

# Research on the Application of Alternative Labor Compensation in Guizhou Environmental Justice

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**Abstract:** Labor compensatory is one of the important way of ecological environment alternative repair, in recent years in environmental judicial attempt to labor compensation for ecological environment damage cases, has achieved good effect, but there are many difficulties in practice, hindered the labor compensatory alternative repair way in the department of environmental law practice and development. By summarizing the cases, analyzing the causes of the dilemma, this paper puts forward reasonable suggestions on the application of alternative labor compensation repair mode, so as to make it play a better role.

**Keywords:** Labor compensation; Alternative repair; Environmental justice

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## Fund Project:

2024 Student Self-funded Scientific Research Project of Guizhou University of Finance and Economics (Project No.: 2024ZXSX110).

The ecological environment level of Guizhou province is among the best in China, but the economic level is not high. In practice, it is often difficult for the environmental fails to pay huge compensation, and it is impossible to compensate and repair the environmental damage. In this case, the alternative repair method of labor compensation is an effective solution.

## 1. The application status of the alternative repair mode of labor compensation in the environmental judicial disputes in Guizhou province

### (1) The application of labor service compensation in Guizhou Province is becoming increasingly mature

Guizhou province has superior climate and ecological resources, and also attaches great importance to environmental protection. In November 2007, the People's Court of Qingzhen City, Guizhou Province established the first environmental protection court in China, opening the construction of environmental judicial specialization. In years of practice, the environmental protection court has gradually established the "Guiyang model", and the application of replanting and green, proliferation and release, and labor compensation in practice has gradually matured<sup>[1]</sup>.

### (2) Case analysis and summary of labor compensation practice in Guizhou Province

In recent years, Guizhou province has actively explored and applied labor compensation in the environmental judicial practice, and achieved certain results. By consulting "China judicial documents network" and "Peking University-judicial case retrieval system" on the alternative of repair case, can find a lot of labor compensatory environmental cases in Guizhou, the cases in common with the infringer in violation of law of environmental pollution, ecological damage caused serious consequences, but the economic difficulties unable to compensate repair costs, and the damage to the ecological environment has no repair. After soliciting the wishes of the parties concerned, they should replace the ecological environment by providing a certain number of labor services<sup>[2]</sup>.

## 2. The applicable dilemma of the alternative repair mode of labor compensation

### (1) Insufficient willingness or ability of the subject of labor service compensation

In the practice of environmental justice in Guizhou, there are many cases of damage to the ecological environment. After the court decided to assume the responsibility of alternative restoration by means of labor compensation, the effect of execution is not ideal due

to the insufficient will and ability of the subject, and the damaged ecological environment is not timely and effectively restored. The subject who fails to fulfill the obligation of labor compensation may also be regarded as violating the legal provisions and needs to bear the corresponding legal responsibility.

## **(2) Lack of unified standards for the judicial application of labor compensation**

At present, our country law, judicial interpretation for labor compensatory alternative repair way only made the principle, in the environmental judicial practice, the choice of labor compensation depends on the communication and coordination, in the infringer economic ability, labor compensation choice often know different, for the burden of proof, execution method, etc.

## **(3) Lack of judicial and administrative cooperation supervision of labor compensation execution**

In environmental infringement cases, the final implementation of the labor compensation plan is related to the final effect of the judgment. In many cases, the infringer lacks judicial and administrative cooperation supervision, and the infringer does not perform labor services strictly following the labor compensation plan, resulting in the lack of timely and effective restoration of the damaged ecological environment. The labor work of labor compensation workers is not a matter of a day, and there is still a lack of “insurance” for the damaged ecological environment restoration work, that is, the cooperative supervision of judicial and administrative supervision<sup>[3]</sup>.

# **3. Analysis of the causes of labor compensation in Guizhou environmental justice**

## **(1) Respect the subject will of the parties to distinguish the application of the problem**

In the process of labor compensation, it is crucial to respect the subject will of the parties. First of all, the subject will of the parties reflects their independent exercise of their own rights. In practice, on the one hand, it is necessary to ensure that the subject will of the parties is real and voluntary, rather than being subject to external pressure or improper influence, which requires a comprehensive understanding and evaluation of the situation of the parties. On the other hand, the subject will of the parties may conflict with legal provisions and public interests, so reasonable balance and coordination are needed. In short, it is necessary to consider many factors when analyzing the application problems in order to achieve a fair, reasonable and effective effect.

## **(2) The difficult problem of unified judicial application standards**

First of all, the definition of labor compensation is vague, and different courts and judges may have different understanding and interpretation, leading to different applicable standards. Secondly, the scope of application of labor compensation is not clear, and there is a lack of clear provisions on which situations are suitable for labor compensation and to which extent it can replace monetary compensation. Moreover, the value evaluation of labor compensation is subjective. How to determine the value of labor services and the equivalence between the damages, there is a large space for discretion. Finally, due to the differences in various regions in the province, it is difficult to unify the implementation standards, and various efforts are needed to solve the problem of unified judicial application standards for labor compensation.

## **(3) The complexity of the implementation procedure of labor compensation**

The implementation procedure of labor compensation in China has certain complexity. First of all, the definition and evaluation of labor compensation are challenging. Detailed analysis is required to ensure that it has comparable value to the compensated debt or liability. Secondly, the scope of application and conditions of labor compensation also need to be clearly stipulated, and the implementation and supervision of labor compensation are also facing difficulties. At the same time, it also needs to solve the possible disputes and disputes. Finally, the imperfect laws and regulations also increase the complexity of the implementation procedures.

# **4. Suggestions on the application of labor compensation in Guizhou environmental justice**

## **(1) Reasonable screening of qualified labor compensation subjects**

First of all, the judicial organ should conduct a detailed and accurate investigation of the economic situation and subjective will of the parties before ruling the infringer of labor compensation, and fully consider the ability and willingness of the subject of labor compensation. Secondly, the procuratorial organs or the government make use of their own advantages to coordinate the implementation of alternative repair projects in various fields, appropriately relax the subject standards of repair obligations, introduce other labor compensation subjects, and strengthen the repair ability of offenders.

## **(2) Formulate unified standards for the judicial application of labor compensation**

At present, Guizhou Province does not have a set of unified judicial application standards for labor compensation in sufficient

perfection. The author tries to formulate unified judicial application standards for labor compensation in Guizhou Province in the following aspects:

1.Scope of application: applicable to the public interest litigation cases in the field of ecological environment and resource protection, who are unable to fulfill the liability for damages due to economic difficulties and other reasons.

2.Signing the labor contract: the contract includes the wage payment cycle, calculation method, job responsibilities and other details.

3.Applicable methods: the judicial organs and the procuratorial organs shall jointly determine the specific issues such as working hours and time limit.

4.Characteristics of local industries: flexibly formulate regulations corresponding to the local economic characteristics to promote the fairness and feasibility of labor compensation.

5.Selection of co-governing units: The selection of co-governing units shall be jointly determined by the legal and prosecution organs. For example, such as public welfare organizations serving the society and community grassroots organizations are suitable as co-governing units.

6.Evaluation consequences: If the compensation obligor fails to perform his obligations according to the agreement or fails to obey the management, and still refuses to repent after warning, the legal procuratorate may decide to terminate the labor compensation work and continue to bear the corresponding civil liability for compensation in the manner determined in the judgment documents.

### **(3) Strengthening judicial and administrative coordination and supervision**

All organs and departments should strengthen communication and cooperation. For example, the government and relevant departments can establish a unified cooperative supervision mechanism, strengthen judicial and administrative communication and coordination, and improve the efficiency of supervision. Procuratorial organs should cooperate with social public welfare organizations, grassroots administrative organs and other forces to supervise the implementation process. In this process, it can also coordinate with various parties. With the consent of the neighborhood committee where the labor service is located, the supervision and acceptance responsibilities can be clarified in the mediation agreement of labor compensation, so as to ensure that the damaged environment is effectively repaired and the case is truly concluded.

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