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WORKER RIGHTS

INTRODUCTION

The Chinese government does not fully respect internationally recognized worker rights. Chinese citizens are not guaranteed either in law or in practice full worker rights in accordance with international standards. In the five-year period the Commission has reported on worker rights in China, the government has made progress in enacting more legal protections for workers, but has continued to deny workers the fundamental right to organize into independent unions and strike to achieve meaningful change. In addition to these restrictions, factors such as poor implementation of labor protections on the books and collusion between local officials and employers create obstacles for workers who attempt to protect their rights. Although market liberalizations have brought Chinese citizens more freedom to choose their employment, along with prosperity and better jobs for some workers, social and economic changes also have engendered abuses from forced labor and child labor to flagrant violations of health and safety standards, wage arrearages, and loss of job benefits. Residency restrictions present hardships for workers who migrate for jobs in urban areas. In addition, tight controls over civil society organizations hinder the ability of citizen groups to champion for worker rights.

In the last five years, local and central governments have enacted a series of rules, regulations, and laws on labor, but have not created the administrative structure to ensure adequate enforcement. A new Labor Contract Law, passed in June 2007 and to take effect in January 2008, attempts to codify a series of protections for worker rights but does not include adequate provisions to guarantee equal bargaining power between workers and employers, and entrenches the role of China's only legal union, the Communist Party-controlled All-China Federation of Trade Unions (ACFTU) in contract negotiations.¹ The law's imprecision leaves interpretation and clarification to the discretion of implementing officials, further limiting the impact of potentially beneficial provisions within the law. As the number of labor disputes rise,² the government may aim for the law to remedy this source of perceived social unrest, but systemic weaknesses in implementing the law challenge the law's capacity to protect workers and reduce conflict.

In 2006–2007, several high profile incidents underscored the inhumane conditions and weak protections under which many Chinese work. The discovery in 2007 that a massive network of small-scale brick kilns in Shanxi and Hunan provinces were employing forced labor evidenced China's weakness in effectively enforcing even its own labor and workplace safety laws. The discovery and admission that child labor was being used in the manufacturing of

Olympic souvenirs further illustrated the state's failure to enforce worker rights.

China's labor practices contravene its obligations as a member of the International Labor Organization (ILO) to respect a basic set of internationally recognized labor rights for workers, including freedom of association and the "effective recognition" of the right to collective bargaining.³ China is also a permanent member of the ILO's governing body.⁴ The ILO's Declaration on the Fundamental Principles and Rights at Work (1998 Declaration) commits ILO members "to respect, to promote and to realize" these fundamental rights based on "the very fact of [ILO] membership."⁵ The ILO's eight core conventions articulate the scope of worker rights and principles enumerated in the 1998 Declaration. Each member is committed to respect the fundamental right or principle addressed in each core convention, even if that member state has not ratified the convention. China has ratified four of the eight ILO core conventions, including two core conventions on the abolition of child labor (No. 138 and No. 182) and two on non-discrimination in employment and occupation (No. 100 and No. 111).⁶ The ILO has reported that the Chinese government is preparing to ratify the two core conventions on forced labor (No. 29 and No. 105).⁷ Chinese labor law generally incorporates the basic obligations of the ILO's eight core conventions, with the exception of the provisions relating to the freedom of association and the right to collective bargaining,⁸ but many of these obligations remain unrealized in practice.

The Chinese government is a state party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which guarantees the right of workers to strike, the right of workers to organize independent unions, the right of trade unions to function freely, the right of trade unions to establish national federations or confederations, and the right of the latter to form or join international trade union organizations.⁹ In ratifying the ICESCR, the Chinese government made a reservation to Article 8(1)(a), which guarantees workers the right to form free trade unions. The government asserts that application of the article should be consistent with Chinese law, which does not allow for the creation of independent trade unions.¹⁰ The Chinese government is a signatory to the International Covenant on Civil and Political Rights, which guarantees the right to freedom of association, "including the right to form and join trade unions[.]"¹¹

Workers in China have no choice as to their representation in the workplace. The ACFTU is China's only official trade union and is required by the Trade Union Law to "uphold the leadership of the Communist Party."¹² While the ACFTU has made progress in unionizing more workplaces in China, and has promoted pro-worker programs where they do not conflict with Party policy, the basic structure of the union system in China is at odds with meaningful representation of workers' rights and interests. Surveys of local ACFTU branches have indicated that a majority of union leaders hold concurrent positions within Party committees, government, or enterprise. Union leaders have represented enterprises, rather than workers, in labor dispute arbitration.¹³

Workers who try to establish independent associations or organize demonstrations risk arrest and imprisonment. Independent labor organizers continue to serve long jail terms. For example, He Chaohui, a former railway worker at the Chenzhou Railway Bureau and vice-chairperson of the Hunan Workers Autonomous Federation during the May 1989 pro-democracy movement, has faced multiple detentions, including a current nine-year sentence, since taking part in labor strikes and demonstrations, and giving information on the protests to overseas human rights groups. Another long-term prisoner, Hu Shigen (Hu Shenglun), received a 20-year sentence in 1994 for “organizing and leading a counterrevolutionary group” and “engaging in counterrevolutionary propaganda and incitement” after helping to establish the China Freedom and Democracy Party and the China Free Trade Union Preparatory Committee.¹⁴

LABOR CONTRACT LAW

Overview

The Standing Committee of the National People’s Congress (NPC) passed a new Labor Contract Law in June 2007, after considering multiple draft versions and soliciting public comments on the law.¹⁵ In addition to seeking public comments, the Ministry of Labor and Social Security also sought technical assistance from U.S. experts in drafting the law. In 2005 and 2006, a U.S. Department of Labor-funded technical cooperation project sponsored a series of workshops and a study tour for Chinese officials who requested to be briefed on U.S. best practices in employment relationships, termination of contracts, part-time employment, regulation of labor recruitment, U.S. Wage and Hour regulations, the means of protecting worker rights, the means of enhancing compliance, and training for investigation.¹⁶

The new law, effective January 2008, governs the contractual relationship between workers and employers from enterprises, individual economic organizations, and private non-enterprise units.¹⁷ The law expands requirements in China’s 1994 Labor Law that mandate the signing of labor contracts.¹⁸ It requires workers and employers to establish a written contract in order to begin a labor relation¹⁹ and creates the presumption of an open-ended contract if the parties have not concluded a written contract within one year from the start of employment.²⁰ The law also includes provisions that allow certain workers with existing fixed-term contracts to transition to open-ended employment.²¹ The law mandates that contracts specify matters including working hours, compensation, social insurance, and protections against occupational hazards. In addition, the employer and worker may add contractual provisions for probationary periods, training, supplementary benefits, and insurance.²² The basic provisions on establishing contracts accompany a series of other stipulations within the law that attempt to regularize the status of workers employed through staffing agencies; strengthen protections in the event of job dismissals; and establish a framework for penalizing non-compliance with the law.²³

Despite strengthening formal legal protections for workers, the ultimate extent of the law’s effectiveness, especially without an

independent union system to monitor enforcement, remains untested until the law takes effect. China's track record for implementing existing labor protections is poor at best. One government official has described weak implementation as the root cause of China's labor problems.²⁴ A series of surveys on the enforcement of existing requirements to sign labor contracts found that many enterprises fail to use contracts, and that workers lacked knowledge of their right to sign a contract.²⁵ Even if the Labor Contract Law promotes the creation of more formal contracts, however, the benefits of such a development may have limited impact without adequate measures to ensure that employers adhere to the terms of the contracts.²⁶

Ambiguities in the law amplify the challenges of implementation. While the law does not explicitly require employers and employees to enter into new contracts on January 1, 2008, neither does it say whether it will apply to existing employment contracts that do not comply with the new law.²⁷ The law requires workplaces that receive workers through staffing agencies to provide "benefits suited for the job" but does not elaborate on this provision.²⁸ The law allows employers to cover their costs for employees' "professional technical training" by requiring employees first to agree to a set service period in exchange, but it provides no definition of "professional technical training" or a method of valuing service.²⁹ Finally, the law does not specify whether it will apply to employees (whether local or expatriate) of foreign company representative offices. Because the law leaves many details to be fleshed out through the issuance of supplemental regulations and interpretations during implementation, its full impact will remain unclear for some time. In the interim, media reports indicate that some employers are dismissing workers now in order to avoid increased safeguards against terminations once the law enters into force.³⁰

Non-Standard Workers

The new law attempts to address a gap in legal protection for workers employed through staffing agencies, who have labored without explicit legal guidelines governing various aspects of their relationships with both staffing agencies and worksites that hire through the agencies. The Labor Contract Law provides that staffing firms fulfill the same function as other employers under the law by signing contracts with workers that detail the terms of employment. Compliance with the law requires staffing firms to agree to fixed-term contracts of at least two years and to pay each worker on a monthly basis including for periods where the worker has not been dispatched to an outside employer.³¹ Compliance also requires workplaces that receive workers through staffing agencies to provide the same wages as directly hired employees.³² The law also stipulates that these workplaces provide overtime, benefits, and incremental wage increases, though the law lacks details on these requirements.³³ In addition, workers may join a union affiliated with either the staffing firm or the workplace to which they are dispatched.³⁴ Finally, the law mandates that neither staffing firms nor workplaces that receive workers may levy placement fees from workers, nor can the staffing firm keep part of the worker's

wages.³⁵ The provisions expand on more limited stipulations for staffing firms specified in the law's draft form.³⁶

The Labor Contract Law attempts to extend a modest new protection for part-time employees by mandating that these workers (defined as those who work no more than 4 hours a day or 24 hours a week) not receive less than the local minimum hourly wage.³⁷ Under the 1994 Labor Law, part-time employees had no such protection, and in 2007, news sources in China reported that fast food restaurants in Guangzhou paid part-timers 40 percent less than the minimum wage.³⁸ In addition, the law mandates that part-time employees be paid no later than every 15 days.³⁹ However, the Labor Contract Law does not require employers to sign written contracts with part-time workers, and allows employers to terminate part-time workers without notice or termination compensation.⁴⁰ The law's prospects for improving conditions for non-standard workers, therefore, are diminished not only by problems with implementation, but also by certain weaknesses in the law itself.

Terminations

The Labor Contract Law stipulates a series of guidelines governing workforce reductions. Where employers reduce their workforce by 20 or more employees—a reduction from the 50 or more workers earlier specified in the drafting process⁴¹—or if they terminate employment for fewer than 20 workers but by an amount that comprises 10 percent or more of the workforce, the union or all employees must receive 30 days' advance notice. In addition, in order to comply with the law, the employer must explain the staff reduction and “listen to the opinions of the trade union or the employees.”⁴² Such provisions reinforce the tendency that runs throughout the new law requiring notification to workers and the union, rather than negotiations, over major issues such as mass layoffs. In the event of layoffs, the law stipulates giving priority to retaining workers with open-ended contracts or long periods of employment under fixed-term contracts, as well as workers who are the sole wage earner in the family and must support children or elderly family members.⁴³ The law also forbids laying off several categories of workers, including workers near retirement, pregnant and postpartum workers, and workers who have sustained on-the-job injuries or occupational diseases, or are in the process of having such a disease diagnosed.⁴⁴ Where employers end a contract unilaterally, they must notify the union and allow the union to intervene where the termination violates the law or contractual terms.⁴⁵

The law also specifies conditions under which employers must give severance pay to employees. Severance provisions apply to categories of workers including those laid off and workers who terminate their contracts because of illegal practices on the part of the employer.⁴⁶ The law specifies a formula for determining severance based on one month of wages for each year worked; workers employed for fewer than six months receive half of the monthly wage.⁴⁷ It also specifies severance pay caps for high-wage workers.⁴⁸

Enforcement Mechanisms and Legal Liability

The Labor Contract Law includes a series of provisions to monitor enforcement of the law and penalize non-compliance. It assigns local labor officials at the county level and above with responsibility for overseeing implementation, including the enforcement of specific contractual terms.⁴⁹ The law also empowers authorities from other offices, such as construction and health officials, to monitor aspects of the law within the scope of their jurisdiction.⁵⁰ A report from the State Council Research Office issued in 2006 noted, however, a “serious shortage” of supervisors to enforce implementation of labor laws, drawing into question the effectiveness of provisions in the Labor Contract Law.⁵¹

Workers who allege an infringement of their rights may appeal to government authorities to address the matter, apply for arbitration, or initiate a lawsuit.⁵² A section on legal liability requires employers who fail to sign a contract after one month of employing a worker to pay double wages.⁵³ It also articulates a series of other remedies for workers and stipulates additional penalties for employers, staffing firms, and labor officials who violate the law.⁵⁴ One provision holds workers responsible for damages where they cause loss to an employer for ending a labor contract in violation of the law or breaching confidentiality and competition agreements.⁵⁵

Collective Bargaining

The Labor Contract Law includes six articles that specify guidelines for negotiating “collective contracts,”⁵⁶ but it does not provide for collective bargaining. Collective *contracting* provisions have appeared in Chinese law for many years.⁵⁷ The limited scope of the collective contracting process in the new law, including the lack of independent union participation, however, prevents it from translating into a meaningful mechanism for collective *bargaining*. Some leading Chinese experts argue that the meaning of the phrase “collective agreements” is rendered meaningless due to the ACFTU’s historic record of never having negotiated genuine collective bargaining agreements.⁵⁸ Many provisions in the Labor Contract Law appear to be based on the presumption that workers will negotiate individual contracts. The final draft of the Labor Contract Law includes a provision that permits workers representatives to negotiate collective contracts where no ACFTU branch exists in the workplace, but such negotiations are “under the guidance of the ACFTU at the next higher level.”⁵⁹ As three labor experts have noted, however, “the idea of [ACFTU officials] representing and protecting the legitimate rights and interests of their members in opposition to those of the employer is something unfamiliar, if not totally alien.”⁶⁰ To date, the terms of collective contracts have been limited. One study of collective contracts observed that a typical contract lacks “detailed specification of the terms and conditions of labour, and often does not include reference to many of the benefits that are in fact provided by the enterprise.”⁶¹ In addition, workers’ input in the process is limited, and employers have concluded collective contracts through model agreements rather than through a process of negotiation with employees.⁶² At the same time, use of

the mechanism is widespread. According to the ACFTU, as of September 2006, 862,000 collective contracts covering 110 million workers had been signed, representing a 14.3 percent increase since 2005 in the number of contracts signed and an 8.3 percent increase in number of workers covered.⁶³

Labor Disputes

The Labor Contract Law includes default provisions designed to function in the event of dispute over contractual terms. Workers and employers may renegotiate a contract in the event specific terms are not clearly specified in a contract, and where negotiations fail, the terms of the collective contract or “pertinent regulations of the state” apply.⁶⁴ The law also provides for the role of a labor arbitration board or people’s court in the event the validity of a contract is disputed.⁶⁵ In addition, the labor union may apply for arbitration or initiate a lawsuit in the event of dispute over a collective contract.⁶⁶ Individual workers may do the same where their rights have been violated, and the law mandates that the labor union supply “support and help” in such cases.⁶⁷ The union’s divided loyalties in practice, however, call into questions the efficacy of these provisions. In addition, the high cost of arbitration fees has the practical effect of discouraging workers from pursuing this avenue of dispute resolution.⁶⁸ Moreover, the law does not specify whether workers must first enter mediation before pursuing arbitration or legal suits, the first stage of labor dispute resolution listed in the 1994 Labor Law.⁶⁹ Unlike the 1994 Labor Law, it does not specify that workers must first exhaust arbitration options before pursuing a legal suit.⁷⁰

In addition, broader legislative developments may ultimately deny workers a full range of options for resolving labor disputes. A new draft Law on Labor Dispute Mediation and Arbitration placed before the NPC Standing Committee on August 26, 2007, if passed, would limit the role of courts in labor dispute resolution. According to a vice-chair of the Legislative Affairs Commission of the NPC Standing Committee, as cited in a Xinhua article, “The draft bill is for strengthening mediation and improving arbitration so as to help fairly solve labor disputes *without going to court* and thus safeguard employee’s legitimate rights and promote social harmony” [emphasis added].⁷¹ The draft allows companies to establish labor mediation committees in-house “so as to solve disputes at [the] grassroots level,” according to the Xinhua article, and specifies that the mediation committees may consist only of management and employees.⁷² Taken as a whole, China’s emerging national labor law regime, billed as both strengthening worker rights and grassroots dispute resolution, appears equally intended to make sure that disputes do not enter legal channels that lead to the central government. Whether this represents deliberate local empowerment as part of a measured long-term strategy to induce grassroots legal development, a strategy of crisis localization and insulation for the center, or some combination, remains an open question.

Criticism and Support for the Labor Contract Law

Observers have been divided in their evaluations of the Labor Contract Law. While noting limitations for enforcing workers rights in practice, some worker rights organizations have expressed support for the law's role in strengthening protections for workers. For example, the China Labour Bulletin, directed by Hong Kong labor activist Han Dongfang, describes the new law as "a laudable attempt to protect the rights of individual workers" in its weekly publication but contends that workers need freedom to join unions, not just the ACFTU, and to freely elect their own representatives who would have the power to negotiate with management for collective bargaining agreements. It also expressed concerns about protections in earlier drafts omitted from the final version.⁷³

Businesses and business associations have had mixed reactions to the new law. Some multi-national companies raised objections to the law during the drafting process because of provisions perceived as impediments to employers, and analysts have drawn attention to new requirements and extra costs the law may impose on foreign firms.⁷⁴

U.S. and European multi-national companies and their representative associations commented upon or urged revisions to the law after publication of a draft version in spring 2006 and continuing through the next year.⁷⁵ The American Chamber of Commerce in the People's Republic of China "called several meetings of its members and formed a team to carefully study and discuss the draft" and prepared a set of comments as part of the NPC's formal public process of soliciting opinions.⁷⁶ Some foreign corporations and their associations endorsed revisions that would weaken some of the formal protections written into draft versions of the law, according to business association, media, and other sources.⁷⁷ Among the aspects of the drafts that concerned these companies were clauses on hiring and termination procedures, layoffs, employee probationary periods, the status of temporary workers, the power of the official trade union, severance pay provisions, and employee training repayment.⁷⁸ The U.S.-China Business Council contended that limitations on the use of temporary employees would prove "prohibitively expensive" for businesses.⁷⁹ NGO sources report that some business organizations threatened to withdraw manufacturing from China.⁸⁰

In its comments on the draft law publicized in March 2006, the American Chamber of Commerce in the People's Republic of China cautioned against "impos[ing] additional and unrealistic obligations on employers" against the backdrop of poor implementation of existing labor laws, stating that the law instead "should leave enough latitude for local governments to make rules according to local needs."⁸¹ The European Chamber of Commerce expressed support for the final version of the law, after initial criticism, and urged the Chinese government to focus on adequate implementation of the law.⁸²

In answer to earlier complaints by foreign investors that the new law would have a detrimental effect on foreign investment, the director of the law department of the ACFTU stated that the Labor Contract Law "not only protects workers' interests and rights, but

also equally protects employers.”⁸³ According to one Chinese government official, “If there were some bias, it would be in favor of foreign investors because local governments have great tolerance for them in order to attract and retain investment.”⁸⁴

OTHER LEGISLATIVE DEVELOPMENTS

In August 2007, the Standing Committee of the National People’s Congress adopted an Employment Promotion Law, effective January 1, 2008, that stipulates measures relating to the promotion of employment growth and equal access to employment.⁸⁵ In addition to containing provisions aimed at prohibiting discrimination based on factors including ethnicity, race, sex, and religious belief,⁸⁶ the law addresses the equal right to work for women and ethnic minorities;⁸⁷ specifies disabled people’s right to work;⁸⁸ stipulates that rural workers’ access to work should “be equal to” urban workers;⁸⁹ and forbids employers from refusing to hire carriers of infectious diseases.⁹⁰ The law also allows workers to initiate lawsuits in the event of discrimination.⁹¹ A survey publicized in June 2007 found widespread discrimination among job-seekers, especially physically disabled people, HIV/AIDS and hepatitis B carriers, and migrant workers. Women reported discrimination related to their entitlement to maternity benefits.⁹² [See Section II— Status of Women for more information.]

If properly implemented, the law may offer support for legal advocates pursuing employment discrimination cases, but other aspects of the law raise potential difficulties. One article assigns the state to spur workers to develop a “proper” mentality in job selections.⁹³ Another provision carves out a role for Party-controlled organizations like the Communist Youth League to aid in implementation of the law, which may dampen the role of civil society groups that promote implementation in ways that challenge Party policy.⁹⁴ Potentially beneficial safeguards also face barriers due to a lack of clearly defined terms. A provision to promote the employment of workers with “employment hardship,” for example, defines this category of workers in general terms but leaves precise details to local authorities, introducing the possibility of uneven protections that reduce the law’s overall impact.⁹⁵ In addition, the law specifies the establishment of an unemployment insurance system, but provides no extensive details on implementation.⁹⁶

CONDITIONS FOR CHINESE WORKERS

Wages

The 1994 Labor Law guarantees minimum wages for workers, and assigns local governments to set wage standards for each region.⁹⁷ The new Labor Contract Law improves formal monitoring requirements to verify workers receive minimum wages. Article 74 requires local labor bureaus to monitor labor practices to ensure rates adhere to minimum wage standards. Article 85 imposes legal liability on employers who pay rates below minimum wage. In addition, Article 72 guarantees minimum hourly wages for part-time workers.⁹⁸

The government reported progress in 2006 in establishing hourly minimum wage standards in most of its provinces. According to a

report from the Ministry of Labor and Social Security (MOLSS) released in October 2006, 29 of China's 31 provincial-level areas had established hourly minimum wage standards, compared to 23 provinces in 2005. In addition, the report found that all 31 provincial-level areas maintained monthly minimum wage standards. The report shows greater local government compliance in 2006 than in 2005 with requirements to review monthly minimum wage standards every two years.⁹⁹ Local government discretion to set minimum wages has resulted in wide variances across provinces.¹⁰⁰ In 2006, the All-China Federation of Trade Unions reportedly urged provincial-level governments to increase minimum wages.¹⁰¹

Illegal labor practices have undermined minimum wage guarantees. In an investigation of working conditions for migrant workers in China, Amnesty International noted that "wages of internal migrant workers are effectively reduced by management through inadequate pay for compulsory overtime, fines, unpaid wages, and other methods."¹⁰² The investigation found that some factories' fines for tardiness—calculated for each minute a worker is late—could constitute a major reduction in a worker's daily salary.¹⁰³ (See the discussions on "wage arrearages" and "working hours," below, for additional information.)

China's leaders have expressed concerns over the growing income gap between rural and urban workers, and between earners at the top of the income ladder and those at the bottom. In July 2006, the government announced it would institute reforms aimed at cutting the wealth gap to promote a "harmonious" society and "improve the socialist market economy," with focus on increasing the middle class and improving wages of low-level government employees.¹⁰⁴ Party officials and commentators have not yet settled on a firm opinion of the wealth gap problem. In November 2006, Ministry of Finance official Wang Bao'an outlined a new wage plan aimed at limiting the rate of wage increases at the high end of the scale; standardizing income subsidies; stabilizing the wages of middle-income earners; and raising the income of low-wage earners.¹⁰⁵ A commentary reprinted in the *China Economic Daily*, however, argued that "the existence of a high-income group is inevitable in a market economy," and argued against "robbing the rich to give to the poor."¹⁰⁶ Government official Qiu Xiaoping, of the Ministry of Labor and Social Security, agreed that the government should not intervene in setting wages in a socialist market economy where a "salary is the market price of labor."¹⁰⁷

Wage Arrearages

Wage arrearages remains a serious problem, especially for migrant workers. In June 2006, the Ministry of Communications, which oversees China's transportation sector, issued a circular ordering provincial-level departments to finish resolving migrant workers' claims for unpaid wages from work on transportation projects by the end of 2006. The Ministry circular responds to a 2004 State Council decree to resolve all migrant worker wage arrears that have resulted from unpaid debt on government projects.¹⁰⁸ Government efforts have helped lower the amount of outstanding unpaid wages, but progress in this area remains limited. Employers in the construction sector still owe workers a re-

ported 10 billion yuan (US\$1.2 billion).¹⁰⁹ An inspection in Gansu province found that companies owed 130 million yuan (US\$16.6 million) in back wages to 130,000 migrant workers, mainly in the construction and restaurant industries.¹¹⁰

Some local governments have issued legal guidance and taken other steps to address wage arrearages. Trial legal measures implemented in Qinghai province in 2006 require construction companies to set aside and deposit wage funds before projects begin, to ensure that workers will be paid when the project is completed. The measures punish enterprises that fail to deposit sufficient funds, that do not make their deposits in a timely manner, or that provide false contract information, and allow authorities to bar non-compliant firms from participating in the construction market.¹¹¹ In Guangdong province, authorities had barred 30 enterprises for failing to pay employee wages as of June 2006. Though the government had given the companies previous warnings and implemented other punitive measures, the companies failed to remedy an outstanding debt of over 20 million yuan (US\$2.5 million) to over 8,000 workers.¹¹²

Subcontracting practices within industry exacerbate the problem of wage arrearages. When investors and developers default on their payments to construction companies, workers at the end of the chain of labor subcontractors lack the means to recover wages from the original defaulters. Subcontractors, including companies that operate illegally, neglect their own duties to pay laborers and leave workers without any direct avenue to demand their salaries. In some cases, subcontractors will pay partial wages to force workers to stay on site to finish construction projects.¹¹³

Wage arrearages have resulted in protests and demonstrations by workers, and some Chinese employers have responded by hiring thugs or gangsters to drive off the protesters. In July 2007, a group of armed gangsters beat up 300 migrant workers who had gone on strike in Guangdong province to collect four months of back pay. The subcontractor construction company claimed that it could not pay the workers because it had not been paid by the contractor.¹¹⁴

Workers who try to take legal measures to recover lost wages face prohibitive expenses and limited possibilities of recovering wages, even where adjudicators decide in their favor.¹¹⁵ Despite these obstacles, there has been a steady increase in the number of workers who turn to labor arbitration to settle their disputes with employers.¹¹⁶ In addition to wage arrearages, sources of disputes have included illegal and improperly compensated overtime and failure to adhere to labor contracts.¹¹⁷

Working Hours

China's labor law mandates a maximum 8-hour work day and 44-hour average work week, but compliance with these standards is weak.¹¹⁸ One specialist in China's compliance practices has estimated that work weeks above 80 hours are common in the apparel industry and other export sectors.¹¹⁹ A study of migrant workers in southern China found that workers were subject to forced overtime to upwards of 16 hours a day. The report noted that employers dodged paying overtime rates by compensating workers on a

piece-rate basis with quotas high enough to avoid requirements to pay overtime wages. Workers who failed to comply with overtime requirements or who were late faced fines.¹²⁰

Suppliers in China avoid exposing themselves to claims of requiring illegal, long hours by hiring firms that help them set up double booking systems designed to deceive foreign importers who aim to adhere to Chinese rules and regulations. A detailed account of the practice found that these firms not only help suppliers set up fake books for audit, but also coach managers and employees on answers to give the auditors. One specialist has estimated that only 5 percent of Chinese suppliers comply with overtime regulations, and 20 percent adhere to wage regulations.¹²¹

Benefits

The routine denial of legally guaranteed job benefits to workers by some employers is a serious problem in China. Gaps in social security and labor insurance coverage remain widespread. Though the government has reported that 100 million workers had unemployment insurance as of November 2006, this figure accounted for only one-seventh of the total 760 million workers in the country.¹²² An International Labor Organization study found that enterprises dodge requirements to provide contributions for old-age insurance by misreporting the number of employees and wages, as well as by keeping workers in irregular employment positions.¹²³ In addition to failing to secure social security safeguards, employers also have denied workers benefits ranging from paid vacations to sick leave.¹²⁴ Workers have described being fined for taking sick days.¹²⁵

Women workers face additional obstacles, as employers withhold maternity leave and related benefits.¹²⁶ A 2006 survey of women migrant workers conducted by the All-China Women's Federation found that only 6.7 percent of surveyed workers had maternity insurance. Of the 36.4 percent who reported that they were allowed to take maternity leave, 64.5 percent said this leave was unpaid.¹²⁷ The survey also found that only 23.8 percent have medical insurance and 19.1 percent have occupational insurance.¹²⁸ [See Section II—Status of Women for more information.]

Systemic failings of local governance exacerbate shortcomings in the provision of social security benefits, as local governments bear responsibility for providing coverage for retirement, illness or injury, occupational injuries, joblessness, and childbirth.¹²⁹ After local mismanagement of the pension system in Shanghai, central government departments issued a series of legal guidance in 2006 to increase oversight of fund management.¹³⁰ Li Jinhua, auditor-general of the National Audit Office, pledged in 2007 to stop the misuse of pension funds and said local governments would be held responsible for repaying misused funds out of their own budgets.¹³¹ Despite these measures, fundamental flaws within the system persist. As one overseas media source observed, "The party has talked for decades about building a social safety net, yet as the working population ages the government isn't investing nearly enough to head off looming crises in health care, education, and pensions."¹³² Chinese officials reported in 2006 that only 6 percent of the popu-

lation benefited from the existing social insurance system and pledged to enlarge participation by 2020.¹³³

In 2006, the government announced it would take “compulsory measures” to promote employer participation in on-the-job injury insurance for migrant workers, expanding coverage to over 140 million people by the year 2010. By the end of July 2006, 18.71 million migrant workers nationwide were covered by the insurance, while 87 million workers overall had such insurance as of April 2006.¹³⁴

WORKER SAFETY

Over the last year, the Chinese government enhanced its efforts to enforce work safety laws by conducting national inspections, promoting accident prevention through safety campaigns, enforcing the closure of small, illegal mines, and actively seeking international cooperation. According to latest statistics provided by the Chinese government, mine fatalities decreased by 20.1 percent in 2006 compared to 2005; fatalities during the first eight months of 2007 also decreased by 15.7 percent compared to 2006, according to latest statistics provided by the government.¹³⁵

Industrial Accidents and Occupational Health

Industrial injuries and deaths remain widespread in China, despite reported decreases in the number of workplace deaths and accidents.¹³⁶ In February 2006, the State Administration for Workplace Safety (SAWS) closed nearly 36,000 businesses that had failed to obtain safety licenses by the end of 2005.¹³⁷ The government amended the Criminal Law in June 2006 to broaden punishments for work safety violations. The amendments included new penalties for “responsible” personnel who hinder rescue efforts by covering up or failing to report accidents, though the amendments do not clarify how responsibility for reporting such incidents is determined.¹³⁸ In August 2006, the government pledged over US\$50 billion to lower workplace accidents.¹³⁹

China has high rates of occupational disease and injuries. As of 2006, official statistics indicated that 440,000 workers suffered from the respiratory condition pneumoconiosis, as a result of exposure to toxic particles. Unofficial estimates place the number as high as 5 million.¹⁴⁰ In 2006, government officials estimated the total number of workers with occupational illnesses may be as high as 700 million.¹⁴¹ Workers have reported that workplaces fail to educate them on occupational hazards or provide adequate safety equipment.¹⁴²

Coal Mine Accidents

China’s coal mining sector continues to have high accident and death rates, and without independent worker organizations, coal miners are limited in their ability to promote safer working conditions. Though government statistics indicate a decline in deaths in coal mine disasters, official statistics are unreliable, and the reported death rate remains high nonetheless. In 2006, officials indicated that 4,746 workers died in coal mine accidents, representing a decline of 20 percent from 2005.¹⁴³ Unofficial estimates have placed the number as high as 20,000, not including the number of

workers who die from mining-related diseases.¹⁴⁴ The central government issued a series of legal guidance in 2006 aimed at addressing coal mine safety. Interim provisions issued in November 2006, for example, stipulate penalties for failing to correct hidden dangers that result in an accident; concealing, misreporting, or providing a delayed report of an accident; and allowing mines with revoked licenses to continue operations.¹⁴⁵

Despite measures to penalize violations of coal mine safety, punishment of coal mine officials is limited in practice. In a Supreme People's Procuratorate investigation of officials charged for their involvement in mining disasters, 95.6 percent were not given any punishment or were given suspended sentences.¹⁴⁶ In one case, where 56 miners died in a flood at a coal mine in the Xinjiang Uighur Autonomous Region, public outrage resulted in a retrial of the township chief, whose sentence was increased from one year to 12.¹⁴⁷ Officials and mine operators have thwarted efforts to reconstruct evidence from coal mine disasters. After a series of accidents in April 2007, China's chief safety officer, SAWS head Li Yizhong, commented that mine operators "sabotaged the (accident) scenes, destroyed incriminating evidence and removed the bodies."¹⁴⁸

China's coal is the source of its huge economic growth rate and some of its worst corruption.¹⁴⁹ Weak central government control over local governments has forced central authorities to postpone closing many small mines until 2010. These mines are the most dangerous ones, but are highly lucrative for local owners. Mine owners raise production levels above the legal limit, and if accidents happen, bribe local officials to ignore their practices. Overseas media reported that mine owners have sent corpses to other provinces to avoid requirements to report accidents with more than three deaths.¹⁵⁰

MIGRANT WORKERS

Chinese migrants face numerous obstacles in the protection of their labor rights, and employers have exploited migrant workers' uprooted status to deny them fair working conditions. A report from the State Council Research Office found that wages for migrant workers are "universally low;" workplaces lack "the most basic labor protection[s];" migrant workers "engage in overly intensive labor for excessively long hours," without a guaranteed right to rest; and migrant workers are "unable to obtain employment rights and public employment services" on a par with permanent urban residents.¹⁵¹ Migrant workers are reportedly denied a total of 100 billion yuan in back pay, with 94 percent of migrant workers in the construction sector not paid on time.¹⁵² The central government has enacted a series of decrees to ease restrictions for migrant workers, but the measures lack sufficient legal force and sustainability at the local government level to ensure consistent implementation. [See Section II—Freedom of Residency and Travel for more information about migrant workers.]

Thirty-one Chinese city governments agreed to a plan in 2007 to set up a network of legal aid centers among the cities to improve legal access for migrant workers and ensure accountability among legal aid providers. Called the Chongqing Pact, the agreement obliges legal aid centers in the network to help migrant workers

with issues such as labor disputes and work-related injuries, regardless of a worker's residency status. It also requires legal aid centers in a migrant worker's original place of residency to assist in the process.¹⁵³ The program may be designed in part to avoid the demonstrations, and sometimes violence, that break out when workers are not paid.

Chinese officials reported in June 2007 on a draft plan to change its pension system to address migrant workers' needs. Under the proposed plan, those with steady employment would join current pension schemes, and those without a permanent place of employment would enter a new program designed specifically for that population. Under the proposed system, employers and employees would make mandatory contributions to the fund that would be shifted to accounts in the migrants' home towns but that would retain portability as migrants change jobs and relocate.¹⁵⁴ A 2006 investigation on old-age pensions by the International Labor Organization identified an existing lack of portability of pension funds as one of the "major barriers" to coverage for migrants.¹⁵⁵

CHILD LABOR

Child labor remains a persistent problem within China, despite legal measures to prohibit the practice. As a member of the International Labor Organization (ILO), China has ratified the two core conventions on the elimination of child labor.¹⁵⁶ China's Labor Law and related legislation prohibit the employment of minors under 16,¹⁵⁷ and national legal provisions prohibiting child labor stipulate a series of fines for employing children.¹⁵⁸ Under the Criminal Law, employers and supervisors face prison sentences of up to seven years for forcing children to work under conditions of extreme danger.¹⁵⁹ Systemic problems in enforcement, however, have dulled the effects of these legal measures, though the overall extent of child labor in China is unclear due to the government categorizing data on the matter as "highly secret."¹⁶⁰ A report on child labor in China found that child laborers generally work in low-skill service sectors as well as small workshops and businesses, including textile, toy, and shoe manufacturing enterprises.¹⁶¹ It noted that many under-age laborers are in their teens, typically ranging from 13 to 15 years old, a phenomenon exacerbated by problems in the education system and labor shortages of adult workers.¹⁶² Children in detention facilities also have been subjected to forced labor.¹⁶³

Events from the past year underscore the government's inability to prevent child labor. Underage workers were among the forced laborers found working in brick kiln mines in 2007, highlighting the existence of what the ILO terms the "worst forms of child labor."¹⁶⁴ [See the subsection on "Forced Labor," below, for more information on forced labor in brick kilns.] A company that produces Olympics-related products admitted in 2007 that children as young as 12 years old had worked in the factory.¹⁶⁵

Although the Chinese government has condemned the use of child labor and pledged to take stronger measures to combat it,¹⁶⁶ it continues to actively endorse other forms of child labor under the guise of work-study activities. Under work-study programs implemented in various parts of China, children as young as elementary school students pick crops and engage in other physical labor. In

the Xinjiang Uighur Autonomous Region (XUAR), for example, some 800,000 students began their 2006 academic year by picking cotton in school-organized work-study programs, while elementary school students in some parts of the XUAR were forced to pick hops. The XUAR government issued legal guidance that year to outline the contours of this labor system, stating that priority should be placed on using labor revenue to buy accident insurance for students and liability insurance for schools. Reports from the region indicated that in recent years students had been made to work in 12-hour shifts and suffered injuries from dangerous working conditions and sexual abuse from adult laborers. [See Section II—Ethnic Minority Rights for more information on conditions in the XUAR.] Also in 2006, over 10,000 students in the fourth grade and higher in a city in Gansu province were made to harvest corn.¹⁶⁷

Central government legislation allows this form of child labor. National provisions prohibiting child labor provide that “education practice labor” and vocational skills training labor organized by schools and other educational and vocational institutes do not constitute the use of child labor when such activities do not adversely affect the safety and health of the students.¹⁶⁸ The Education Law supports schools that establish work-study and other programs, provided that the programs do not negatively affect normal studies.¹⁶⁹ A nationwide regulation on work-study programs for elementary and secondary school students outlines the general terms of such programs, which it says are meant to cultivate morals, contribute to production outputs, and generate resources for improving schools.¹⁷⁰ These provisions contravene China’s obligations as a Member State to ILO conventions prohibiting child labor.¹⁷¹ In 2006, the ILO’s Committee of Experts on the Applications of Conventions and Recommendations “expresse[d] . . . concern at the situation of children under 18 years performing forced labour not only in the framework of re-educational and reformative measures, but also in regular work programmes at school.”¹⁷²

Beyond the parameters of government-approved work study programs, some teachers have used their position of authority to induce students into exploitative working conditions in factories far from home. In 2006, for example, a teacher in Henan province recruited 84 female students from her school to work in a can factory in Zhejiang province. Students labored under exploitative conditions until some escaped. Authorities rescued the remaining students.¹⁷³ The same year, teachers at a school in Shaanxi province arranged for approximately 600 students, including under-age minors, to do “work-study” in an electronics factory in Guangdong province, where students were reported to work up to 14 hours a day without full wages.¹⁷⁴

FORCED LABOR

In May and June 2007, Chinese media and Internet activists uncovered a massive network of forced labor in brick kilns in Shanxi and Henan provinces. Reports indicated that people forced to work in the kilns included children and mentally challenged adults kidnapped by human traffickers and sold to the kilns, where they were beaten, denied food, and forced to work up to 20 hours per

day. In other cases, workers were lured to the kilns through promises of high salaries.¹⁷⁵ One father described his son's condition when he found him:

My son was totally dumb, not even knowing how to cry, or to scream or to call out "father"[. . .] He was in rags and had wounds all over his body. Within three months he had lost over [22 pounds].¹⁷⁶

Chinese officials announced in August 2007 that a nationwide campaign led to the rescue of 1,340 enslaved workers,¹⁷⁷ but government reports of the size and scope of the problem appeared to conflict with accounts by citizens. Parents from Henan province, for example, said that up to 1,000 children were forced into labor in Shanxi province, but Shanxi provincial vice-governor Xue Yanzhong said that authorities had inspected 4,861 brick kilns in the province and identified only 15 child workers. According to Xue, only 17 of the brick kilns inspected used forced labor.¹⁷⁸

The reports of forced labor reveal a longstanding phenomenon, according to an editorial in the Chinese newspaper *Southern Weekly*:

The dirty slave trade has been thriving for a long time but the local government didn't take any action. It's become an actual accomplice. The scandal is so massive and catastrophic that it poses a serious threat to public security.¹⁷⁹

According to a deputy director from the Ministry of Public Security, official knowledge of the forced labor system goes back as far as 2004. At that time, police discovered child labor being used in brick kilns in Henan province after a parent asked for help in finding his child. The deputy director considered the problem "solved . . . under the instructions of our leaders." A kiln contractor reported that many kiln operators received advance notice of the inspections from local police and hid enslaved laborers during inspections. Kilns were only closed if they had no business licenses or did not adhere to safety and environmental standards, not because they were using forced labor.¹⁸⁰

By the middle of July 2007, 29 mine supervisors and owners received prison sentences for their involvement in forced labor. Of those convicted, a foreman who beat a mentally disabled worker to death was given the death penalty. The owner of this kiln, a son of a local Communist Party official, received a sentence of nine years. Other defendants were given prison terms from two years to life in prison.¹⁸¹ Critics have complained that these few convicted criminals were being used to deflect attention from the involvement of Party officials.¹⁸² By August, no senior officials had been punished and only 95 low ranking officials had been reprimanded.¹⁸³ [For information regarding Chinese officials' disclosure of information on the forced labor scandal see Section II—Freedom of Expression.]

In June, the All-China Lawyers Association asked the National People's Congress Standing Committee to introduce new legislation making slavery a criminal charge. The Association noted that current law applies only to legally recognized employers and does not apply to individuals or illegal workplaces.¹⁸⁴

U.S.-CHINA BILATERAL COOPERATION

The U.S. Department of Labor and two Chinese government agencies continued to conduct cooperative activities during 2007 on wage and hour laws, occupational safety and health, mine safety, and pension oversight. The two countries renewed Letters of Understanding related to these areas and pledged to continue the cooperative activities for four more years. In addition, two new cooperative agreements were signed in the areas of unemployment insurance program administration and labor statistics.¹⁸⁵

Endnotes

- ¹ See the discussion on the “Labor Contract Law,” *infra*, for more information.
- ² See, e.g., Guan Xiaofeng, “Labor Disputes Threaten Stability,” *China Daily*, 30 January 07 (Open Source Center, 30 January 07).
- ³ These other rights are “the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.” ILO Declaration on Fundamental Principles and Rights at Work, 18 June 98, International Labour Organization (Online), art. 2 [hereinafter ILO Declaration].
- ⁴ See “ILO Tripartite Constituents in China,” International Labour Organization (Online), last visited 27 September 07.
- ⁵ ILO Declaration, art. 2. China has been a member of the ILO since its founding in 1919. For more information, see the country profile on China in the ILO database of labor, social security and human rights legislation (NATLEX) (Online).
- ⁶ “Ratifications of the Fundamental Human Rights Conventions by Country,” International Labor Organization (Online), 11 September 07.
- ⁷ “China: Forced Labor and Trafficking: The Role of Labour Institution in Law Enforcement and International Cooperation,” International Labour Organization (Online), August 05.
- ⁸ See generally PRC Labor Law, enacted 5 July 94, art. 12.
- ⁹ International Covenant on Economic, Social, and Cultural Rights adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 3 January 76, art. 8.
- ¹⁰ Declarations and Reservations, United Nations Treaty Collection (Online), 5 February 02. Article 10 of China’s Trade Union Law establishes the All-China Federation of Trade Unions as the “unified national trade union federation,” and Article 11 mandates that all unions must be approved by the next higher-level union body, giving the ACFTU an absolute veto over the establishment of any local union and the legal authority to block independent labor associations. PRC Trade Union Law, enacted 3 April 1992, amended 27 October 01, art. 10, 11.
- ¹¹ International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 22. The Chinese government has committed itself to ratifying, and thus bringing its laws into conformity with, the ICCPR and reaffirmed its commitment as recently as April 13, 2006, in its application for membership in the UN Human Rights Council. China’s top leaders have previously stated on three separate occasions that they are preparing for ratification of the ICCPR, including in a September 6, 2005, statement by Politburo member and State Councilor Luo Gan at the 22nd World Congress on Law, in statements by Chinese Premier Wen Jiabao during his May 2005 Europe tour, and in a January 27, 2004, speech by Chinese President Hu Jintao before the French National Assembly. As a signatory to the ICCPR, China is required under Article 18 of the Vienna Convention on the Law of Treaties, to which it is a party, “to refrain from acts which would defeat the object and purpose of a treaty” it has signed. Vienna Convention on the Law of Treaties, enacted 23 May 69, entry into force 27 January 80, art. 18.
- ¹² PRC Trade Union Law, art. 2, 4.
- ¹³ For an overview of ACFTU programs that have promoted worker rights, see the section on “ACFTU Role in Protecting Worker Rights” in the CECC 2006 Annual Report, 67. For a summary of surveys of trade union leadership in Guangzhou and Shenyang, see “Is the All China Federation of Trade Unions Merely a Front for the Communist Party and Enterprise Management?,” *China Labour Bulletin* (Online), 1 August 07.
- ¹⁴ See the CECC Political Prisoner Database for more details.
- ¹⁵ According to information from the ACFTU reported by *CSR Asia Weekly*, the government enacted its first comprehensive labor law in 1994, and officials first proposed supplementing it with a labor contract law in 1996. After drafting of the law stalled in 1998, work on a new labor contract law began in 2004. “Labour Contract Law of the PRC,” *CSR Asia Weekly* (Online), 4 July 07. “China’s Legislature Adopts Labor Contract Law,” *Xinhua* (Online), 29 June 07. The government claimed that more than 65% of the comments were from Chinese workers. “Chinese Public Makes Over 190,000 Suggestions on Draft Labor Contract Law,” *Xinhua*, 21 April 06 (Open Source Center, 21 April 06).
- ¹⁶ CECC Staff Interviews.
- ¹⁷ PRC Labor Contract Law, adopted 29 June 07, art. 2.
- ¹⁸ PRC Labor Law, art. 16, 19.
- ¹⁹ PRC Labor Contract Law, art. 10. If no contract exists at the time the relationship starts, it must be signed within one month.
- ²⁰ *Ibid.*, art. 14.
- ²¹ *Ibid.*, art. 14.
- ²² *Ibid.*, art. 17.
- ²³ *Ibid.*, art. 36–50 (on terminations generally); 57–67 (on workers employed through staffing firms); and 80–95 (on legal liability). See also discussion *infra*.
- ²⁴ Josephine Ma, “New Law To Protect Mainland Workers,” *South China Morning Post* (Online), 30 June 07.
- ²⁵ For an overview of several surveys on the use of labor contracts, see “Internal Migrants: Discrimination and Abuse,” *Amnesty International* (Online), 1 March 07.
- ²⁶ As the *China Labour Bulletin* observes, “All too often in China, employers can disregard the terms and conditions of the contracts they have signed with their workers and impose their own terms and conditions as and when it suits them.” “National People’s Congress Approves New Labour Contract Law,” *China Labour Bulletin* (Online), 29 June 07.
- ²⁷ Article 97 states that written contracts established before the law’s implementation remain in force, but includes no provisions to address existing written contracts that do not abide by the terms of the Labor Contract Law. PRC Labor Contract Law, art. 97.
- ²⁸ *Ibid.*, art. 62.

- ²⁹ *Ibid.*, art.22.
- ³⁰ “Employers Sacking Workers Before the Labour Contract Law Is Implemented,” China Labour Bulletin (Online), 14 September 07.
- ³¹ PRC Labor Contract Law, art.58.
- ³² *Ibid.*, art.63.
- ³³ *Ibid.*, art.62(3), 62(5).
- ³⁴ *Ibid.*, art.64.
- ³⁵ *Ibid.*, art. 60.
- ³⁶ See, e.g., PRC Labor Contract Law (Draft) [Zhonghua renmin gongheguo laodong hetong fa (cao an)], 20 March 2006, art. 12, 24, 40.
- ³⁷ PRC Labor Contract Law, art. 72.
- ³⁸ “Draft Labour Contract Law Improves Protection of Part-Time Workers,” Xinhua (Online), 24 June 07. The foreign-owned fast food restaurants investigated also denied part-time workers benefits and failed to abide by overtime regulations, among other violations. “Fast Food and Wages in China,” CSR Asia, (Online), 12 April 07.
- ³⁹ PRC Labor Contract Law, art. 72.
- ⁴⁰ *Ibid.*, art. 71.
- ⁴¹ PRC Labor Contract Law (Draft), art. 33.
- ⁴² PRC Labor Contract Law, art. 41.
- ⁴³ *Ibid.*, art. 41.
- ⁴⁴ *Ibid.*, art. 42.
- ⁴⁵ *Ibid.*, art. 43.
- ⁴⁶ *Ibid.*, art. 46.
- ⁴⁷ *Ibid.*, art. 47.
- ⁴⁸ *Ibid.*, art. 47.
- ⁴⁹ *Ibid.*, arts. 73–74.
- ⁵⁰ *Ibid.*, arts. 76.
- ⁵¹ Translated portions of the study, conducted by the State Council Research Office Study Group and originally published as the book China Peasant Worker Research Report in April 2006, is available at “PRC: Excerpts of State Council Research Report on Migrant Workers,” Open Source Center, 12 September 07.
- ⁵² PRC Labor Contract Law, art. 77.
- ⁵³ *Ibid.*, art. 82.
- ⁵⁴ See generally Chapter 7, Legal Liability (articles 80–95) in the Labor Contract Law.
- ⁵⁵ *Ibid.*, art. 90. Article 86 holds either party liable where an invalid contract causes harm to one side.
- ⁵⁶ *Ibid.*, arts. 51–56. The draft of the law released in March 2006 provided for collective bargaining but lacked the consolidated set of provisions of the final version. PRC Labor Contract Law (Draft), art. 7, 11, 23, 44, 45, 46, 48, 50, 51.
- ⁵⁷ PRC Trade Union Law, art. 20; Provisions on Collective Contracts [Jiti hetong guiding], issued 20 January 04.
- ⁵⁸ CECC Staff Interviews.
- ⁵⁹ PRC Labor Contract Law, art. 51. See also “National People’s Congress Approves New Labour Contract Law,” China Labour Bulletin.
- ⁶⁰ Simon Clarke, Chang-Hee Lee, and Qi Li, “Collective Consultation and Industrial Relations in China,” 42 Brit. J. Industrial Relations 235, 242 (2004).
- ⁶¹ *Ibid.*, 246–247.
- ⁶² Information provided by U.S. Embassy Beijing.
- ⁶³ “ACFTU Issues ‘2006 Blue Book on Chinese Trade Unions Safeguarding the Rights and Interests of Workers,’” People’s Daily, reprinted on China Trade Union News (Online), 15 May 07.
- ⁶⁴ PRC Labor Contract Law, art. 18.
- ⁶⁵ *Ibid.*, art. 26.
- ⁶⁶ *Ibid.*, art. 56.
- ⁶⁷ *Ibid.*, art. 77–78.
- ⁶⁸ For a description of costs involved, see “Xinjiang People’s Congress Representative Appeals for Abolition of Labor Arbitration Procedure” [Xinjiang renda daibiao huyu quxiao laodong zhongcai qianzhi de falü chengxu], Xinhua (Online), 20 January 06.
- ⁶⁹ PRC Labor Law, art. 77–84.
- ⁷⁰ Compare PRC Labor Law, enacted 5 July 94, art. 79 to PRC Labor Contract Law, adopted 29 June 07, arts. 26, 56, 77.
- ⁷¹ “Law To Deal with Rising Number of Labor Disputes To Be Enacted,” Xinhua, 27 August 07, reprinted on the National People’s Congress Web site.
- ⁷² *Ibid.*
- ⁷³ “National People’s Congress Approves New Labour Contract Law,” China Labour Bulletin. For additional evaluations, see, e.g., Tim Costello, Brendan Smith, and Jeremy Brecher, “Labor Rights in China,” Foreign Policy in Focus (Online), 21 December 06.
- ⁷⁴ See, e.g., Bill Savadove, “Firms Say New Labour Law is a Step Backwards,” South China Morning Post (Online), 21 March 06; Bill Savadove, “Labour Law Won’t Go to NPC in March; But Regulation—Which Foreign Firms Say is Too Strict—Still Expected To Pass This Year,” South China Morning Post (Online), 31 January 07; Joe McDonald, “China Due to Enact New Labor Law After Heated Debate,” Associated Press, 27 June 07; Joseph Kahn and David Barboza, “China Passes a Sweeping Labor Law,” New York Times (Online) 30 June 07.
- ⁷⁵ CECC Staff Interviews. Comments addressed the draft version released in March 2006 and subsequent revisions. See, e.g., American Chamber of Commerce in the People’s Republic of China, “Comments on the Draft Labor Contract Law of the People’s Republic of China,” 19 April 06; US-China Business Council, “Comments on the Draft Labor Contract Law of the People’s Republic of China (Draft of March 20, 2006),” 19 April 06; American Chamber of Commerce in Shanghai, “AmCham Shanghai and AmCham China (Beijing) Comments on Draft Two of the

PRC Labor Contract Law,” last viewed 7 October 07; US-China Business Council, “Comments on the Draft People’s Republic of China Law on Employment Contracts (Draft of December 24, 2006),” last viewed 7 October 07.

⁷⁶American Chamber of Commerce, “Comments on the Draft Labor Contract Law.”

⁷⁷CECC Staff Interviews; US-China Business Council, “Comments on the Draft People’s Republic of China Law on Employment Contracts (Draft of December 24, 2006);” Sarah Schafer, “Now They Speak Out,” *Newsweek International* (Online), 28 May 07; Andrew Batson and Mei Fong, “China Toils Over New Labor Law,” *The Wall Street Journal* (Online), 7 May 2007; “Undue Influence: Corporations Gain Ground in Battle Over China’s New Labor Law,” *Global Labor Strategies*, March 2007; “The Chinese Draft Contract Law—A Global Debate,” *CSR Asia*, 25 April 2007; “Behind the Great Wall of China: U. S. Corporations Opposing New Rights for Chinese Workers,” *Global Labor Strategies* (Online), last viewed 7 October 07.

⁷⁸CECC Staff Interviews; US-China Business Council, “Comments on the Draft People’s Republic of China Law on Employment Contracts (Draft of December 24, 2006);” Batson and Fong, “China Toils Over New Labor Law;” Schafer, “Now They Speak Out;” “The Chinese Draft Contract Law,” *CSR Asia*; “Behind the Great Wall of China,” *Global Labor Strategies*; “Twenty-Seven Democrats Ask Bush To Support China’s Proposed Labor Law,” *Daily Labor Report*, No. 213, 3 November 2006, A–8.

⁷⁹US-China Business Council, “Comments on the Draft People’s Republic of China Law on Employment Contracts (Draft of December 24, 2006).”

⁸⁰“Behind the Great Wall of China,” *Global Labor Strategies*, 3; “The Chinese Draft Contract Law,” *CSR Asia*.

⁸¹American Chamber of Commerce, “Comments on the Draft Labor Contract Law.” AmCham disputed reports that it had opposed the draft Labor Contract Law. See American Chamber of Commerce in the People’s Republic of China, “Re: Press Reports Concerning AmCham-China and the PRC Draft Labor Contract Law,” 18 June 07.

⁸²“European Union Chamber of Commerce in China Welcomes the Promulgation of the Labour Contract Law,” *European Chamber of Commerce Web site* (Online), 1 July 07. Joe McDonald, “China Due To Enact New Labor Law After Heated Debate.”

⁸³Guan Xiaofeng, “Labor Law ‘Will Not Hurt Investment Environment,’” *China Daily*, 3 July 07.

⁸⁴Quoted in Jude Blanchette, “Key Issues for China’s New Labor Law: Enforcement,” *Christian Science Monitor*, 2 July 07.

⁸⁵PRC Employment Promotion Law, adopted 30 August 07, art. 28.

⁸⁶*Ibid.*, art. 3. Other laws have also included this provision. See, e.g., PRC Labor Law, art. 12.

⁸⁷PRC Employment Promotion Law, art. 27, 28.

⁸⁸*Ibid.*, art. 29.

⁸⁹*Ibid.*, art. 31.

⁹⁰*Ibid.*, art. 30.

⁹¹*Ibid.*, art. 62.

⁹²“Survey: Discrimination in Job Market Common,” *Xinhua* (Online), 27 June 07.

⁹³PRC Employment Promotion Law, art. 7.

⁹⁴*Ibid.*, art. 9.

⁹⁵*Ibid.*, art. 52.

⁹⁶*Ibid.*, art. 16.

⁹⁷PRC Labor Law, art. 48.

⁹⁸PRC Labor Contract Law, art. 72, 74, 85.

⁹⁹“Most Provincial-Level Governments Issue Hourly Minimum Wage Standards,” CECC China Human Rights and Rule of Law Update, November 2006, 7–8. Legal provisions governing minimum wages require provincial-level governments to formulate the minimum wage standards for their area, in consultation with local unions and businesses. The MOLSS has two weeks to review draft standards submitted by the local labor and social security bureaus. The standards are deemed approved if the MOLSS does not raise objections during this period. The provisions set forth a number of factors that provincial governments should consider in calculating the minimum wage, including the average salary, minimum living expenses, unemployment rate, and level of economic development in their area. See generally Provisions on Minimum Wages [Zui di gongzi guiding], issued 20 January 04.

¹⁰⁰See “Most Provincial-Level Governments Issue Hourly Minimum Wage Standards,” CECC China Human Rights and Rule of Law Update, November 2006, 7–8, noting that the 2006 MOLSS report recorded the highest monthly minimum wage in Shenzhen, at 810 yuan (US\$101.25), the highest hourly minimum wage in Beijing, at 7.9 yuan (US\$0.99), and the lowest monthly and hourly minimum wages in Jiangxi, at 270 yuan (US\$33.75) and 2.7 yuan (US\$0.34), respectively.

¹⁰¹“China’s Trade Union Calls for Minimum Wage Boost,” *Xinhua* (Online), 19 May 07.

¹⁰²“Internal Migrants: Discrimination and Abuse,” *Amnesty International*.

¹⁰³*Ibid.*

¹⁰⁴“Government To Reduce Income Gap Through Reform,” *China Daily*, 18 July 06 .

¹⁰⁵“Ministry of Finance 8-Item Work Deciphered: Wage Revolution ‘Limits High [Wages], Stabilizes Middle [Incomes], Brings Up Low [Wages]’” [Caizhengbu ba xiang goingzuo jiedu: gongzi gaige ‘xian gao wen zhong tuo di’], *People’s Daily* (Online), 7 November 06.

¹⁰⁶“‘Limit High [Wages], Stabilize Middle [Incomes], Bring Up Low [Wages];’ Reducing Subsidies for High Income Earners Is Not the Same as Equal Distribution,” *Yanzhao Metropolitan Newspaper*, reprinted in *China Economic Daily*, 9 November 06.

¹⁰⁷Stephen Chen, “Forced Wages Rises Won’t Work; Official Labour Officer Says Beijing Can’t Set Salaries,” *South China Morning Post* (Online), 18 July 2007.

¹⁰⁸“Communications Ministry Orders Push To Resolve Unpaid Migrant Wage Claims,” CECC China Human Rights and Rule of Law Update, August 2006, 2–3.

¹⁰⁹This number figure represents a decrease from previous years in the amount of unpaid wages. "Internal Migrants: Discrimination and Abuse," Amnesty International.

¹¹⁰"Migrants Frustrated Over Unpaid Wages, Xinhua, reprinted in China Daily, 31 December 06.

¹¹¹Implementing Measures for the Qinghai Province Construction Sector Migrant Worker Wage Payment Deposit System (Trial Measures) [Qinghaisheng jianshe lingyu nongmingong gongzi zhifu baozhengjin zhidu shishi banfa (shixing)], issued October 06, art. 2, 17.

¹¹²"30 Firms Blacklisted for Defaulting Wages," Xinhua (Online), 27 June 06.

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