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Judicial Inconsistencies and Legislative Gaps in Service Period Agreements for Special Treatment: An Empirical Study

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Abstract

Along with the constant growth of the demand for advanced talents in our labor market, more and more employers are attracting talents by offering special treatment. Based on the principle of consideration in contracts, the service period system for special treatment has emerged. However, the 22nd article of the Labor Contract Law, which is also known as the "sponsored training service period" in academic circles, raises questions about whether the service period for special treatment is legally recognized. The academic community has different views on this issue. For disputes between employers and employees regarding the service period for special treatment, the views of the courts across the country are not consistent. Through the collection and sorting of judicial cases on the service period for special treatment, this article finds that the main problems in such cases are inconsistent identification of the nature of the service period, huge differences in the standard of return of special treatment, and weak legal support and logical reasoning in the reasoning part. Based on the problems existing in judicial practice, this article suggests that the legislation should expand the scope of service period, increase the review of service period reasonableness, unify the standard of return of special treatment, and restructure the existing default penalty system to match it. In this way, the service period system in labor contracts can be improved.

Keywords: the labor contract, service period, special treatment

1. Introduction of the Issue

With the promulgation of the Labor Contract Law in 2007, the service period system for labor contracts was formally established in legal form. Arising from the Labor Law's protective orientation toward employees, this system emerged to address employers' concerns about bearing training costs and other investments while employees might abuse their statutory right to resign with notice. It establishes a balanced consideration relationship between both parties, facilitating harmonious and stable labor relations. As one of only two circumstances permitting liquidated damages clauses under China's Labor Contract Law, the service period system requires employers to provide legally recognized professional technical training as a prerequisite for application.

Years after its establishment, the service period

system has seen extensive implementation, accompanied by various disputes in practice. With rapid socioeconomic development, enterprises increasingly demand high-end talent. To enhance job attractiveness, some employers offer special treatment including relocation allowances, household registration in first-tier cities, and arrangements for children's schooling to recruit professionals. These substantial investments often lead employers to stipulate corresponding service periods and liquidated damages in employment contracts to prevent premature resignations after obtaining such benefits.

The core issue lies in Article 22(1) of the Labor Contract Law: "Where an employer provides special training expenses for professional technical training to an employee, it may enter into an agreement with such employee specifying a service period." Special treatment clearly falls outside the scope of professional technical training, yet current legislation remains silent on whether service period agreements may be established for special treatment.

If the essence of service periods lies in employers providing professional technical training beyond basic employment obligations, thereby establishing new consideration relationships through employees' temporary waiver of resignation rights[1], their purpose being to safeguard employers' returns on human capital investments while balancing labor relations stability, then special treatment as another form of human capital investment theoretically raises the question: Should employers' legitimate interests in such investments also be protected through service period mechanisms?

Although current labor legislation contains no explicit provisions regarding service periods for special treatment, numerous related cases have emerged in practice. Faced with statutory gaps, courts must render judgments, resulting in prominent inconsistencies in similar case adjudications. Critical issues remain unresolved, including whether to expand service period applicability to special treatment and how to determine liability for breaches under such expansion. This necessitates systematic analysis of current judicial approaches to service period disputes involving special treatment, aiming to identify solutions for these practical challenges.

2. Current Judicial Adjudication Status of Service Period Agreements Involving Special Treatment

This study conducted searches in the judicial case database of the "Alpha Platform" using the following methodology: limiting the cause of action to "labor disputes" in advanced search settings, restricting keywords to the same paragraph, and iteratively replacing search terms with "special treatment + service period," "welfare benefits + service period," "relocation allowance + service period," "talent recruitment fee + service period," "research startup fund + service period," and "household registration + service period." After retrieving 143 judgments from 2013 to 2024 and eliminating duplicate cases through manual screening, 124 valid judgments were ultimately obtained. Key methodological principles include: 1) iterative keyword substitution while maintaining other search criteria; 2) selecting only final judgments as individual samples for cases adjudicated at multiple court levels; 3) defining "special treatment" in this study as benefits explicitly distinct from professional technical training and fixed remuneration, excluding contentious categories such as educational advancement and standardized residency training.

The selected cases primarily involve disputes over whether employees who resigned before completing agreed service periods must reimburse special benefits — including household registration in first-tier cities, relocation allowances, research startup funds, and spousal employment arrangements—provided by employers beyond standard compensation to attract talent.

2.1 Disputes over the Legal Characterization of "Service Periods" for Special Treatment

The fundamental issue lies in determining whether service period agreements tied to special treatment are legally valid and how to characterize their nature. While the Labor Contract Law explicitly permits service period agreements for professional technical training, it remains silent on whether special treatment may trigger such obligations. Consequently, judicial interpretations diverge significantly. Among the 124 analyzed cases, four primary viewpoints emerge regarding the legal nature of service

[1] Cheng, Xiaoyong and Meng, Gaofei. (2014). The Application of the Service Period System in Labor Contracts. *People's Judicature*, (17), p. 74.

period agreements involving special treatment, distributed as follows:

Table 1.

Legal Nature	Recognition of Service Period Agreements	Undefined Nature	Prepaid Labor Remuneration	Welfare Benefits
Quantity	47	63	3	11
Proportion	37.9%	50.81%	2.41%	8.87%

2.1.1 Recognition of Service Period Agreements for Special Treatment

The recognition of service periods and the characterization of special treatment service periods directly affect the issue of returning special treatment when employees resign prematurely. Only by clarifying the legal nature of special treatment service periods can scientifically reasonable reimbursement formulas be established. In judicial decisions recognizing service period agreements for special treatment, there are primarily two reasoning approaches: one avoids invoking Article 22 of the Labor Contract Law while affirming the validity of special treatment service period agreements, while the other analogizes Article 22 of the Labor Contract Law to demonstrate compliance with legal provisions.

2.1.1.1 Reasoning by Circumventing Article 22 of the Labor Contract Law

Given that the Labor Contract Law explicitly permits service period agreements only for professional technical training, literal interpretation suggests no statutory basis for service period agreements based on special treatment. Consequently, many courts validate the legality and reasonableness of such agreements through alternative legal perspectives. For instance, some courts uphold service period agreements for special treatment under the principle of good faith, arguing that special treatment enhances employee retention and protects employers' legitimate interests in workforce stability and recruitment [1]. Others validate these agreements by deeming them compliant with essential validity requirements for civil juristic acts and free of statutory invalidity grounds[2].

However, this approach of circumventing the Labor Contract Law raises concerns. Labor law aims to protect workers' rights and balance labor relations through appropriate intervention in private law domains. While the Labor Contract Law permits party autonomy, such autonomy must operate within its legal framework to achieve legislative objectives. This necessitates that courts cannot disregard the Labor Contract Law when assessing the validity of employment contract terms.

2.1.1.2 Reasoning Based on Article 22 of the Labor Contract Law

This line of decisions analogizes Article 22 to justify special treatment service periods. Proponents argue by positive analogy that service period agreements for enhanced special treatment should be permitted to protect employers' human capital investments and mitigate workforce instability [3]. They also contend that such agreements protect employees from full reimbursement obligations upon premature termination. Some decisions employ reverse reasoning, noting that while Article 22 specifically addresses professional training, it does not categorically prohibit other service period agreements[4].

While containing reasonable elements, this approach risks overextending statutory interpretation. The Labor Contract Law stipulates: "Where an employer provides professional technical training to an employee, it may enter into a service period agreement." From a purely logical perspective, this does not inherently preclude other service period agreements. However, jurisprudentially, this constitutes potential overreach in statutory interpretation.

2.1.2 Undefined Nature

[1] Beijing (0114) Primary Civil Case No. 2020 (2022).

[2] Beijing (0108) Primary Civil Case No. 18200 (2023).

[3] Beijing No. 2 Intermediate Court Final Civil Case No. 6836 (2022).

[4] Guizhou No. 1 Intermediate Court Final Civil Case No. 2146 (2020).

Data reveals that only 37.9% of judgments explicitly recognize special treatment service period agreements, while half avoid characterizing their validity and directly rule on special treatment reimbursement. This judicial avoidance results in significant discrepancies in reimbursement standards across cases. Notably, most courts refrain from expressly invalidating such agreements while declining to affirm their validity, with only 25% (31/124) of judgments explicitly declaring special treatment service periods invalid.

2.1.3 Special Treatment as Prepaid Labor Remuneration or Welfare Benefits

A minority of decisions characterize special treatment as prepaid labor remuneration or welfare benefits. However, these judgments typically fail to provide substantive reasoning for such characterization or evaluate the legality of corresponding service period agreements[1].

2.2 Undetermined Standards for Reimbursement of Special Treatment

Based on the collected sample data, significant disputes persist in judicial practice regarding the validity of service period agreements for special treatment between employers and employees. While employers may mitigate losses through liquidated damages clauses in professional technical training service periods, no unified standard exists for whether employees must reimburse special treatment upon premature termination when the validity of special treatment service periods remains unsettled. Among 124 sample cases, 105 addressed reimbursement of special treatment, with courts applying the following reimbursement standards:

Table 2.

	No Reimbursement	Discretionary Reimbursement	Proportional Reimbursement	Full Reimbursement
Quantity	7	43	30	25
Proportion	6.67%	40.95%	28.57%	23.81%

2.2.1 No Reimbursement

Only seven judgments ruled that employees need not reimburse received special treatment. These decisions reasoned that the agreements specified only service periods and liquidated damages without explicit reimbursement terms, and employers failed to substantiate actual losses [1]. Such rulings typically involve non-material special treatment (e.g., urban household registration). However, this approach overlooks employers' implicit costs. For instance, securing urban household registration—a scarce resource—represents a significant employer investment in talent recruitment. Permitting employees to retain such benefits without compensation after premature resignation unfairly disadvantages employers and incentivizes arbitrary job-hopping.

2.2.2 Discretionary Reimbursement

Common in non-material special treatment cases, courts determine reimbursement amounts by weighing factors such as employee income, tenure, and employer costs. While this protects employers' legitimate interests, adjudicated amounts vary excessively. For example, Beijing courts issued starkly divergent compensation awards (differing by 225,000 yuan) in similar cases involving household registration benefits: Beijing No. 1 Intermediate Court Final Civil Case No. 8841 (2022) versus Beijing No. 3 Intermediate Court Final Civil Case No. 142 (2022)[2].

2.2.3 Proportional Reimbursement

Predominantly applied to material special treatment (e.g., housing subsidies, relocation fees), courts calculate reimbursement using the formula:

Reimbursement Amount = (Total Special Treatment / Agreed Service Period) × Remaining Unfulfilled Period.

Though scientifically sound for material benefits, this method cannot directly apply to

[1] Beijing (0108) Primary Civil Case No. 57653 (2021).

[2] Beijing No. 1 Intermediate Court Final Civil Case No. 8841 (2022) ordered the employee to compensate the employer 250,000 CNY; Beijing No. 3 Intermediate Court Final Civil Case No. 142 (2022) ordered the employee to compensate the employer 25,000 CNY.

non-material special treatment.

2.2.4 Full Reimbursement

Twenty-five judgments ordered full reimbursement or compensation per contractual terms. This extreme approach, juxtaposed with non-reimbursement rulings, disproportionately neglects employees' rights. While employees breached service terms, partial performance should warrant proportional retention of benefits.

3. Core Issues Requiring Resolution Under Current Legislation

Analysis of the 124 judgments reveals two critical legislative gaps: (1) no explicit legal basis for special treatment service periods, and (2) unresolved standards for reimbursing material/non-material special treatment upon premature termination. Thus, legislation must first determine whether to expand the Labor Contract Law's service period scope and subsequently establish reimbursement criteria.

3.1 Whether to Expand the Service Period Scope Under the Labor Contract Law

There remains significant controversy regarding whether to expand the scope of application for service periods. Scholars opposing this expansion argue that legislation should only recognize service periods for financially sponsored training. The primary rationale for this view is that service periods for sponsored training represent development-oriented talent competition, whereas service periods tied to special treatment constitute poaching-oriented talent competition. Development-oriented talent competition encourages employers to cultivate talent and increase human resource pools, whereas poaching-oriented competition merely leads to employers poaching talent through welfare benefits without contributing to talent resource growth. Given China's current circumstances, policy should prioritize encouraging development-oriented talent competition while restricting poaching-oriented competition[1].

Supporters of expansion contend that service period systems should not be limited to specialized technical training but should also include special treatment arrangements. Legal norms arise from societal needs, and solely regulating specialized technical training fails to meet practical demands. Judicial practice reveals frequent disputes where employers agree upon service periods with employees through special treatment, leading to systemic issues. Excluding such cases from service period regulations would result in inconsistent rulings in similar cases, undermining judicial authority and fairness.

This paper posits that incorporating special treatment into the scope of service periods may represent a preferable choice. First, pressing issues in judicial practice demand resolution. Whether special treatment can be contracted for service periods is a tangible problem in practice. Since one purpose of law is to address societal issues, lingering uncertainties over whether poaching-oriented talent competition inhibits talent development cannot justify tolerating unresolved practical problems. Second, service periods aim to safeguard employers' rights to recoup human capital investments by restricting employees' right to terminate with notice, thereby striking a new balance beyond normal rights and obligations. Employers provide special treatment to attract and retain talent. If employees, after receiving such significant benefits, remain entitled to arbitrarily terminate labor contracts without rigid constraints, employers' interests would be manifestly harmed, potentially tipping the relationship into a state of reverse imbalance[2]. Thus, there is a need to restrict employees' right to terminate with notice to restore equilibrium.

3.2 Standards for Reimbursing Special Treatment (or Compensating Employer Losses) Upon Employee Resignation in Breach of Agreed Service Periods

For employers, providing special treatment serves as a means to attract and retain high-caliber talent, constituting a form of human capital investment. Breach of agreed service periods through premature resignation necessitates reimbursement or compensation for such special treatment to offset employer losses. A refusal to reimburse disregards employers' financial harm and fails to safeguard their right to returns on human capital investments, while full reimbursement unjustly ignores the labor contributed by employees during fulfilled service periods. Consequently, establishing scientifically sound reimbursement standards is

[1] He, Ping and Su, Yu. (2009). On the Economic Functions of Labor Law: Retrospect and Prospect. *Studies in Law and Business*, (3), p. 138.

[2] Xu, Jianyu. (2014). On the Determination of the Service Period. *China Labor*, (6), p. 14.

imperative to balance employer-employee interests and unify judicial adjudication criteria.

Special treatment can be primarily categorized into material and non-material types. For material special treatment, the current liquidated damages system may serve as a reference to determine proportional reimbursement. Material special treatment, such as relocation allowances, research grants, or housing benefits, is quantifiable in monetary terms due to its market value, enabling direct formulaic calculations. When employees breach service period agreements by resigning prematurely, courts must balance mitigating employers' human capital investment losses against recognizing the labor contributed during the fulfilled service period, rendering proportional reimbursement a rational approach.

For non-material special treatment, the most pressing issue in practice is inconsistent judicial standards leading to widely divergent discretionary compensation amounts. However, precise calculation formulas remain unfeasible for non-material benefits. Thus, principle-based criteria must be established. A foundational principle must be affirmed: non-material special treatment, such as urban household registration in first-tier cities—a scarce resource with inherent economic value—cannot be denied its economic significance or the costs employers incur to provide it, even absent direct monetary quantification.

4. Recommendations for Improving Legislation on Special Treatment Service Periods

4.1 Expanding the Scope of Service Period Application and Establishing Restrictions

The scope of application for service periods stipulated in Article 22 of the Labor Contract Law no longer meets practical demands. As a prevalent phenomenon, service periods tied to special treatment should also receive legal recognition and protection. However, while expanding the scope of service periods, corresponding restrictions must be imposed.

On the one hand, it should be clarified that service periods linked to special treatment only restrict employees' right to terminate with prior notice. Employees' termination rights are divided into immediate termination and termination with prior notice. Immediate termination arises when employers engage in illegal acts, in which case employers cannot reasonably expect employees to continue fulfilling the labor contract. Therefore, only the right to terminate with prior notice may be restricted.

On the other hand, the duration of service periods should also be limited. Scholars in China have long advocated for reasonableness review of service period durations[1], yet such reviews remain rare in practice. Among the 124 cases examined in this study, no court reviewed the reasonableness of agreed service periods. If courts fail to assess the reasonableness of service periods during proceedings, adjudication will only address the return of special treatment benefits. Excessively long service periods would thereby be deemed legally valid by default, unfairly restricting employees' freedom to choose employment and undermining their rights.

In conclusion, this paper argues that while expanding the scope of service periods, it is imperative to clarify that such periods restrict employees solely to their right to terminate with prior notice. Additionally, a reasonableness review of service period durations must be introduced to examine whether the duration aligns with the special treatment provided and whether employers unduly restrict employees' freedom to resign.

4.2 Standardizing the Compensation Criteria for Special Treatment and Establishing a Liquidated Damages System for Service Periods

Regarding compensation standards for special treatment, material special treatment should be refunded according to the formula: Refund Amount = (Total Value of Special Treatment / Agreed Service Period) × Remaining Unfulfilled Period. For non-material special treatment, compensation should be determined through a holistic evaluation of factors such as the employer's investment costs and the treatment's scarcity, as previously argued in this paper.

After standardizing the compensation criteria for special treatment, the critical issue lies in differentiating it from the liquidated damages system, necessitating a reconstruction of the service period liquidated damages regime. China's Labor Contract Law strictly limits the application of liquidated damages to service periods and non-compete agreements. However,

[1] Guo, Wenlong. (2006). The Service Period Should Have a Reasonable Duration. *China Labor*, (10), pp. 42-43.

under Article 22 of the Labor Contract Law, liquidated damages for service periods are capped at the training costs provided by the employer and must not exceed the proportional share of such costs attributable to the unfulfilled portion of the service period. This formulation primarily serves to restore benefits or revert to the status quo after contract termination, merely requiring employees to return gains they should not retain. It fails to address compensation for the employer's reliance interests.

While compensatory liquidated damages protect employees' freedom to choose employment, they inadequately account for the employer's opportunity costs and anticipated gains[1]. For service periods tied to special treatment, compensation or restitution focuses solely on restoring or returning the special treatment itself. The liquidated damages system should fulfill dual functions: compensation for damages and performance guarantee[2]. Otherwise, even with agreed service period terms, the absence of additional liability for employees would fail to safeguard the employer's legitimate interests.

In conclusion, the law should restore the fundamental functions of liquidated damages, enabling them to fulfill their inherent role as a performance guarantee. Legislatively, restrictions on the amount of liquidated damages could be relaxed, permitting parties to negotiate terms autonomously, while allowing employees to request an appropriate reduction for excessively high damages to avoid infringing on their lawful rights. The criteria for determining liquidated damages should incorporate a comprehensive assessment of the value of the special treatment provided by the employer, the employer's loss of opportunity costs due to the forfeiture of anticipated labor utilization rights, and other necessary expenses.

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[1] Jiangsu (0381) Primary Civil Case No. 6577 (2019) held that special treatment constitutes prepaid labor remuneration; Jiangsu (0111) Primary Civil Case No. 9768 (2019) classified special treatment as a welfare benefit.