



**RESEARCH PAPER**

**Labor Reforms in China: An Appraisal**

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**ABSTRACT**

This paper traces the basic reforms in China's labor system and discusses the unexpected changes resulting from those reforms. Labor system reform in China was initiated in the late 1970s. The reform focused on relaxing direct control by various governmental departments and making better use of the market mechanisms in the labor market. Since the reform, people have more opportunities and freedom with respect to job selection and enterprise managers have more autonomy regarding hiring, rewarding and firing employees. Due to the simultaneous functioning of the dual system government control and market forces coupled with the lack of a well-established system, some people are distinctly more advantaged than others since the reforms. Corruption has increased drastically, most people are deeply frustrated and angered, something which contributed to the mass participation in the latest democratic movement in mid-1989. Qualitative research method is used to analyse the labor reforms and law system in China. Based on research on China's labor system reform and comparison, our conclusions are that economic system reform and political system reform should be conducted simultaneously.

**Keywords:** Compulsion, Contract, Labor, Prohibition, Reforms

**Introduction**

Following China's economic reform in 1980, the Chinese Communist Party began its state-capitalist market experiment, juggling a fine balance between economic growth (through the active introduction of western technology and capital), and the political stability of China's socialist society. During this period, a capitalist model of market economy was carefully instilled into the then closed socialist economy of China, starting with a few experimental regions or Special Economic Zones (SEZs) Shenzhen, Xiamen, Zhuhai, and Shantou. Within the confines of these SEZs, selected foreign companies were permitted to invest capital and build facilities under the principles of safeguarding China's sovereignty while maintaining an open-door policy economically. (Cohen, 1968)

The economic reform brought foreign capital, technology, and management knowledge that turned China's vast natural and labor resources into rapid economic growth. The shift from a closed socialist economy to a relatively open market economy stimulated a period of high urbanization, industrialization, and economic growth in the 1980s and 1990s. According to the China Ministry of Commerce, China's nominal GDP grew at an annual average of 15.5% in the 1980s, increasing to 18.5% in the 1990s. This period of fast economic development also exposed various issues—a widening urban-rural gap, market dysregulation, local officials' blatant abuse of power, and severe labor exploitation, to name a few. This also brought about social change within China – socialist labor relations defined by life-long and assigned professions were gradually replaced by a market model of contract-based labor relations. If you plan to set up and manage your operations in China, it is essential to be familiar with the various employment & labour regulations – not just to help you avoid unnecessary labour disputes but also to create a productive and seamless environment for your employees in China. (Adamson, 1984)

**Material and Methods**

This research is based upon the Foucauldian concept of power. This kind of power neither force nor domination nor authority. It is attribute to anyone or anything. Power is impersonal because it is neither possessed nor exerted by individual, group and institution. This research is based upon the empirical evidence of the laws and reforms introduced after 1980. Data of three labor reforms is analysed through qualitative research.

### Literature Review

S. Liang, Z. Liu, D. Crawford-Brown, Y. Wang, M. Xu (2014) described the Decoupling analysis and socioeconomic drivers of poverty pressure in China, which deals with the ideas of economic reforms and its social impacts'. Liu, Y. Hao, Y. Gao, The environmental consequences of domestic and foreign investment: Evidence from China, has given the ideas of all investments which are coming after reforms and opening up. E. J. Carlton, Q. Jiang, J. Wu, L. Wang, J. V. Remais, (2012) discussed the impacts of economics reforms in the health sector. J. Yang, H. Xiao, L. Xin (2014), An analysis of education inequality in China. Through which they analysed the reforms in education sector.

J. Huo, X.-M. Wang, N. Zhao, R. Hao, (2016) Statistical characteristics of dynamics for population migration driven by the economic interests which disclosed the ideas of Chinese population migration from one province to another in search of better facilities. The State Council Information Office of the People's Republic of China, (2016) China's progress in poverty reduction and human rights. United Nations Development Programme, *The Millennium Development Goals Report 2015* (United Nations, 2015) also highlight the data of Chinese developments programs. F. Yan, (2018) Urban poverty, economic restructuring, and poverty reduction policy in urban China critically focused on the poverty reduction in China after reforms.

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The below guide outlines everything foreign-owned businesses should know about China's labour laws and how to comply? The authorities recognized that the market reform called for new legal frameworks to address issues and draw boundaries for the private sector's activities. The labor framework then was divorced from the international rule of

law and market standards and was thus seen as a threat to economic progress. Therefore, in this period, a slew of new laws was introduced to stabilize the dysregulated market, increase foreign investors' confidence, and align the Chinese legal framework closer to international standards.

Among the new laws introduced, the earliest and most important labor-related laws were the 1992 trade Union Law and 1995 labor law. According to these laws, it was mandatory for workers to be paid in full and on time for their labor, with proper compensation for working overtime, paid leave, national holidays, proper rest, equal protection against discrimination, social security, and free participation of trade unions that represent the rights and interests of workers. Under the newly introduced laws were all considered basic and protected labor rights. In addition, employers would only be able to terminate the employment contract if the employee had "seriously breached" the employer's internal regulations. China's economic reform fundamentally transformed the nature of the planned socialist economy and Chinese people's social relationships. Renminbi, the Chinese currency, gradually regained market exchange value and finally, in the 1990s, completely replaced and phased out the coupons Chinese citizens used to exchange daily necessities in the planned economy era. Chinese citizens began to be able to freely participate in the open market economy and legally own property. However, this transition also brought immense uncertainty throughout the country, which, in Deng Xiaoping's own words, were "...crossing the river by touching the stones" (摸着石头过河) as they attempt to traverse the new terrain of the new form of economy. (Chen&Wang,1996)

More recently, the most important and most controversial new law introduced was the 2008 labor contract law (LCL), which came under the scrutiny of business stakeholders for its "overprotection" of labor. The law set out to regulate and specify businesses' contracting practices for internships, as well as established regulations for workers working for a given entity for under and over a 10-year threshold. It also stipulates that employers and workers "should" sign written labor contracts to establish labor relationships. Under the LCL, the employer is entitled to terminate the employment contract if the employee had "seriously breached" the employer's internal regulations ("Serious Breach Dismissal Cases"). Despite the view of businesses that the LCL "overprotected" labor, a study analysing over 2,000 "serious breach dismissal cases" found that Chinese courts are in no way "pro-labor", and in fact were more "pro-employer". The study also found that courts in most cases failed to conduct a substantive review on the fairness of such dismissal cases. (Cohen,1986)

### **Key Points**

- The specific regulations may be a combination of provincial, city and national legislation depending on where the employee is based.
- China's labour law is subject to quickly implemented and frequent changes, depending on the government's direction.
- Setting up and registering a business in China is a prerequisite to hiring employees, regardless of whether they are local or international hires.

### **Different types of employment contracts**

In China, employment must involve a written contract to be legal. An employer has a 30-day grace period to provide the contract to an employee. Failure to do so will lead to a double wage penalty to the employee for each following month that passes by without them having a written contract. If a year passes without a contract, it is automatically categorised as an open-ended contract.

There are three types of employment contracts in China:

- **Fixed-term labour contracts** are the standard labour contracts in China. They set an employer-employee relationship for a specific length of time, whether for full-time or part-time work
- **Open-ended/indefinite labour contracts** don't have a set termination date and can be concluded only via mutual agreement
- **Project-based contracts** are based on a specific project or task rather than on the period a company will employ the employees. The contract expires after the delivery of the project.

Regardless of the type of contract, it must fulfil all statutory benefits and paid leave requirements, such as maternity leave, holidays, vacation time, health coverage, sick leave, health coverage, workers' compensation, and pensions. (Helm,1997)

### **Probation**

The agreement may incorporate a probationary period if an employee works full-time and the contract lasts more than three months. The salary during the probation period may not be less than 80% of the agreed wages or not be less than the lowest salary standard of the same position in this company, and not be less than the minimum wage of the area where the company registered. The contract duration determines how long a probation period is permitted. The maximum probation period that can be applied if the contract lasts less than a year is one month. The probation period may be set at two months maximum if the contract lasts one to three years and may be set at six months maximum if it lasts three years or more or if it is an open-term contract.(Garfinkel,1967)

### **Employment of foreign nationals**

Foreign Nationals who wish to work in China are issued a Z visa for entering China. Then, the application of a Work Permit and Residence Permit must be applied to work compliantly in China.

The employer and the employee should obtain a residence and employment permit for the work contract term during the 30-day grace period that the work visa permits from the day of entry into China. The maximum stay is five years, and the minimum stay is 90 days. A labour contract between the employer and the foreign employee should be concluded; its term should not exceed five years. When the term of the employment contract ends, the employment permit is no longer valid. If a renewal is necessary, the employer must apply to the labour administrative authorities within thirty days of the contract's expiration for an extension of the term of employment. If approved, the company must then follow the necessary procedures to extend the employee's employment permit. The employer of the foreign employee in China shall be the same as specified in his Employment License. Upon the termination of the labour contract, the employer must report it to the labour and public security authorities and cancel the Employment Permit and the residence certificate. (Kassebaum,1997)

### **Working hours**

According to China's Labour Contract Law, employees should not work over eight hours each day or 40 hours per week, on average. After discussing with the trade unions, the employer is permitted to prolong working hours, but they are limited to one hour of overtime per day. Employers can request more than one hour's worth of overtime only

under exceptional circumstances. However, extra hours cannot exceed three hours each day or 36 hours each month.

### **Minimum wage**

The minimum wage standards in China are established by each local government and are changed annually or every two years considering the following:

- Average wage levels
- Cost of living
- The degree of economic development in a particular region

The minimum wage typically consists of hourly and monthly minimum wages for part-time and full-time employees.

### **Mandatory contributions**

In addition to salaries, employers are required to provide social contributions to the following:

- Medical expenses
- Employee pension
- Housing fund
- Maternity benefits
- Unemployment
- Work-related injuries or accidents. ( Xu,1995)

### **Employment Termination**

There are four legislative grounds for terminating an employee in China:

#### **Termination by mutual agreement**

If both the employer and employee come to an agreement through discussion, they may revoke the work contract at any time.

#### **Employee Termination**

An employee may voluntarily leave their position. If they do, they must give a written 30-day notice. Employees are not required to notify their employers if the business:

- Created unsafe working conditions
- Failed to pay their salary on time
- Given orders that contradict the terms of the contract and/o
- Used violence, detention, or threats to force an employee into working

#### **Employer-initiated termination**

An employer has the right to unilaterally and immediately terminate an employee's contract due to misconduct.

### **Automatic Termination**

The contract terminates immediately upon the occurrence of any of the following circumstances:

- Expiration of the agreement
- Employee has reached the legal retirement age
- Government has declared an employee *missing* or *deceased*
- Employer declares bankruptcy
- The business license of the employer is revoked. (Oldham,1986)

### **Labor Legislation in China (3 New Reforms)**

The three laws issued in 2007 and taking effect in 2008 were aimed at addressing the shortcomings of the earlier labor law, promoting the government's vision of "social harmony" (Harper Ho, 2009; YU-Fu Chen and Michael Funke, 2008) and defending the rights of workers, paradoxically the less favored class in a still officially Socialist country. The Labor Contract Law<sup>7</sup> was adopted by the Standing Committee of the National People's Congress on June 29, 2007 and became effective on January 1, 2008. The Law on Mediation and Arbitration of Labor disputes was adopted by the Standing Committee on December 29, 2007 and came into force on May 1, 2008, and the Labor Promotion Law was approved on August 30, 2007 and became law on January 1, 2008. Additionally, the State Council enacted a Regulation on Paid Annual Leave for Employees on December 7, 2007 that took effect on January 1, 2008. The most important of the three is the Contract Labor Law, which was unusually visible to the public in its drafting phase, probably indicating that the government wanted to give it wide public coverage. (Pfohl, 1994)

### **The Labor Contract Law**

Rather than replacing the earlier law, the Labor Contract Law attempts to fill its gaps. The law requires that basically any labor relationship should have a written contract (fixed term, continuing, or contract for a specific task). Any employment relationship must be formalized in writing within a month after work begins, with penalties if the procedure is not respected: the employee receives double pay starting in the second month until the contract is drawn up and signed. If there is still no contract after a year, the labor relationship is automatically considered to be indefinite or open-ended, with all the rights (especially regarding layoffs) associated with this kind of contract. The new law also requires that fixed-term contracts should be transformed into indefinite or open-ended contracts after the second renewal. Contracts must cover working hours, overtime payment, remuneration, social insurance, working conditions, probationary period, and training. (Jia,1983)

The new law thus promotes a series of rights that stem from a contractual employment relationship: remuneration, social security and welfare benefits (retirement, illness or injury, work-related disabilities or occupational disease, unemployment, maternity leave), payment of overtime work and severance pay. One change especially important for employers is that the new law specifies required severance payments for dismissals. Any dismissed worker is to be paid one month's wages for each full year or fraction of the year that he/she has been employed. (Previously, these payments were

required but no amount was specified; their size was agreed privately in the contract between the employer and employee.) To keep severance payments from rising too high, a cap is placed on the amount for employees earning higher wages: if the monthly wage is more than three times the average in the region, severance pay is capped at 12 months times three times the regional average monthly wage. The law also regulates temporary work agencies or "staffing firms" for the first time, with few limitations except that pay cannot be lower than the minimum in the company where the workers are being placed; and that the period of the contract cannot be less than two years. The law sets a new requirement, which is that firms that are found to have dismissed workers unfairly must readmit them or pay additional compensation. (Pu, 1994)

Another novelty of the 2007 law is its restrictions on collective dismissals, which begin when an employer dismisses 10% or more of the work force (or 20 or more employees). (It is not clear whether all layoffs must occur at the same time to be considered collective, or whether the terms of the law apply if 10% of the work force is dismissed over a period of months.) A mass layoff can be conducted if the company is experiencing severe financial, production or operations problems or is undergoing a major transformation; or if there has been a material change in the objective economic circumstances that existed when the original contracts were signed. The new law requires companies to 1) make a layoff plan specifying who is to be affected; 2) consult for 30 days with unions or workers' representatives; and 3) report the proposed layoffs to local labor authorities before 4) implementing them. No approval is necessary under the law, although some regions (e.g. Shanxi province) are now requiring official approval for large mass layoffs. The 2007 law specifically mentions workers' bonds, non-competition requirements and non-solicitation of workers by competitors, and confidentiality rules. It strengthens enforcement with new mechanisms affecting both workers and employers. In some cases, noncompliance is not only a civil liability but also a penal liability.

As the global crisis erupted and unemployment rose, and as some employers complained about the excessive burdens of the new law, steps were taken at national and local levels to seek a balance between the newly enhanced protection of workers and the interests of employers. In September 2008, the State Council implemented "regulations for the PRC Employment Contract Law" in an effort to clarify some ambiguities over the termination of employment contracts and placement and introduce flexibility, in hopes of avoiding layoffs. The Supreme People's Court<sup>12</sup> in 2009 explicitly invited local people's courts to consider the global economic context as well as social harmony when handling labor disputes, which had increased dramatically. The implication was that they should be less strict in applying the provisions of the new law if it could result in company shutdowns. Some local governments (Guangdong was the first) have also adopted local regulations to provide clarification and details on some issues of the law. (Rusche & Kirchheimer, 1986)

Article 1 in fact addresses just what the Employment Contract Law failed to. On the one hand, the Employment Contract Law's initial aim was to protect both employer and employees benefits; however the consequence of the law was the shutting down of factories. Requirements such as offering employees open term contracts are difficult for employers to comply with. While employees cannot be terminated without specific cause, it is reported that such a requirement significantly increases employers' burden as well as their operational expenses. Employers who cannot afford the sudden increase of expenses face bankruptcy, leaving employees out of work. The intention of the law and the social effect were therefore at opposite ends of the spectrum.

## **The Law On Mediation And Arbitration Of Labor Disputes**

To handle labor disputes, the new Law on Mediation and Arbitration of Labor disputes left in force the same approach: "one mediation, one arbitration and two trials", meaning that any labor dispute has to be solved first by mediation, then by arbitration if the mediation fails, and finally by courts (with a two-trial system) if the arbitration fails. It adds some basic changes, however, that benefit workers. It opens the range of disputes that can be referred to arbitration to almost any issue: Article 2 refers to potential disputes arising from the employment relationship, working hours, rest and holidays, medical cost for injury at work, economic compensation or damages. The period of time for bringing a claim is extended from 60 days to one year from the time a dispute arises (art.27), and no time limit is imposed on claims involving employee remuneration if the employee is still employed by the relevant company. Article 6 and Article 39 increase the burden for employers to provide evidence relating to employment disputes (Jiangang Li, 2008). They both state that "if the employer fails to provide evidence by the specified deadline, such failure shall be held against him". Finally, employers are only permitted to appeal awards on remuneration, severance pay, damages, working hours and leave and social insurance if they can show that the law was applied erroneously, evidence was false or statutory procedure was not correctly followed. (Troyer, Clark & Rojek, 1989)

The new legislation on dispute resolution opened a floodgate of complaints: the Ministry of Human Resources and Social Security stated that labor disputes in 2008 rose to 693,000, a near doubling of cases from a year earlier. According to the 2009 Annual Report of the Congressional Executive Commission on China, "Reports on disputes in 2009 show that this rapid rate of increase is continuing, and that the explosion of disputes is particularly apparent in coastal cities and provinces, including Beijing, Shanghai, Jiangsu, Zhejiang and Guangdong". In the Pearl Delta alone (Law, 2009), "more than 60,000 applications had been made for arbitration by the end of 2008, according to the arbitration office of the Guangzhou Labor and Social Security Bureau". Joanna Law (2009) says this increase is due not only to the new provisions of both the Contract Labor Law and of the Law on Mediation and Arbitration of Employment disputes, but also because "employees have been encouraged by the fact that they can now file labor arbitration cases free of charge".

## **The Labor Promotion Law**

In addition to the Labor Contract Law and the Law on Mediation and Arbitration of Labor Disputes, the Standing Committee enacted a "Labor Promotion law" in 2007 that is a further step toward the objective of achieving social harmony in the People's Republic of China, and a possible reflection that employment in at least some areas was becoming a problem. Article 1 states that "the law has been formulated with a view to promoting employment, promoting the balance between economic development and the expansion of employment opportunities, and promoting social harmony and stability". Following the Chinese legal tradition of considering law more as a policy tool than a normative act, the two first chapters invite the government at all levels (national, provincial and local) to "treat the expansion of employment as a major objective of economic and social development, include it in the national economic and social development plan and formulate the medium- to long-term plans and annual working plan for employment promotion". In that sense, Article 11 proclaims that "the people's government at and above the county level shall prioritize the expansion of employment and shall plan as a whole and coordinate the relevant industrial and employment policies". Article 17 foresees preferential tax treatment to encourage companies to comply with the law. The law also outlaw's discrimination in the workplace against women, ethnic groups, disabled persons, carriers of infectious diseases and rural workers (Articles 27-31). People's governments at all levels are to provide employment assistance to persons with difficulties obtaining employment and disabled persons (Articles 52 and 55). Workers may present a complaint to the people's court if they encounter discrimination in employment that violates the provisions of this Law (Article 62). Finally,



the law obliges firms to set aside training budgets for staff and workers according to relevant state provisions, to provide vocational training and continuing education (Article 47).

### **Implications Of The Law For Employers: A Shift To New Hiring Strategies**

Although the new Chinese labor law does succeed in better protecting workers, it also marks a major step in the direction of a more rigid labor market for China. From the perspective of employment protection, the 1994 law was relatively flexible. Although it was more restrictive than modern U.S. law, it was similar in overall impact to modern Canada, or to several European states (Germany, Italy, Austria) in the 1950s, before successive regulation made their labor markets rigid. In contrast, the 2007 Labor Contract Law moves China into the range of countries that are considered to have highly regulated labor markets, such as present-day Spain, Belgium, the Netherlands, Finland or Germany. Nearly all of its provisions make contracts more restrictive. The law's limits on temporary hiring are a further constraint. Previously, any employee who had worked under fixed-term contracts for 10 years - a long period compared to modern European legislation - could demand and receive an open-ended, or indefinite, labor contract. Under the new law, no more than two temporary contracts can be agreed between a worker and an employer before the worker has the right to demand an indefinite contract. This is more restrictive than in many European nations.

The severance payments which are set for the first time by the new law are also relatively high: they are comparable to those required in Spain and Portugal, which are among the OECD's most rigid labor markets. The restrictions on collective dismissals do not add to the severance payments, but they do introduce delays and administrative procedures that make layoffs more costly for businesses. As noted above, some regions (*e.g.*, Shanxi province) are now requiring official approval for large mass layoffs, which will make procedures even more cumbersome. Again, these provisions will cause companies to think twice before expanding their permanent work force, since the cost of adjusting it is now both higher and more uncertain. (Wang, 1988)

At least on paper, then, China's new law marks a change in its labor regulations toward a rigid labor market. Compared with other Asian developing countries like Vietnam, it is now more regulated: although Vietnam has more onerous severance pay requirements, temporary work, temporary work agencies and collective dismissals are basically unregulated in Vietnam. Both countries now do require firms to reinstate employees who are dismissed unfairly. (Wilson, Greenblatt, 1977)

### **Conclusion**

Most labour-related legislation was passed in the 1990s and 2000s. Although the legal framework purports to guarantee wide-ranging rights, enforcement is wholly inadequate and seeking redress through official mechanisms leaves many worker plaintiffs unsatisfied. Organizing at the enterprise level and attempting to work within the structures of the official trade union have also met varying levels of success. As employers continually exploit their workers, government officials look the other way, and economic inequality only increases in China, workers are left with little recourse. Considering the crackdown on civil society, it is now more essential than ever that the ACFTU step up to the plate and act as a true representative of the labour sector, defending workers' rights and promoting their interests in all industries across China.

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