

Impact of Employment Contracts Law on Employment Relations in China

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The new Labor Contracts Law (2008) has great impacts on employment relations in China. Focus of disputes on the Law is the stipulation on the open-term contract. Disputes are also focused on the stipulation on labor dispatching. Some scholars recognize the new Labor Contracts Law as a landmark to protect employee's rights and benefits. Some deem that it has damaged and will continue to damage employee's interests, and may even adversely influence China's economic development significantly. This paper explores the impact of the Law on employment relations in China. It was found that, although it aims to provide more legal protection to employees with more job security, social equity and justice, attitudes and reactions vary among the three actors and the outcome may be quite different from expectations.

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China's Employment Relations

It has been 32 years since China started economic reform and opened itself to the outside world. In the past 32 years, the traditional employment relation in China has changed dramatically. From a micro perspective of enterprises, the amount and the scale of non-public ownership economy developed rapidly, in which the number of employees increased significantly. Therefore, more and more employment relations disputes occurred in the multi-leveled employment system in China, which has been strengthened and expanded. From a macro perspective, a large number of state-owned enterprises restructured, the development of non-public-owned economy rapidly increased, and the size of the output in the entire national economy expanded in recent years. Thus following the continuous expansion of non-public economy the proportion of pluralistic society employment relation in the total employment relation is increasing, along with the impacts and coverage.

In the process towards what is called “socialist market development”, the employment relation in China is apparently becoming increasingly conflicting. On the one hand, it is stressed as a result of the development of a modern enterprise based on the operation and management of capital. On the other hand, China’s oversupply of labor in volume terms, especially because of industrial restructuring in recent years, further strengthened the labor force supply and demand imbalance, which rendered the employment relation of workers weak. The interest differentiation is increasingly becoming clear between the enterprises and socio-economic strata. The conflict of interest in the employment relation is growing, and the disputes between the two sides continue to rise.

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The period from Deng Xiaoping’s speech during his famous South China Tour in 1992 to the beginning of the 21st century is the initial formation stage of China’s legal system of employment. The “Labor Law” which became effective on January 1, 1995 is the first step in the founding of New China to adjust the employment relation through a comprehensive law. It is also an important milestone in the process of China’s labor legislation. Since then, the implementation of “Labor Law” sets a contribution to adjusting the labor relations. Chinese people have great expectations

from the employment protection system, but it has clearly not kept pace with the times. The most intuitive performance indicator is: China’s labor dispute cases which increased every year, and at the core of many labor disputes is the issue of the contract. A national survey on the enforcement of labor law inspection by the National People’s Congress Standing Committee found that small and medium-sized enterprises and non-public ownership enterprises signed labor contracts in less than 20%, individual economic organizations signed even in a lower number of cases. The survey also found that more than 60% of the contracts signed by employers with workers were for the short-term of one year (NPC 2005). Some were signed for a few years; but in the case of a number of factories the phenomenon of wage arrears to workers were found clearly prominent. Some guilty bosses escape and hide after the non-payment of wages. In some companies number of labor will be fixed based on piece units, disguised employees’ overtime wages were deducted. Many did not buy social insurance for their workers. Some workers knew that their rights and interests were violated, but chose to remain calm.

The over-emphasis on economic development and the earlier neglect of social justice led to prominent social contradictions and the widening gap between rich and the poor. “Strong capital, weak labor” also emerged. Therefore, the government began to advocate the building of a harmonious society and implementing the people-centered scientific concept of development, to streng-

then the countries' active intervention in employment relation, labor social security and further development of the legal system.

In Chinese history of development of employment relation, 2008 is a special year in which the "Three Labor Laws" ("Labor Contract Law", "Employment Promotion Law" and "Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes") came into operation. Beginning from mid-1980s, the main objective of the reform of labor and employment system is to strengthen the market efficiency and operations' position, reduce the right of the labor. Since 2003, an important measure adopted to implement "scientific development view" and build a harmonious society is to "restore" the rights of the labor, in particular the rights of peasant workers through recovering wages, establishing mechanisms for the normal increase in wages, expanding the labor contract and social insurance coverage (Li 2003). The year of 2008 should become an important year in "repairing" the labor rights. However, the widespread domestic criticism from all sections of the society about the Labor Contract Law was unexpected. The financial crisis which originated from the United States and which spread to global economies increasingly pushed the domestic economic development towards recession. The ever-expanding wave of business failures, as well as the surging controversy that occurred after the Labor Contract Law came into force, made the Government hesitant when confronted

with the difficult choice between the protection of labor rights and the stimulation of economy to ensure growth and save small and medium-sized enterprises.

During the National People's Congress in March 2010, the work report of Standing Committee of the National People's Congress said that since the Labor Contract Law has been promulgated and implemented, the awareness of the labor contract of the whole society has been generally raised and the rate of signing of labor contract was significantly increased, up to 93% (Li 2003, Chen 2004).

Adverse Impact on the Employment of Graduates

Labor Contract Law will slow down the pace of recruitment for college students. It is feared that the Law greatly emphasizes on protection of labor rights, which tends to increase the labor costs. Thus, the enterprises will be more cautious and rational when they take college recruits, which will make the situation of college student employment more serious.

It is not feasible to recruit and wash-out in large scale any more. After the implementation of Labor Contract Law, some enterprises will solve the possible post, which is not that urgent and necessary, by means of temporary internal promotion. That is the reason why Labor Contract Law will alter the strategy of "recruiting and washing-out in large scale".

The implementation of Labor Contract Law will lead to attach more importance to the ability of human resources. At the very beginning stage of recruiting college students, the trend has been to education-orientation and college-background-orientation. However, after the implementation of Labor Contract Law, companies would prefer to take the student capability into account rather than merely the education. Only through taking on highly-qualified employees with enough capacity, the companies can cut down on the labor cost and maintain high market shares to own its competency, which will just be compliant with the Labor Contract Law.

Adverse Impact on Employment for Peasant Workers

At the same time, the implementation of the Labor Contract Law has also brought out adverse impacts on the general employment of peasant workers. On the one hand, companies might raise their recruiting standards, and pay much more attention to the capability of workers. Labor Contract Law lays great emphasis on the protection of labor rights, which tends to enhance the labor costs. Thus, when it comes to employ migrant workers, the enterprises will be more cautious and rational. And the companies will emphasize the capabilities of migrant workers in the recruitment, taking in the skilled staff of high-quality, which will decrease their labor costs. However, majority of migrant workers are poorly skilled with low educational background and lack of experience, which will be a great obstacle to employ-

ment. On the other hand, the migrant workers are also bound by Labor Contract Law. As migrant workers are surviving under poor conditions, they have to go back home during harvest seasons even without the status of farmers. Their instability in work also contributes to their disadvantages in employment.

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Employment Disputes & Conflicts

With the implementation of Labor Contract Law and the Labor Dispute Mediation Law, cases of labor disputes grow nationwide. In Beijing, for example, by September 2009, the departments of labor arbitration in the city and the districts have dealt with 32,953 cases, an increase of 103.8% compared with the same period last year. The cases dealt with by the departments numbered 25,443 from May to September 2009 after the implementation of the Labor Dispute Mediation Law, a growth 164.6%, from the total cases dealt with in 2008 (Qiao 2009). The courts across the city dealt with 12,140 cases of labor disputes, an increase of 103.8% compared with the same period in 2007. In addition, the high court in Guangdong province dealt with 39,767 cases of labor disputes from January 1 to June 30 in 2008, an increase of 157.7% when compared to that in the same period in the earlier year. The Labor Arbitration Institution across Guangdong Province

dealt with as high as 3 times the labor disputes in the meantime. Cities with cases exceeding 100% numbered 11. The occurrence of such cases in some districts of Pearl River Delta is surprisingly high (Qiao 2009).

According to what the authorities from Labor Dispute Arbitration Committee in Beijing said, the main feature of labor disputes is that a large number of cases about right-protection emerged since the implementation of Labor Contract Law. The cases about protecting personal right to get compensation due to not signing labor contract, and requiring double payment bonus account for 50% of all the cases. The disputes focused on the issue of salary and compensation, largely are taking place in non-state-owned enterprises. It is increasingly difficult to deal with such cases because of the growing hostility between the two parties (Qiao 2009)

The disputes are divided in to 3 types. The first is caused by labor relationship, including the compensation due to not signing labor contract, termination of the labor contract, or getting rid of the contract illegally. The second type is caused by salary, including the payment defaults and refusal to give bonus. The third type is caused by social insurance, including non-payment for the insurance adequately.

Job Security: New Problems

The new law affects the small and medium-sized enterprises the most, es-

pecially the labor-intensive manufacturing enterprises. Many employers fear that the cost increase would be high after the implementation of the law, thus threatening the development of the enterprises, even their survival. Just as some of them said, "Enterprises are not large enough. Its prospect is clouded by the law." In simple terms, the employers have to bear more pressure. Some adopted two methods to deal with the problem. The first is to increase the scale of the enterprise in order to relieve the pressure of salary. The second is to increase the efficiency by training the workers and adopting the latest technology (Wen 2009)

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Positive Influence on the Workers

1. Protecting employees' rights to know the job. Under the new law when employers hire they should tell the employee the specific situation about the job including its nature, location, condition, hazard, salary and so on. Some indefinite words are not allowed, such as good environment, good payment. The new law is aimed to increase the transparency of the job, and to orient the employee.
2. Protecting the employee from changing. It is stipulated that the employer must make written contract with the employee within a month since the

employee is hired. It is also stipulated that the employer must make an open-ended contract if the employee meets certain demands when continuing the contract unless he/she demands fixed-term contract him/herself. If the employer refuses to make open-ended contract, the employee should be given double the salary since the time such contract is made. These provisions have increased the difficulties of employee firing, thus protecting the employees.

3. Protecting the bottom line of the salary. It is stipulated that the salary given to the employee must not be below the local standard. The probation salary must not be below the lowest payment for the same job or 80% of the contract salary. The employer should make over a 2-year contract with the employee, giving salary from month to month. If the employee has no specific job to do, the employer must offer salary according to the lowest-salary stipulation. All of this helps protect the bottom line of the salary. Table 1 shows that some of the provinces and major cities have increased their minimum wages since April 1, 2001.
4. Protecting the right of equal pay for equal work. According to the law, the employee enjoys the right of equal pay for equal work. If the enterprise

does not have the same work, the pay should be made the same as for similar work in the same place of the enterprise.

5. Protecting the employee from terminating the contract during the time of sickness. According to the law, the employer cannot fire the employee under situations, which include: the employee facing the risk of job-related diseases and who do not receive inspection when leaving the post, during the quarantine, disabled due to the job he or she does, in the process of curing the disease, females during pregnancy, fertility and lactation. These provisions are aimed to assure the employee when they are sick.
6. Protecting the employee to take relatively short-time probation. The probation cannot exceed one month if the period of contract is between three months and one

Table 1: The Highest Minimum Wages Per Month in Some Provinces and Cities in China

Place	Highest Minimum Wages	Average increase
Guangdong Province	1030 yuan	21.1%
Guangzhou City	1100 yuan	27.9%
Shandong Province	920 yuan	21.2%
Shanghai City	1120 yuan	16.7%
Zhejiang Province	1100 yuan	15.3%
Jiangsu Province	960 yuan	13.12%
Fujian Province	900 yuan	24.5%
Tianjin City	920 yuan	12.2%
Ningxia Autonomous Region	710 yuan	18%
Hubei Province	900 yuan	28.9%
Jilin Province	820 yuan	22.9%
Shanxi Province	850 yuan	15.5%

Source: <http://unn.people.com.cn/GB/14748/11490112.html>

year. And the probation cannot exceed two months if the period of contract is between a year and three years. It must not exceed six months in contracts whose term is over 3 years or open-ended. The employer can stipulate only one time probation with the same employee. When it comes to quantity-calculating job or the contracts involving within three months, probation is not allowed. These provisions are for protecting the employees' reasonable rights, and to cut the length of probation.

Adverse Influences on Workers

1. Increase the difficulty of labor looking for a job. Because the Labor Contract Law has been strengthened in the interest of the protection of workers, companies can not reduce staff to trim casually and the dismissal of employees must be considered carefully. While selecting, employing and training people through simpler and more efficient methods, companies should not employ or fire a person blindly. For example, the same work, which was done by two persons in the past, is assigned to only one worker now-a-days so as to reduce the cost. The resultant reduced volume of employment is bound to lead to reduced job opportunities for low skilled workers.
2. Increase the workload of employees. It is stipulated in the Labor Contract Law that it is necessary for companies to pay workers overtime when working extra time. Thus the employer will increase the work intensity and workload during normal working hours in order to pay less overtime. With the streamlining of staff positions, workers have a general feeling of the labor intensity and increased workload.
3. Increase the rate of unemployment. Enterprises fire the people who have been in the company for a long time and those without technological competence and competitive advantage in the profession to avoid signing flexible deadline contracts after the implementation of the Labor Contract Law. Consequently, the unemployment rate has increased. In addition, the international financial crisis forces the closure or transfer of some enterprises, leading more workers to lose the jobs thus increasing the rate of unemployment.
4. Strengthen regulations in respect of workers' probation period. Labor Contract Law stipulates that workers should inform the employer three days in advance if they seek to terminate the contract during the probation period. The worker needs to give the employer no information about terminating the contract at any time during the probation period, which enhances the strictness of the regulations in the probation period.
5. Increase the work pressure on employees. The Labor Contract Law stipulates that if workers seriously violate employer's rules and regulations, the employer has the right to

discharge the labor contract. Therefore, after the implementation of Labor Contract Law, enterprises began to refine the rules and regulations one by one for facilitating a favorable basis for firing employees in future. Punishment is often higher than the reward in the established rules and regulations. As punishment is related to the quantity and the quality of work, labor discipline, accidents, losses, and other aspects of behavior, workers generally feel the work pressure.

6. Increase regulations in training of employees. Labor Contract Law stipulates that employers can enter into an agreement with the workers and promise the serving period on the condition that employers agree to provide the special fund for academic training of workers. Workers in violation of the agreed period of service should pay the employers liquidated damages in accordance with the agreement. Therefore, some companies sign a longer period of service with the employees when they send employees for training, so the trained employees must serve the enterprises for long. This restricts the right of a worker to choose an occupation (Huang 2008)

Contract Signing & Break-up

1. There are certain difficulties for workers to protect their own rights and interests. In spite of the implementation of the new law, the employing units and workers require a

running process to the implementation and compliance with the new law: (1) high frequency of workers' migration to some extent restricts the signing of labor contracts. The work of foreign workers is highly mobile and for irregular periods. In accordance with the current employment system, even if the employers and foreign workers have signed labor contracts, they will not necessarily work with peace of mind. The choice to come and go freely restricts the implementation of the new law. Medical care in old-age insurance premium paid in the current system hinders the protection of the rights and interests of workers (Wen 2009)

2. The employers do not want to enter into non-fixed-term contracts, which easily lead to a rigid employment system. According to the Labor Contract Law, all employees in compliance with the statutory conditions can be signed for non-fixed-term contracts with enterprises, which means some enterprises did not consider fixed-term employment contract contrary to freedom, leading to the fear of "big or iron rice bowl" and can not be free to dismiss employees. The provision will increase the costs to the company's casual dismissal and the threshold for dismissal.
3. Illegal layoffs, non-payment in full and timely payment of financial compensation. Illegal layoffs unilaterally reduce the number of staff for one or more batches without complying with statutory procedures. In

accordance with the relevant provisions of labor laws and regulations, employer's economy-related layoffs should be followed by substantive and procedural requirements. For example, the "Trade Union Law" Article 21 provides that for a unilateral lifting of enterprise labor contract, the reasons should be notified prior to the trade unions. However, some companies involved in making a major decision of the vital interests of employees do not have the required degree of democratic procedures. Some enterprises lift labor contracts, whose payment of financial compensation are significantly lower than that of the relevant provisions of the present and can not be issued timely.

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Other Effects

1. Many new provisions of Labor Contract Law seem to be adverse to the companies. Employers will be more cautious in future employment, which will bring a certain degree of negative impact on the employment of migrant workers. On the one hand, companies may raise employment standards and pay more attention to the ability of workers. Labor Contract Law focuses on the protection of labor rights that will enhance labor costs of the enterprises. They will be more cautious and rational
2. in farmers' recruitment than before. More attention will be paid to the ability of migrant workers and the employment of high - quality; skilled employees will reduce personnel costs. The technical weakness of migrant workers, low level of education, and lack of experience will be major obstacles to their employment. Because of marginalization, migrant workers need to go home in the harvest seasons though they are not farmers; meanwhile work instability is also a disadvantage that restricts their employment. It is necessary not only to build a harmonious society and achieve sustainable socio-economic development but also to treat migrant workers with respect, improve their working and living conditions and industrial injury insurance system. There is also the need to ensure the social and political stability in the long-term. We believe that the follow-up implementation of Labor Contract Law will bring greater benefits to vast numbers of migrant workers (Tian 2009)
2. Welfare impact of the new law after its implementation on labor market is unequal. The provision of the labor contract by the state system is able to reduce transaction costs and labor-management conflicts. Labor Contract Law is based on a sharing of goods. From a political sense, the protection of labor income is also the protection of the workers' basic rights, workers use the labor contracts to transfer their

own capital (labor) to obtain their own income so as to enhance the level of benefits.

- 3) A negative impact on the macro level has not yet appeared, there is the need to guard against the risk of zero or negative welfare benefits. "Zero benefit" refers to no decrease in the Gini coefficient after the second distribution, while "negative benefits" refers to increase in the Gini coefficient after the second distribution. Since the new law, in the Pearl River Delta and Yangtze River Delta areas many businesses changed such as the relocation of processing and manufacturing. In addition, since the financial crisis induced recession in the second half of 2008 many businesses were confronted with large number of layoffs, but the reason behind this was multiple and therefore could not simply be attributed to Labor Contract Law. In fact, working through the labor contract signed with the stability of work created more efficiency for the enterprise and promoted social welfare.
- 4) Local short-term impacts cannot be evaded. From the game theory point of view, the new law is a regulatory policy, labor-management game is zero-sum game, that is, with a given total income, the higher the income of workers, labor users access lower profits, which means that the later suppressed the interests of the former. In accordance with the requirements of the new law, companies must pay workers a variety of social security, welfare payments

and termination fees, which will increase their income (Chen 2009)

Development of Unions in China

In the modern market and democratic systems, workers' organizations are to reconcile the contradictions in the outcome of labor relations. Trade unions treat the legitimate rights and interests of workers as their responsibility and objectively alleviate the antagonism between employers and employees and act as a buffer to avoid class confrontation as an effective solution to labor conflicts and ensure balance of social forces.

China's trade unions have adopted a unified management system, there is only one China Federation of Trade Unions at the national level and local trade unions have only negligible force. Trade union cadres of the local full-time civil service treat the work as reflecting the will of the party. Examination by the party organization and personnel arrangements for the appointment and removal are very rare. Few unions carry out elections. Lower branches of the unions must surrender 40 percent of their revenue to trade unions at higher levels.

Under market conditions, conflicts in labor relations have become a major social issue. The role of the trade unions as agents of economic relations, maintenance and expression on behalf of good workers is not only the duty under the law, but they also promote economic development and safeguard social stability as their main task (Guan 2008). Trade unions are voluntary organizations of the

working class in our country. The amendments to “People’s Republic of China Trade Union Law” adopted by the NPC Standing Committee in October 2001 reaffirmed the essential attribute of the trade unions and highlighted the functions and rights of trade unions and the legal status of relative independence. It should be noted that the revised Trade Union Law adapted to some extent to the profound changes in labor relations. Yet correct positioning of the trade unions in the market development process is not easy and twists and turns through a gradual process do take place.

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Unions & the Employment Contracts Law

First, unions serve as “mentor” in the formation of labor contracts among the public service workers. Second, during the tenure of the contract they serve to protect the interests of workers and “safeguard the people.” Large number of labor disputes are not conducive to labor relations standardization, but they also have a negative impact on the steady economic growth and social harmony and stability. Under such circumstances, trade unions have been placed on high hopes to eliminate the “short-term pains” and to promote the economic activities through the rule of law. This hope is based on the collective voice of trade unions and enterprises to carry out the relative advan-

tages, to voice equal consultation, to break the embarrassing situation of individual workers being not able to protect human rights because of the weakness, and also under certain conditions to avoid blind firing of temporary workers, and make labor relations healthy, standard, and non-confrontational. Labor Contract Law enables to establish a standardized relationship between rights and obligations of individual workers and employers. The rights of trade unions were not their own, but of the trade union agency workers.

Other Impacts

Labor Contract Law gives clear guidance on trade union rights. According to Article VI: “the trade unions should help and guide workers and employers to make and fulfill the labor contract in accordance with the law and collective bargaining units to establish a mechanism to safeguard the legitimate interests of workers”. 78th Article mentions: “trade unions should safeguard the legitimate rights and interests of laborers in accordance with the law, the trade unions should give support and assistance in accordance with the law when workers apply for arbitration proceedings”. These are not only the rights of trade unions but also their specific responsibilities. At present, there are imperfections in China’s legal system, some employers do not act within the law; on the other hand, some workers’ educational level is limited and there is the lack of legal knowledge of what the labor contract is, how the labor contract entered into more at a loss. Therefore, it

needs the help and guidance of the trade union organizations.

Labor Contract Law gives trade unions the right to participate more. Labor Contract Law Article IV states: "Employers in the formulation, modification, or a decision on the labor remuneration, working hours, rest and vacation, labor safety and hygiene, insurance benefits, employee training, labor discipline, and labor management, fixed workers directly involved in the immediate the interests of major issues rules and regulations, the General Assembly or the staff representatives of our employees should have the right to discuss, and put forward a proposal with the trade union or the employees on behalf of equal consultation," major issues in the regulations and decided to implement the process, the trade union or the employees that inappropriate, employers have the right to put forward, to be revised and improved through consultations. "The rules and regulations impact on the workers in a very large scale, and often irrational rules and regulations of the employing units become an excuse to avoid responsibility. As we all know, it is not possible for the individual worker or a loose group of workers to participate in the formulation of rules and regulations of employing units, and it is also difficult for them to clearly express their voices. Labor Contract Law then enables them to express the rights of workers to participate through the "bridge" of the union. In fact, it is for the better realization of the rights of workers so that they can rely on the trade unions involved in the development, closely linking with

their own rules and regulations in order to avoid a variety of dominant and recessive injuries, and gradually eliminate the use of arbitrary units.

Labor Contract Law reinforced the right of trade unions to negotiate. China's "Labor Law," the thirty-third article specifies the form of legal recognition of trade unions' right to collective bargaining. Labor Contract Law has further retained the provisions of labor law, defined the procedures and effectiveness to make collective contracts and its relationship with the labor contract, and a clear way to proceed to the relationship between the collective settlements of contractual disputes. And for the first time, it provides for the legal aspects of special collective, trade and regional collective contracts.

Labor Contract Law specifies the supervision of trade union rights more clearly. The labor administrative department is the main direct agency to monitor the implementation of the labor contract system. And the official supervision is the supervision system of Labor Contract Law to a major extent. However, in order to effectively put an end to employer violations of the law, the labor administrative department's supervision and management of law enforcement is not enough, it is also necessary to play the role of the supervision of the various agencies including the trade unions among which, the strengthening of trade unions in monitoring the masses of society is the precise requirements of Labor Contract Law.

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Labor Contract Law strengthens agency relations of the trade unions and makes clear a variety of trade union rights under the specific circumstances of its practical operation. It provides the legal support and basis for the role of trade unions in labor contract and also a sound mechanism for trade union rights. So the trade union should show the new unions the use of Labor Contract Law and the rights conferred by it to their own advantage. It actively safeguards the interests of workers and promotes employers and employees to realize “mutual benefit” and the building of harmonious socialist labor relations (Liu 2009)

Increased Labor Cost

The cost of labor is that while taking in, maintain, developing human resources and terminating the contracts during the process of the enterprise. The cost will increase with the implementation of labor contract law due to two reasons:

- (1) The provision about the probation. The law stipulates the time period of probation under different situations. And the condition, time and the standard of probation salary are strictly stipulated to check enterprises doing harm on employees during the probation.

- (2) The stipulation about the compensation. The law enlarges the range of compensation and increases the payment. Compensation has to be given out even if the employer terminates the contract with the employee under the new law. And the payment should also be given out when the deadline of the contract is met unless the employee does not agree to continue the contract under the same or better provisions.

Pressure for Surviving or Developing

To some extent, the implementation of the new labor contract law increases the employment risk for enterprises. Non fixed-term labor contract leads enterprises into a dilemma. The new law states that employers of workers in ten years of continuous work can enter in to the second or successive fixed-term labor contracts without a fixed term labor contract. The assumption that, after an employee signed a non-fixed term labor contract, he did not make big mistakes but continued to make small mistakes, leaves the companies without enough evidence to expel him, or without proof of evidence, or not to cooperate with him, or on high termination pay compensation and renders enterprise into a dilemma.

Typical Reaction of Enterprises

The reason why foreign investors threatened to withdraw during the process of consultations on the “Labor Contract Law (draft)” is that Shanghai Hu

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man Resources Association of multinational corporations, the European Union Chamber of Commerce or American Chamber of Commerce in Shanghai and other foreign agencies in China is related to maximization of the benefits. When they estimate that the expected increased income after withdrawing investment outweighs the loss of economic interest, the conclusion is that the cost of withdrawing investment is less than the expected labor cost. Therefore, the pursuit of maximizing interests prompts them to prepare for divestment. However, the losses from the vast market of China for foreign businessmen are huge. It is possible to compromise or make some concessions in the regulations of the new law, but it also needs to pay for such a compromise - that is the increase in labor cost (Dong 2009).

The design of the legal system should be built on the basis of balance of interests. The promulgation of the Labor Contract Law is like following the two pairs of game perfect equilibrium. On the one hand, the enterprises are on a strong side while the workers on a weak side in the current reality of the game. It is the new labor contract law that protects workers, limits the business and balances the benefits of both the parties participating in the game on the basis of protection of the legitimate rights and interests of disadvantaged groups. On the other hand,

balance of interests is also reflected in the corporate social responsibilities. The purpose of the past performance of enterprises, such as low rate of signing labor contracts, non-standard content as well as the dismissal of workers in many enterprises, service dispatch, short-term contract behaviors and so on before the introduction of a new labor contract law is to pass the buck. In this level, the game between employers and employees turns to the government administrative departments and enterprises. The introduction of Labor Contract Law is to eventually realize the goal—business and employment must be in accordance with the law and the enterprises should take on the social responsibilities, by regularizing legal behavior of both enterprises and workers (Zhao & Ye 2008).

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The promulgation of Labor Contract Law is a very severe challenge and test for the enterprise. Enterprises should implement the rule of law on the management of workers if they require for survival and development. The new labor contract law makes enterprises in the face of completing the adjustment of labor relations in the shortest possible time so that they can create greater value. This Chinese legal system of corporate human resources forms a step forward. This will also enable Chinese corporate legal system in aspects of human resources to step forward (Li & Liu 2009).

Role of the Government

Employment relations in China differ fundamentally from those in western countries (Zhao 1995). During the early period of the industrial revolution, laborers are forced to live in poverty and their labor used by workshop owners because of the free economy and the original capital accumulation. They finally got together and fought for their rights to a small extent. With further development of industry, laborers grew in number and went against workshop owners for their rights. Not until industry matured, did labor organizations begin to negotiate with owners to add to mutual economic interests. It can be seen that the employment relations and its development in western countries always have some relation with the economy, while in China it is more ethical and politically oriented since the beginning. The Chinese government plays multiple roles in the employment system.

The Chinese government plays multiple roles in the employment system.

The government is the final employer in a planned economy and controls the labor standard. The usual function of government in employment relations is the maintenance of employers' and employees' mutual interests. In order to achieve this goal, the government usually sets rules and supervises its implementation, coordinates the relation and establishes useful systems to timely settle conflicts in labor relations. In mar-

ket economies the government often plays multiple roles such as controller, regulator, supervisor, direct employer and so on.

China's employment relation is in a transformation process and highly participated by the government. The government generally plays three kinds of roles: the first being from 1979 to 2002, a period of shared rights. Government expanded the enterprises' autonomy and reduced the direct control on employment relations during the period. In the second, from 1992 to 2002, the main task has been to cultivate the major part of the market towards a regulatory stage. Through measures such as the property rights and the workers' rights the government cultivated the independent status of employers and employees who are the main partners in the market. Apart from this, the attitude of the government changed towards the non-public economy as the main part of the market. During this period, it is the promotion of labor contract system that changed the situation. The benefits overlapped each other to a large extent and this made the labor relationship steps into the orbit of contractual operation and rendered the role of the government more clear. On one hand, it must carry out the supplementary policy of assisting the laid-off workers and provide a stable environment of labor relationship for the state-owned enterprises. On the other, it must assume the role of the coordinator of employment relations as its objective. The paper by Ministry of Labor "The General Plan of Revolution of Labor System in the Period of Establishing

Socialist Market Economy” stated that the basic role of the government in the labor relationship is by means of legislation of the basic regulation of labor relationship, the government can regulate the employment relation. We can safeguard this relationship by means of inspection of administration of labor, and moreover, we can guarantee the benefits of the employers and the employees through justice and arbitration.

The third stage is from 2003 until now. It’s a period of structural adjustment on employment relation. The policies during the reform of state-owned enterprises, the low labor cost competition due to globalization and the willingness of the local government to change the pattern of China’s employment relation. The structural imbalance and the protection of employees’ interests became people’s concern during China’s fast economic progress. So the government will value more the private property rights and stress on fairness and justice in order to establish a society of harmonious employment relation.

Discussion & Conclusions

Labor Contract Law is to protect employees’ legal rights as well as the enterprises’ right to autonomy and other legal rights. Chang (2008) considers that Labor Contract Law in effect is the specific “Labor Law”, which is directly motivated by the unsatisfactory functioning of labor contract system. At a deeper level, the main reason for the legislation of Labor Contract Law is that China’s market-oriented labor relations

have been very high. Since 1995, China’s economic structure has undergone significant changes. The proportion of private property gradually increased in the structure of total property rights. An increasingly market-oriented economy with ownership and management rights forms the main body of interests and joins together to face the group of workers. Therefore the conflicts have become a major contradiction in China’s market economy. The Labor Contract Law is intended to balance and coordinate these relations and promote social harmony and stability. It will not only make employers regulate their employment behavior and improve working conditions but also make employers aware that a strong employment law system and stable and harmonious employment relations will do good to the long term development of the enterprises and to the sustainable development of economy and society.

Conflicts have become a major contradiction in China’s market economy.

Labor Contract Law adopts one standard and one model in different sectors of business. For example, it requires all kinds of business to sign written contracts and it pursues long term contracts and limits employers’ rights on removing employment contracts. It even enforces some business to sign non-fixed term contract. According to the NPC Standing Committee work report, “contract rate of large-scale enterprises reaches 93 percent” while service indus-

tries, construction industries as well as small-and-medium size enterprises and private enterprises have lower contract rates. It shows that we did not pay attention to the differences in industries, sizes and forms of various businesses and resorted to a 'fit-all- size' unrealistic method.

After the promulgation of Labor Contract Law, many employers think that the emphasis on the protection of employees' rights will cause a substantial increase in the cost of labor and increase the burden on enterprises. Those who hold this "burden theory" even worry that the implementation of Labor Contract Law will lead to corporate bankruptcy and have therefore resisted it. Some even shut down their companies. Some are worried that the emphasis on the protection of labor rights may lead to equal treatment and it is a step backward. In their view, workers protected by special state policies are like "greenhouse flowers"; they can not improve personal qualities and will not be able to participate in international competition. Some think that in this legislation, the employers may consider the threshold as too high and resort to measures to deal with the transition, such as reduction of posts, which is detrimental to the protection of workers' interests. Experience has shown that former labor law is not strictly enforced, the cost of breaking law is very low, and so many em-

"Where there is policy there is countermeasure" becomes a routine.

ployers did not care much about the law. "Where there is policy there is countermeasure" becomes a routine. Many companies understand the law clearly but use various means to circumvent it. At present, enterprises have introduced new programs, some companies started to modify and refine business rules and regulations to make it better to avoid putting themselves in disadvantage; some enterprises make efforts to modify job descriptions to fit "equal pay for equal work". These problems and deviations on the concept mean that Labor Contract Law will be facing a major challenge before its effective implementation. The life of the law is in its implementation. The effective implementation of the law relies on a good operation mechanism. Solving the problems while implementing Labor Contract Law should be from the system perspective in order to build harmonious labor relations for the value of goals, focus on legislation and law enforcement. The whole process should integrate the legislature, the executive law enforcement agencies, employers and labor system elements, such as efforts to resolve. We believe that, as China continues to accumulate practical experience in dealing with the relationship between workers and employers, Labor Contract Law will also gradually be improved. We can comprehend that, as the legislation allows more workers to share the fruits of economic development and the whole society builds harmonious and stable labor relations, the employers will eventually benefit from it. This is the noble mission Labor Contract Law will bear.

Chinese enterprises have their own history in the development of the employment relations and they have their own national conditions. Faced with the transition of economic system as well as the challenges of globalization, we must be rational in viewing the employment relation in China, instead of hurriedly solving the conflicts. Today, we cannot transplant the Chinese enterprises in a state of freedom to enable workers to rely on the strength of their own and reach mutual harmony. We can neither immediately do as done by the industrialized market economies, who follow a complete and thorough employment relation strategy and principles. Therefore, with the impact of economic globalization, the development of positive and effective employment policies is a new topic before us in order to promote the coordination of the employment relation and stability, thus promoting the harmonious social and economic development.

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