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THE PROBLEMS AND REFORMS OF LABOUR RELATIONS SINCE THE IMPLEMENTATION OF *LABOUR CONTRACT LAW*

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Introduction

This paper examines the problems and causes in Chinese labour relations since the implementation of the *Labour Contract Law* in 2008. The research is based on questionnaires and field interviews with several small and medium sized labour-intensive private enterprises in Hubei Province. It concludes with policy proposals to improve labour relations in China.

Main Challenges of the Chinese Labour Relations

Since 2008, the implementation of the *Labour Contract Law* (hereinafter referred to as “the law”) has clarified the legal status of the labour contract. The law is the legal basis for regulating the rights and obligations of the two parties involved in labour relations and protecting the legitimate rights and interests of workers. Exactly how have labour relations changed since the implementation of the law? Has it achieved a win-win cooperation between employers and employees?

To assess these questions, I conducted a half-month survey in the cities of A, B, and C in Hubei province. Employers and employees in the chosen labour-intensive small and medium size enterprises responded to the questionnaires. We chose three to six enterprises in each of the three cities, and 20-30 employees in each chosen enterprise. We sent out 40 questionnaires to employers and got 25 responses; we also sent 354 employee questionnaires and got 221 responses. We surveyed 17 enterprises in manufacturing, chemicals, textiles, trade, food, restaurant business etc. Among them, manufacturing enterprises were about 70%, trade and restaurant business 25%; other enterprises account for 5%.

A total of 361 employees were surveyed. Among them, local urban workers accounted for 60%, local rural workers 30%, urban migrant workers 2%, and rural migrant workers 8%. Male employees accounted for 40% and female for 60%. Workers between 31-50 years of age accounted for 76%, while those under 30 accounted for 22% and those above 51 years 4%. Workers with college level education and above accounted for over 40%.

In addition, we also visited a number of relevant government bureaucracies, including the Labour Monitoring Authority in City A, the Labour Arbitration Institute in City B, and the Economic and Trade Commission in City C. We held town hall meetings with employees, union leaders, and employers in the three regions. We listened to reports of human resources managers and toured production workshops. Throughout the

investigation, we found that:

- 1) There is no fundamental change in the short-term labour contract

Studies point out that the labour contract terms and compensation requirements in the law have led enterprises who used to sign contracts of less than three years in duration, to redesign contract terms. Currently, labour contracts with three-year terms have accounted for more than 60%. According to our survey, the short-term labour contract is still very popular. Survey results show: labour contracts in cities A, B and C are mostly under terms of less than one year and between one and three years. City A has the highest percentage of contracts with duration of less than one year (72.22%). Percentages of labour contracts with 1-3 year terms are 60.53% and 52.38% in City B and C respectively. Overall, there are relatively less contracts with no fixed terms, the percentages being 5.66%, 2.63%, and 14.29% in City A, B, and C respectively. City B has as many as 17.11% of workers who have not signed any contract.

We found in the labour-intensive textile industry that, workers have constantly been switching employment due to the easy entry of jobs and income differences. Therefore, workers under those circumstances are often reluctant to sign a labour contract that restrains them, and even if they do, the contracts are of short term. Figure 1 shows that there is no fundamental change in the short-term oriented labour contract.

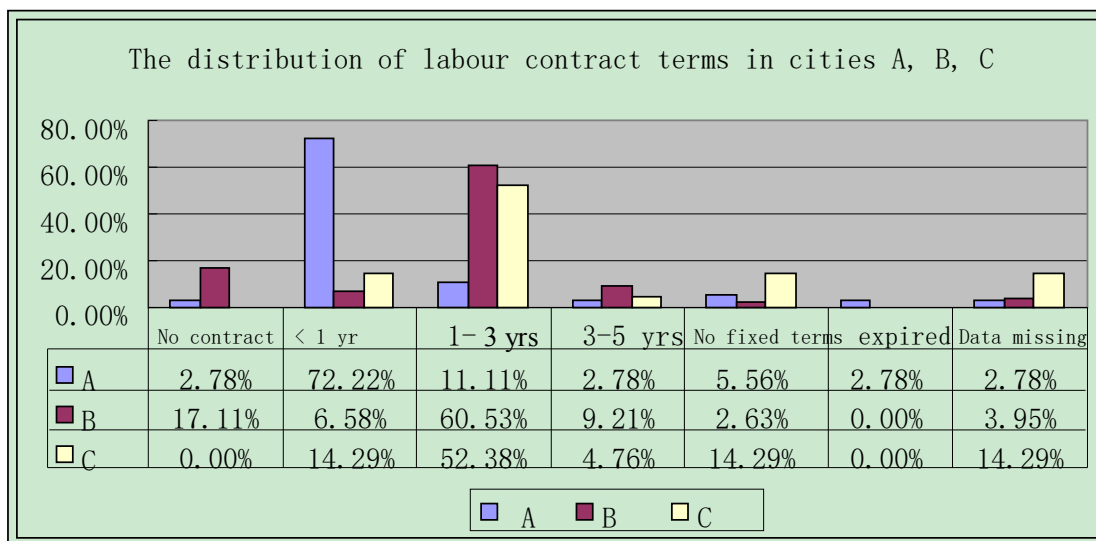


Figure 1. Distribution of labour contract terms in cities A, B, C

Contract terms also vary with workers' ages. Those under 24 years of age tend to sign a short-term contract, usually one year, and account for 40%. Workers between 35 and 44 years of age sign contract terms in the ranges of 3-5 years and 5 years. We also found in the survey that many companies choose to extend the duration of a single contract, in order to avoid prematurely signing contracts with no fixed terms. This means, exposures of labour problems involving contracts with no fixed terms are likely to be delayed.

In addition, the prospects with fixed term labour contracts are not promising. Our survey shows that among those employees who do sign a contract, 44.81% of them do not actually keep the contracts.

2) High work quota leads to lower payment and problems of long work hours are severe

Work quota is the determining factor of the wage rate. However, there is no national work quota standard, nor an industry-wide standard. It is often up to the employers themselves to decide. Many companies have a very high work quota that violates the legitimate rights and interests of workers. In the textile industry we have surveyed, most of the companies use the piece-rate wage system. Although the nominal wages of these companies are higher than the minimum wage, workers need to work overtime to complete the high work quota, and thus, get above the minimum level of wages. Moreover, working overtime is a severe problem. For instance, employees in many textile companies in City B usually worked more than 8 hours every day. Overtime payment was lower and on an arbitrary basis. Over 34% of employees we surveyed thought there was no standard in their overtime payment. Another 34.4% of respondents said they received no overtime pay. Companies claimed their employees earn more than 1000 RMB per month, but such income was only possible based on high intensity work. Many front-line employees said they had no days off, no statutory holiday breaks, and one day off per week was very rare. More often they got a day off per month or no day off at all. The survey showed that 48% of the employees worked 26-29 days per month on average, and 34.4% of the employees had to work the full month. In addition, most migrant workers had no annual leave/vocation, and no statutory holiday break. While China provides a high standard working-hour regulation, overtime work is rampant; and while there is a relatively high standard for overtime payment regulation, many workers receive no overtime pay at all.

3) Labour dispatch is so challenging that it must be solved

Labour dispatch originated in the West and is a form of flexible employment. It is intended to complement formal employment. However, once it is adopted in China, its nature and form have undergone a qualitative change. The contract law stipulates that dispatch can only be temporary and complementary as an alternative replacement. However, dispatching is very popular across industries in China, and it has become a large-scale form of employment. The classified 20 industries and 7 types of state-owned enterprises have more or less used dispatch workers. The scale of dispatching across such a wide range of industries is unique. How to treat and regulate labour dispatch in labour relations is the critical issue that must be solved.

4) The social security system could not adapt to changes in labour relations

Firstly, there are conflicts between high labour mobility and narrow coverage of the social security system. As the state-owned enterprises and private enterprises have different

social security systems, employees' social security benefits cannot be freely transferred across regions and enterprises. Some employees even suggested social security system should be abandoned. Secondly, there is a contradiction between diverse labour relations and a singular social security system. In the face of flexible employment and periodic employment, the singular social security system that current labour relations are based on is inadequate in meeting the needs of workers with multiple labour relations. Thirdly, social security management lags behind the diversity and flexibility of labour relations in China today. Emerging service industries, such as freelancers, self-employment, hourly wage labour, nanny work, and other major areas of employment, use flexible employment systems. Workers have no fixed working places, employment shows high mobility, and income is unstable. In the current system, social security is operated mainly by employers. Therefore, the flexible employment makes it more difficult for workers to get the benefits. Fourthly, there is a contradiction between dynamic labour relations and rigid social security management.

Under the current regulations, employers shall pay social security fees for newly hired employees. Many employers complained that when they pay for the newly hired, those workers may leave at the end of the probationary period, and this would result in unnecessary management cost. Some mobile employees (such as migrant workers) do not terminate the labour contract when they quit their jobs, and it is hard for employers to find them. Because the contract is not terminated legally, companies would have to continue to pay their social security insurance. This type of situation could increase management costs. In addition, some companies cheat by inflating employee numbers; under-reporting the total amount of payroll; replacing full time permanent staff with temporary employees; claiming temporary production, heavy burdens and low production efficiency; and other means in order to delay or even to avoid paying social insurance premiums. The lack of government supervision has caused a lot of problems in labour relations.

5) Other challenging labour relations in trade and service industries

During our survey, many trade companies complained that for management purposes, the companies would supply their vendors' employees with uniforms and pay them wages. However, in the event of labour disputes, these employees, due to their lack of legal knowledge, would file complaints against the trade companies instead of the vendors – even though labour is directly related to vendors. Under the current regulation, workers can prove their labour relations by employment uniforms, pay stubs, and so on. As a result, chances of trade companies losing in the labour dispute are high. Some workers even took malicious complaints to get compensation, thus, further complicating labour relations.

In addition, in the trade and service industries, the contract rate was only 59.1%; and 95.5% of the employees said that employers detained deposits and/or personal identification cards. In addition, 47.7% of the employees did not participate in any social insurance plans. Because many companies think that age and appearance would impact on economic performance, they are willing to hire only young employees under 35 years of age and are unwilling to sign long term contracts with employees. In the surveys, 84.6% of all contract employees have contracts less than three years long.

The Main Causes of Labour Relation Problems

1) Contradictions between labour-intensive businesses and labour shortage

According to our survey in the cities of A, B, and C, the labour-intensive enterprises are facing a number of problems: (1) they are small-scale with insufficient management skills; (2) production technology and equipment are backward; (3) their supporting industries lag behind. Therefore, the labour-intensive businesses are mainly dependent on long hours and overtime work in order to maintain price competitiveness, rather than through improving technology and labour productivity. Currently, enterprises are facing labour shortages, more frequent staff-turnover, and low salaries and wages; long working hours and lacking of rest are more common. For instance, in an enterprise in City B, many migrant workers demanded to work overtime hours without any break days. They threatened to quit and work for other companies if their demands were not met. Thus, enterprises sometimes have to increase the labour time to retain workers.

2) The impact of increasing labour costs on labour relations

It has been contentious how *Labour Contract Law* has impacted labour costs and employment behaviours. According to the survey, most companies believed that the law had increased the employment termination costs, made it more difficult to fire employees, and increased the risks of illegal dismissal. Secondly, frequent employee turnover only increased recruitment and training costs. Thirdly, many private enterprises that have been reformed from state-owned enterprises bear historical problems of owing overtime and social security payments. Under the *Labour Contract Law* regulation, paying the historical debts would increase labour costs significantly.

The survey also found that different companies adopted various means to cope with rising labour costs. Some companies made employees resign by frequently changing their positions. Labour disputes from arrears of wages were prominent.

3) Low levels of enrollment in social insurance due to enterprises not fulfilling the obligation of paying for it

It has been generally believed that employees were not enrolled in social insurance plans because business owners did not insure them. Our survey confirms this view. The survey shows that, among those uninsured, 47.4% of employees were not enrolled in any social insurance plan because they did not sign labour contracts; 36.8% of employees did sign contracts, but the companies refused to provide social insurance plan; and 10.5% of employees were promised social insurance only after they worked in the company for a certain period. Enterprises do not want to provide employees with insurance primarily to reduce labour costs. In the survey, some migrant workers, especially short-term and seasonal workers, were reluctant to participate in social insurance plans due to concerns

that they have to go back to rural areas for seasonal farming and cannot get insurance. However, the majority of migrant workers surveyed were concerned about social security. Close to 95% of those migrant workers did not participate in social security because the companies did not pay for them. This has had a negative impact on forging harmonious and stable labour relations.

4) Lagging business management skills

Labour Contract Law, based on human survival and development, ends the era of China's cheap labour and marks the beginning of a new era. In order to change the current irrational management model, to meet the international standard and globalization trend, and to be consistent with the rules of the game in the world, managers must switch their management philosophy from focusing on enterprise development to the co-development of enterprises and workers; in human resource management, treat employees as competition and cooperation partners; and in the enterprise competition model, switch from relying on cutting labour costs to innovation and improvement. Since the implementation of the *Labour Contract Law*, many enterprises have not adapted themselves to the change, and thus when the era of cheap labour is over, they will be unable to cope with labour relations in the new era.

5) Inadequate labour law enforcement

According to our survey, since the implementation of the *Labour Contract Law*, employers are more conscious of law-abiding, workers became more aware of their rights, and labour security supervision has been strengthened. The survey shows that 54.5% of employees would be willing to settle disputes through arbitration or government agencies. Thus, the government has some credibility in the eyes of employees. However, we also found that the enforcement of labour law was not adequate. According to some employees surveyed, labour administrations in local governments lacked the initiative, failed to investigate employment conditions in private enterprises on a timely basis, and relied mostly on reports and complaints filed by employees. There was also local protectionism. Labour administrative and law enforcement mechanisms are not in place, thus companies are allowed to adopt non-standard employment. Issues such as short-term contracts, lacking social insurance, narrow coverage of insurance, poor standard wages, etc. are not dealt with on a timely basis, hence labour disputes arise.

Policy Proposal

- 1) Study *Labour Contract Law*, promote enterprises to change their management model and achieve win-win labour-capital relations.

First of all, the standardized enterprise employment system should be promoted. Based on the contract law, through the convening of workers' congresses, the enterprises should establish and maintain a system of rules on labour management and detailed evaluation program. Enterprises should strive to achieve standard employment and legal procedures so as to build harmonious and stable labour relations for the benefit of both the employees and employers. Secondly, a long-term mechanism to study and enforce labour laws and regulations should be established. Since the implementation of *Labour Contract Law*, more and more people are interested in learning about the law, which to some extent contributes to standardizing labour relations in China. However, for some employers, the purpose of studying the law is not to implement and enforce it in practice, but rather to do everything possible to avoid the regulations. Employees now have a better understanding of the laws and regulations, but do not yet exercise their rights thoroughly enough to protect themselves.

To solve these and other emerging problems, the law should be studied and implemented in conjunction with "Implementation Provisions of Labour Contract Law." We should use all sorts of media to continuously publicize the content and contributions of the law and establish a long-term mechanism, in order to gradually reduce the gap in understanding the law and related provisions between employers and employees. Workers, business owners, government officials, academics, and the public in general should form an objective, comprehensive, and unified understanding of the law to create and maintain a good atmosphere necessary to maintain stable labour relations.

2) Adapt to changes in labour relations and further improve the social security system

Labour Contract Law focuses on written labour contracts to regulate labour relations. In fact, employers avoid written contracts not for fear of established labour relations but mainly for fear of legal obligations coming out of the established labour relations. Once labour relations are established, employers are obliged to provide social insurance during the course of employment. Social insurance becomes unbearable to many small and medium size enterprises when the social insurance payments far exceed the profits. To avoid paying social insurance for employees, employers then opt to not sign written contracts to hide labour relations, and instead they hire dispatch labour and prevent workers from obtaining evidence of the existence of labour relations.

In addition, the fact that migrant workers would rather use the "vote-with-feet" approach to protect their rights rather than be bound by labour contracts is also related to the social security system. Under current policies and regulations, migrant workers have to stay in the same city for at least 15 years in order to be qualified for retirement and pension payment. However, migrant workers are concentrated in the food and service industry, which is a highly mobile industry. It is difficult to work in the same city for over 15 years. Therefore, it is particularly important to improve our current social security system. On the one hand, we should ensure social security coordination when work place and labour relations shift. It is necessary to remove the regional restrictions in social security. Social insurance accounts should be transferrable across regions. On the other hand, we should

improve institutional arrangements to coordinate labour contract and social security reporting system. We should strengthen audit on social insurance payment and reporting, to prevent companies from evading social insurance payment by false reporting, concealing the numbers of workers, and arrears of wages, etc.

3) Strengthen labour security supervision and safeguard the legitimate rights and interests of workers

First, we should strengthen labour law enforcement and enlarge institutional settings of labour security enforcement. The labour security administration should perform duties stipulated by the “Labour Security Supervision Provisions” and carry out inspections on issues such as arrears of wages, unreasonable deductions of wages, overtime hours without pay, and so on. Secondly, we must adjust and regulate labour security supervision. At present, China’s labour security supervision covers broad range of issues, including the internal labour security regulations developed by employers, the co-development of labour contracts by employers and workers and other areas of issue. Labour inspection overlaps with labour arbitration, which is often confusing. We must redefine the monitoring function and clearly assign responsibilities. Thirdly, we must strengthen key areas of labour security supervision. We can do so by increasing the cost of illegal employment and compressing the space for illegal employment. We should particularly strengthen law enforcement and supervision in areas that present flexible forms of employment and employ most migrant workers, such as food and service, construction, leisure and entertainment industries, etc.

4) Improve the tripartite consultation mechanism

The tripartite consultation mechanism is an important institutional setting to ensure the healthy development of labour relations. In 1990, China ratified the *ILO’s Tripartite Consultation* (International Labour Standards). In August 2001, the former Ministry of Labour and Social Security, the National Federation of Trade Unions, and China Enterprise Confederation announced to launch a comprehensive labour relations tripartite negotiation mechanism to solve various problems in labour relations. On October 27, 2001, Trade Union Law was revised, and its Article 34 provides specific rules for the tripartite mechanism. However, China’s tripartite consultation mechanism is still far from perfect. In the future, representation qualifications for the main parties should be specified and the consultation process and content should be standardized so that tripartite consultation can better facilitate labour relations.

5) Further improve labour laws and regulations

Specifications and interpretations on abstract provisions in *Labour Contract law* should be provided. For example, “continuous” in Article 14, “professional training” in Article 22 and “equal pay” in Article 63 have been contentious. The much expected “Labour Contract Law Implementation Provisions” do not explain well the contentious

concepts, which have directly impacted on standardizing labour relations. We recommend the labour department develop administrative rules and regulations to clearly explain the above concepts to promote smooth implementation of the law.

Labour dispatch legislation should also be implemented. As labour dispatch was born and quickly gathered momentum during China's market economic reform, legislation should adhere to the flexibility principle. Legislators should find a fine balance between promoting socio-economic and enterprise development and better protecting the legitimate rights and interests of workers. Article 66 of *Labour Contract Law* briefly claims labour dispatch as "temporary, complementary, or substitution," which requires further contemplation.

Legislation regarding labour strikes should also be implemented. In China, the right to strike is not endorsed as workers legal rights. I believe that to regulate strike behavior, workers must be granted the right to strike in the first place. The right to strike and the concept of "building a harmonious society" are not contradictory. Recognition of the right to strike can resolve internal contradiction and social stress and ensure social stability. The ultimate goal of establishing the legal right to strike is to build a socialist harmonious society. We must also pass legislation to clearly stipulate the right to strike. The right to strike is the right to work, and its essence is the ability to work; it is a natural basic human right. The Constitution does not include the right to strike, nor are there relevant provisions to protect the right to strike. The Constitution should be amended to provide workers with the legal right and freedom of strike, and labour law should include provisions to protect workers' right to strike.

An exemption clause for special industries and exceptional circumstances should also be created. For instance, labour-intensive small and medium size enterprises often employ a large number of workers with low labour costs and flexible employment. However, these enterprises usually have small profit margins. As those enterprises have made a great contribution to solving unemployment, especially employment of labour forces in rural areas, we should consider special treatment for those enterprises, just as what we did for special enterprises during the financial crisis. We can set a transitional period of implementation of the law to labour-intensive small and medium size enterprises, and give tax cuts to those companies that hire increasing number of workers.

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