14% recognised it as a special labour relationship, concentrated in Zhejiang

DOI: 10.54254/2753-7048/2026.33632

and Shanghai. Area. In judicial practice, even in the process of discussing the employment relationship of overage workers as the same nature or in the trial of cases, there are differences in the understanding, application and detailed grasp of the legal basis of different subjects [2].

The identification of the employment relationship of overage workers, due to the inconsistency of legal provisions and the inconsistency of the applicable standards of judicial practice faced by legal norms and judicial practice, there is a phenomenon of serious regional discrimination and different judgements in the same case. The work of over-age farmers is a more special group among over-age workers. The identification of their labour relations has become more complicated due to the influence of factors such as the household registration system, the dual labour market of urban and rural areas, and the highly different social security system between urban and rural areas.

2.2.2. Overage migrant workers are difficult to prove

It is difficult for over-age migrant workers to prove, which further aggravates the difficulty of determining labour relations. In practice, over-age migrant workers are mostly engaged in informal employment, and the form of employment is flexible and loose. The real employer is often unclear, and it is difficult to form a traceable and retainable chain of evidence. At the same time, due to the limited ability of overage migrant workers themselves, they have no knowledge of the types of evidence and collection methods required for the identification of labour relations, which further amplifies the impact of difficulty in proof.

More prominently, once a labour dispute occurs, the employer will often deliberately deny the fact of employment or argue that the two parties are only a temporary employment relationship, and defend on this basis. Due to the lack of valid evidence, overage migrant workers cannot provide core evidence such as written labour contracts and wage payment vouchers, and cannot refute the employer's Defence. Even if there is a testimonial of workers, it is often difficult to be trusted due to the high mobility of the workers and the inability to testify in court, resulting in insufficient evidence and difficult to identify labour relations.

In addition, some studies in the academic community also pointed out that there is also a practical problem of "insufficient evidence relevance" in the evidence dilemma of over-age migrant workers.In practice, even if some over-age migrant workers can collect a small amount of evidence, such as the testimony of fellow workers, simple wage settlement records, etc., they often cannot form a complete chain of evidence due to the lack of relevance and integrity of the evidence, and it is difficult to prove that "accept the management of the employer and engage in remunerated labour arranged by the employer, labour The core element of labour relations, which is "the results belong to the business component of the employer", cannot be recognised as a labour relationship in the end, which further aggravates the difficulty of protecting rights and interests.

2.2.3. Difficulty in quality and certification of overage migrant workers

In the questioning process, over-age migrant workers are passive due to their own ability limitations and the natural advantages of the employer. With its own resource advantages and professional ability, the employer can efficiently complete the preparation of verification, evidence refutation and other operations. With the initiative of employment management, the employer can also supplement and submit attendance records, employment management system, salary distribution ledger and other evidence that is beneficial to itself, and further strengthen its own advantage of verification. In contrast, over-age migrant workers themselves lack the knowledge and ability of questioning. They not only have a weak awareness of evidence collection, but also know nothing about the process,

DOI: 10.54254/2753-7048/2026.33632

requirements and core points of questioning. They do not even know the basic rights and operation methods of questioning, and it is difficult to effectively refute the evidence submitted by the employer.

What's more, the rule of superiority evidence is applied in civil litigation in China, and due to the limitations of their own conditions, the evidence submitted by overage migrant workers in practice is mostly the testimony of fellow workers, simple handwritten records, etc. The evidence is not standardised, the relevance is not strong, and the proof is weak. Therefore, in the questioning link, the employer further strengthens the probative power of his own evidence through professional argumentation, while overage migrant workers cannot effectively question the employer's evidence, nor can he strengthen the probative power of his own evidence. As a result, the court often adopts the evidence submitted by the employer when applying the criteria for proof of superior evidence. Then make a conclusion that labour relations are unfavourable to over-age migrant workers.

As usual, in a case of work-related injury claims for over-age workers tried and settled by the Tonglu County Court, Aunt Zhang, who was 52 years old, was injured while working in a shoe company. She advocated labour relations and applied for work-related injury recognition. However, in the interrogation process, the shoe company submitted relevant employment management system, labour contracts of other employees and other evidence, arguing that the two parties were Aunt Zhang is unable to effectively refute the evidence submitted by the company because she does not know the skills of questioning, nor can she further supplement the evidence to strengthen her own claim. If the court does not finally determine that overage workers who do not enjoy the basic endowment insurance treatment still enjoy the rights and interests of work injury insurance, their rights and interests will be difficult to be guaranteed.

3. Analysis of the causes of the dilemma of protecting the rights and interests of overage migrant workers

3.1. The geographical division of the judgement standard leads to different judgements in the same case

3.1.1. "Age Standard Theory" area: strictly applicable to retirement and termination

Represented by some judicial practises in Beijing and other places, the Regulations tend to be strictly applied. As long as the workers exceed the statutory retirement age, regardless of whether they enjoy old-age treatment, they will be recognised as labour relations and excluded from the protection of labour law. In the labour contract dispute case of Li v. a property company in Beijing,typically reflects the judgement idea of "one-size-fits-all". Even if the worker does not enjoy endowment insurance, he will be deprived of the main qualification of the labour law just because his age exceeds the standard.

3.1.2. "Treatment Standard Theory" area: focus on substantive justice and the state of old-age care

Represented by Guangdong, Jiangsu and other developed manufacturing areas, it focusses more on substantive justice and cites the spirit of judicial interpretation of the Supreme Law. It believes that over-age migrant workers who do not enjoy endowment insurance treatment still have the qualifications of labour subjects and can establish special labour relations. In the case of Wang v. a property company in Suzhou, Jiangsu Province,the judgement reflected the judicial orientation of

DOI: 10.54254/2753-7048/2026.33632

"substance is more important than form", taking "whether to enjoy old-age treatment" as a key watershed for judging the survival of labour relations, and believing that overage workers who do not enjoy old-age treatment still have the qualification of labour subjects.

3.1.3. "Ecompromise distinction theory" area: separation of work-related injuries and rights and interests

Some courts in the central and western regions adopt a compromise attitude, distinguishing between "work-related injury recognition" and "other labour rights and interests". In work-related injury cases, we tend to refer to the standard compensation for work-related injuries (based on the principle of fairness), but in cases such as double wages and paid annual leave, it is strictly handled according to the labour relationship. In the warehouse case issued by the Supreme People's Court, a property company in Urumqi v. Ma Moumou's labour contract dispute case , the retrial court made it clear that those who have reached the legal retirement age but have not enjoyed the basic endowment insurance treatment can form a relationship with the employer. Labour relations.Although this view is established by the Supreme Law Case Library, there are still differences in implementation in various places. Some areas are only applicable in work-related injury compensation, while other rights and interests are still conservative.

3.2. The threshold for proof of overage migrant workers is high, and employers take the initiative to avoid responsibility

First of all, there are the congenital limitations of the form of informal employment. More than 80% of over-age migrant workers are engaged in informal employment such as construction, sanitation and housekeeping. Most of them work in the form of "daily settlement" and "spase work". There is no fixed employment period between them and the employer, and there is no clear work arrangement process. This loose employment model itself lacks objective traces that can prove labour relations. Trace, which makes it difficult for the employment relationship between overage migrant workers and employers to form traceable and retainable evidence of labour relations, and it is difficult to form a complete chain of evidence, which is the first premise for difficult to prove [3].

Secondly, employers often take the initiative to avoid responsibility by relying on their advantageous position, and often refuse to assume relevant responsibilities on the grounds that "labour relationship will be terminated if you exceed age". In order to avoid employment risks, employers generally do not sign formal labour contracts with overage migrant workers and do not leave traces of employment. Some employers even deliberately avoid leaving any traces of employment - do not record attendance, do not issue pay slips, do not apply for work certificates, and most of the wages are settled in cash, and do not leave any Settlement voucher. Some construction industries transfer employment responsibilities through "layer-by-layer subcontracting", so that over-age migrant workers cannot clarify the real subject of employment, let alone obtain evidence materials related to the subject of employment [4].The "responsibility avoidance behaviour" of the employer has obvious initiative and universality. Its essence is to take advantage of the vulnerable position of over-age migrant workers to escape the legal responsibility related to labour relations by avoiding the retention of evidence, which further aggravates the difficulty of proof of labour relations identification.

Finally, over-age migrant workers have insufficient ability to protect their own rights and lack of awareness of protection of rights. Most of the over-age migrant workers are of primary school and below. They are old, have weak legal awareness and evidence collection awareness, have little

DOI: 10.54254/2753-7048/2026.33632

understanding of their own labour rights, and are not clear about the process of rights protection, the types of evidence required for the identification of labour relations, and the retention methods. In practice, most of the over-age migrant workers have never taken the initiative to ask the employer to sign a written labour contract in the process of working, nor will they deliberately keep salary settlement records, attendance records and other relevant materials, and even do not know that work permits, attendance forms, workmate testimony, etc. can be used as evidence to prove labour relations. At the same time, I am not proficient in the operation of smartphones, computers and other electronic devices, and I can't keep electronic evidence such as WeChat transfer and chat records. Some over-age migrant workers are worried about losing employment opportunities. Even if they know that the employer has not provided the relevant employment certificates, they dare not take the initiative to ask for it, further losing the best opportunity to collect evidence.

3.3. The status of the original defendant is unbalanced and the legal aid is lacking

First of all, the questioning is the imbalance between the main position and ability of the two sides. In this process, over-age migrant workers fall into an obvious passive situation due to their own limited ability and the natural advantages of the employer. In practice, most employers have certain experience in employment management, and some enterprises will also hire professional lawyers to participate in the handling of labour disputes. When questioning, they can accurately grasp the loopholes in the submission of evidence by overage migrant workers, refute them through professional legal expressions, and deny the proof of evidence submitted by overage migrant workers. At the same time, the employer can also take advantage of its own employment management initiative to supplement and submit attendance records, employment management system, wage distribution ledger and other evidence that is beneficial to itself, further strengthen its own verification advantages, and form a complete closed loop of "submission of evidence - effective verification - strengthening advantages".

Secondly, the ability of over-age migrant workers is generally lacking in quality certification. Relevant research found that over-age migrant workers not only have a weak awareness of evidence collection, but also know nothing about the process, requirements and core points of questioning. They don't even know the basic rights and operation methods of questioning, how to question the authenticity, legality and relevance of the employer's evidence, and how to submit The evidence is supplementary and the proof is strengthened. In practice, over-age migrant workers are often in a state of "passive response" in the questioning process. Even if the evidence submitted by the employer has loopholes and is inconsistent with the facts, it cannot be pointed out in time because they do not know the questioning skills. Even some over-age migrant workers are nervous and unfamiliar with legal procedures, so they dare not take the initiative to speak and give up the right to question, resulting in the small amount of valid evidence submitted by themselves being unable to play their due role. In addition, overage migrant workers are often employed in other places. They often lack the assistance of family and friends when protecting their rights, and they cannot afford the cost of hiring professional lawyers. Without the support of professional guidance, it is even more difficult to take the initiative in the questioning process.

In addition, the advantageous evidence rules applicable to civil litigation in China essentially put forward high requirements for the questioning ability and the quality of evidence of both parties, and it is difficult for overage migrant workers to meet this requirement due to their own conditions. In practice, the evidence submitted by over-age migrant workers is mostly the testimony of fellow workers and simple handwritten records, which have weak proof power; while the evidence such as written ledgers and standardised management systems submitted by employers is obviously more

DOI: 10.54254/2753-7048/2026.33632

normative, complete and proof. In the questioning link, the employer further strengthens the probative power of his own evidence through professional argumentation, while overage migrant workers cannot effectively question the evidence of the employer, nor can he strengthen the probative power of his own evidence. As a result, the court often adopts the evidence submitted by the employer when applying the standard of proof of superior evidence, and then Make a conclusion that it is not conducive to the recognition of labour relations for overage migrant workers.

4. The improvement path for the protection of the rights and interests of over-age migrant workers under incomplete labour relations

4.1. Build "substantial subordinate attribute" identification standards and "typed referee rules"

First of all, based on the labour law norm construction transformation theory of "from identity to behaviour" proposed by Wang Tianyu, this study puts forward the following institutional design logic:

Personality subordinate attributes.Whether the over-age migrant workers work under the command and supervision of the employer, whether they abide by the rules and regulations of the employer, and whether the employer has the right to discipline the tools of the overage farmers.

Economic subordinate attributes.Whether over-age migrant workers take the labour remuneration paid by the employer as their main source of livelihood, and whether they have economic dependence on the employer.

Organisational subordinate attributes.Whether over-age migrant workers are included in the production organisation system of the employer, and whether the labour provided is an integral part of the employer's business.

Secondly, for over-age migrant workers in different industries such as construction, housekeeping, sanitation and cleaning, security, differentiated identification standards and refereeing rules should be formulated in combination with the characteristics of the industry. Different industries have different employment characteristics, and the degree of "subed attribute" is also different. It is necessary to formulate targeted rules according to the characteristics of different industries:

In the housekeeping industry,its typical employment characteristics are "platform signing, single service, no management traces", which should be judged as "weak subordinate attribute". The key points of its refereeing rules are: judging the subordinate attribute by the intensity of platform management ; the platform bears the liability for work injury insurance.

In the construction industry,its typical employment characteristics are "layer-by-layer subcontracting, contract foreman management, and daily remuneration", which should be judged as "middle subordinate attribute". The key points of its refereeing rules are: the actual construction person is the main body of responsibility, and the general contracting unit bears joint and several liability; participate in work injury insurance according to the project.

In the sanitation and cleaning industry,its typical employment characteristics are "government purchasing services, enterprise contracting, fixed routes", which should be judged as "strong subordinate attributes". The key points of its refereeing rules are: the employer is directly recognised as the responsible subject; the "over-age labour protection agreement" is forced to be signed.

In the security service industry,its typical employment characteristics are "direct management of property companies, fixed posts, attendance system", which should be judged as "strong subordinate

DOI: 10.54254/2753-7048/2026.33632

attributes". The key points of its judgement rules are: attendance records are the key evidence; non-insured personnel need to pay full work-related injury treatment.

4.2. Lower the threshold of proof for over-age migrant workers and strengthen the burden of proof of employers

First, tighten employer evidentiary duties and record-keeping rules for informal hiring. Given the prevalence of oral deals and cash wages in sectors where over-age migrant workers cluster, employers should face clear statutory obligations to retain hiring records, backed by penalties for non-compliance. At the same time, simplified evidentiary guidelines tailored to this group can lower the threshold for presenting initial proof of an employment relationship.

Second, strengthen workers' ability to gather and preserve evidence. Community bodies, labour agencies, and legal aid providers should run targeted outreach on what evidence matters, how to collect it day-to-day, and how to save electronic records like phone recordings or chat logs. Encouraging peer testimony among co-workers also helps build a steadier evidence chain.

Third, relax evidence admissibility standards in favour of substantive fairness. Courts should take a more forgiving view of materials with formal flaws—such as handwritten pay notes or personal recordings—so long as they corroborate other evidence and establish the basic employment facts.

Fourth, create practical evidence-collection support. Dedicated service windows at labour arbitration and human-resources offices should assist workers in obtaining attendance logs, pay records, and similar documents. Online submission and cross-regional data sharing can further reduce the time and cost burdens for workers pursuing claims far from home.

4.3. Balance the questioning status of both sides and strengthen social assistance

First, expand professional legal aid to offset evidentiary disadvantages. Disputes involving over-age migrant workers should fall squarely within legal-aid priority coverage, backed by stable funding. Government-purchased lawyer services can handle everything from case filing to courtroom questioning. Meanwhile, train frontline public-interest legal workers to offer one-on-one guidance where these workers live and labor.

Second, standardize examination procedures to level the playing field. Arbitration bodies and courts should consider the cognitive and expressive traits of over-age workers. Arbitrators and judges must proactively explain rights and steer questioning effectively, while penalizing employer tactics that exploit procedural advantages to harass or overwhelm.

Third, apply a more flexible "preponderance of evidence" test. Courts should focus on whether the evidence chain hangs together logically, not on sheer volume. Employers must account for the source, creation, and legitimacy of their evidence; unexplained gaps or contradictions should weaken its weight.

Finally, strengthen judicial guidance and case exemplars. Higher courts should issue guiding or model cases that clarify key questioning issues, credibility benchmarks for different evidence types, and protective discretion toward the weaker party. In individual trials, judges should actively focus questioning and help frame disputes so procedural ignorance does not erode substantive rights.

5. Conclusion

Protecting over-age migrant workers is an unavoidable governance challenge amid demographic and social-security transitions. Through the lens of "incomplete labour relations," this article examines

DOI: 10.54254/2753-7048/2026.33632

why the group falls into a grey zone—neither labour nor service—due to vague recognition standards, uneven burden of proof, and weak evidentiary capacity. The solution lies in moving past rigid "age" and "social-security" thresholds and adopting a test centered on substantial subordination, thereby bringing those without employee pension coverage under labour-law protection. Typified adjudication rules, stronger employer record-keeping duties, and a fairer allocation of proof can substantially narrow the power gap between parties. Harnessing the "silver dividend" demands a tailored rights framework that upholds both dignity and flexible-employment vitality. inclusive and sustainable labour rule of law environment.

References

[1] Lin Jia: "Beyond Labour Relations: Protection of Labour Rights and Interests of Overage Workers", "Application of Law" No. 7, 2024; Li Kungang, Wang Yifan: "Legal Reflection and Regulation of Employment in China's Gray Zone", Journal of Anhui University (Philosophy and Social Science Edition) No. 2, 2020.

[2] Zeng Yanchao: "Theory and Practical Analysis of the Recognition of the Employment Relationship of Overage Workers", Journal of China University of Political Science and Law, Issue 5, 2025, pages 220-221.

[3] Hong Lin: "Employment Dilemma and Countermeasures Faced by Overage Migrant Workers - Research Report Based on the Employment Status of Overage Migrant Workers in Lu County", Research Report.

[4] "Dilemma and Way Out of Work Injury Recognition for Urban Migrant Farmers who have exceeded the Legal Retirement Age", published in Haikang Yearbook.