HANDBOOK OF PROTEST AND RESISTANCE IN CHINA
HANDBOOKS OF RESEARCH ON CONTEMPORARY CHINA

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Edited by Teresa Wright
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HANDBOOKS OF RESEARCH ON CONTEMPORARY CHINA

Edward Elgar

Cheltenham, UK • Northampton, MA, USA
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7. Labor legislation, workers, and the Chinese state

Jenny Chan and Mark Selden*

The Chinese party-state’s promotion of “rule of law” is integral to its authoritarian governance. This chapter examines the evolution of employment legislation and its impact on Chinese workers from the late 1970s through 2018. Law has become a pivotal site of state–society contention in which workers, employers, and the government contest rights and interests.¹ We argue that the state has institutionalized some degrees of flexibility for employers at the expense of workers, even as basic legal protections generally have been strengthened.

This chapter begins by discussing the competing forces culminating in the introduction of China’s first national labor law in the mid-1990s. In response to growing labor unrest related to the restructuring of state enterprises and the growth of the non-state sector, national leaders moved to raise minimum wages, extend social insurance benefits, and expand access to grievance redress. In turn, the implementation of the 2004 Provision on Minimum Wages, the 2008 Labor Contract Law, the 2008 Labor Dispute Mediation and Arbitration Law, and the 2011 Social Insurance Law emboldened workers to defend their rights through legal pathways. At the same time, labor challenges continued outside of state-sanctioned means, eliciting varied governmental responses.²

The corporate drive to assure labor flexibility and higher profits also has shaped labor activism and the development of labor law. While noting amendments to the Labor Contract Law in 2012, in particular limits on the use of dispatch workers and the mandatory provision of equal pay and social insurance benefits to direct and subcontract employees, this chapter concludes with an examination of the shortcomings of China’s labor practices in assuring social and economic justice for workers.

CHINESE LABOR AND LEGAL REFORMS

Since China’s “reform and opening” began in the late 1970s, local governments have been encouraged to attract investment and secure export markets to boost employment and economic growth. With fiscal decentralization, local officials have been able to approve and channel bank loans as start-up capital, secure land use rights, offer tax breaks, facilitate rural migrant labor recruitment, and introduce other preferential policies for investors to create a favorable business environment within their jurisdiction. Local labor inspection teams, however, generally have been understaffed and insufficiently funded. Under these circumstances, despite government passage of 49 labor laws and regulations between 1978 and 1995, employers have had little incentive to improve labor and workplace conditions.³

Individual workers with few financial resources and social connections have faced formidable obstacles in seeking redress for their grievances. Beginning in the early 1980s, disputes over wages and welfare, job responsibilities, labor discipline, promotions, and occasionally women workers’ rights arose as market-oriented reformers delegated greater
powers to urban enterprise managers to raise labor productivity and competitiveness. As worker–manager conflicts centering on redistributive inequalities, bureaucratic corruption, and inflation became more intense, in 1987, the government passed the Provisional Regulations on Handling Labor Disputes in State Enterprises, establishing a three-stage process of mediation, arbitration, and litigation to give employees and employers “an avenue to enforce legal rights directly through formal proceedings.” Labor disputes in state enterprises would first be handled by the labor dispute mediation committees (comprised of party leaders, the trade union chair, managers, and worker and staff representatives) before proceeding to district-level arbitration and, if necessary, civil suit. With the quickening pace of economic reform in the aftermath of the 1989 Tiananmen crackdown, in 1993, the government promulgated the Regulations on Handling Labor Disputes in Enterprises, which superseded the 1987 Provisional Regulations to extend legal access to grievance resolution from urban state workers to rural migrant employees.

By the early 1990s, tens of millions of migrants from the countryside had found jobs in newly built private and foreign invested firms in coastal cities, even though they lacked important citizenship rights in many cities, including health care, pensions, and access to public education for their children. The initial export-oriented policy centered on special economic zones and industrial clusters in Guangdong, Fujian, Zhejiang, and Jiangsu. There, non-state and later state-owned units could hire and fire rural migrant workers and their local counterparts to maximize profits. Pitting younger migrants against older workers, national leaders slashed the cradle to grave welfare benefits enjoyed by most state employees and accelerated market reforms and the privatization of many industrial enterprises, despite individual and collective resistance on the part of adversely affected employees and pensioners.

Starting in the early 1990s, the Chinese government began releasing public security statistics on “mass incidents,” a category that extended across the ranks of workers, villagers, and other social groups. The term mass incident is both all-encompassing and ill-defined, possibly including riots, strikes, protests, sit-ins, rallies, demonstrations, collective petitions, traffic blockades, and other forms of social unrest. The number of mass incidents was 8,700 in 1993, the first year for which official data was publicly available. It increased to 32,000 in 1999 and surpassed 58,000 in 2003. These numbers indicate widespread labor tensions, although detailed documentation about the nature, location, duration, and outcome of worker actions was withheld by the Ministry of Public Security and the press. From factories to offices to construction sites, as delineated by Anita Chan in *China’s Workers under Assault*, conflicts over non-payment or underpayment of wages and benefits, illegal dismissals, and occupational injuries and diseases were rampant, with some workers, in extremis, committing suicide, or murder, in efforts to defend their dignity and their rights.

In July 1994, the central government promulgated the Labor Law, which went into force on 1 January 1995. This was the first national law to codify labor dispute resolution processes and the requirements relating to labor contracts, wages, working hours, occupational safety and health measures, social security, and women workers’ rights. Regardless of household registration status, Chinese citizens were to be legally protected at work.

With the legalization and institutionalization of the contract labor system, the permanent work pattern of urban residents previously governed by state enterprises has been dismantled. While the experiment of signing short-term contracts with new recruits for certain types of low-skilled work had been underway in the state sector since the
early 1980s, most older, male regular workers were not affected.\textsuperscript{11} Some of their female counterparts, however, were persuaded to “return home” (the “natural” place for women) to address the emergent problems of youth unemployment and declining returns in less profitable industries.\textsuperscript{12} With the influx of foreign and domestic private investment, in the late 1990s, male and female workers from numerous small and medium sized state enterprises were persuaded to accept early retirement or step down from their posts (sometimes retaining partial wages and retirement benefits from their work units). In some cases, they were dismissed without severance pay or benefits.

In the midst of bankruptcy, privatization, and reorganization of firms, by 2002, over 60 million urban workers were laid off from state sector jobs. That is, there was “a 44 percent reduction of the 1993 state sector workforce within a 10-year period.”\textsuperscript{13} State and collective sector jobs as a share of urban employment fell sharply from “76 percent in 1995 to 41 percent in 2000 to only 27 percent in 2005.”\textsuperscript{14} Some of the fiercest labor struggles in response to state sector layoffs took the form of anti-privatization movements. Aggrieved pensioners took to the street to make desperate claims to health and retirement benefits, while some laid-off workers fought for economic compensation or reinstatement. By making a moral claim to the vanishing socialist contract, if not an outright condemnation of socialism betrayed, some of these protesters secured modest benefits, but there was no turning back the clock.\textsuperscript{15} With the exception of large profitable state-owned corporations, the “iron rice bowl” system was smashed and workers in both state and private enterprises were to sign term contracts.\textsuperscript{16} Seeking employment through labor agencies in a more diversified and liberalized economy, as we will see, would bring new legal challenges.

**STRENGTHENING WORKER PROTECTION**

Throughout the high-growth final two decades of the 20th century, Chinese wages and incomes remained far below the level of earlier East Asian industrializers during their periods of rapid growth.\textsuperscript{17} The general assumption held by local officials and employers alike was that rural migrants could choose to return to their hometowns to fall back on their household land and familial resources whenever needed. As a result, the production and social reproduction costs of rural migrant workers were kept at extraordinarily low levels.

However, under the Hu Jintao and Wen Jiabao administration (2003–2012), labor costs rose markedly.\textsuperscript{18} Between 2003 and 2012 (even when the 2008 world recession briefly led to reduced exports resulting in large-scale layoffs of Chinese workers), China’s national economy sustained average growth of 10.4 percent per annum, and real wages for rural migrant workers rose 2.5 times.\textsuperscript{19} The younger cohort’s frequent job hopping, in the context of a tighter labor market (following the reduction of birth rates with the combined factors of the implementation of the national birth control policy\textsuperscript{20} and the pressure associated with the rising cost of living), further pushed employers to increase wages and improve conditions to recruit and retain workers.

In the early 2000s, the central government showed renewed interest in social policy, reversing its drift away from such commitments in the 1980s and 1990s.\textsuperscript{21} Effective 1 March 2004, the Provision on Minimum Wages required that provincial and lower-level governments review statutory minimum wage levels under their jurisdiction at least once
every two years. Further, in the early 2000s, social spending was increased to enroll uninsured workers (and villagers) in newly installed social insurance programs administered by local governments. Minimum income support and other kinds of social assistance were also provided to eligible households on a needs basis. These government measures, Dorothy Solinger suggests, were introduced to “preempt disturbances and prevent ‘instability.’” However, the pragmatic flexibility of the Chinese state has opened new terrains of contestation around labor law and beyond.

Labor subcontracting and rights violations are widespread in the construction sector. Real estate developers specialize in land acquisition, project design, and marketing, while manual labor is provided by informal labor contractors and their work teams, as well as dispatch workers hired by licensed (or unlicensed) labor agencies. Rural migrant construction workers, estimated at 44.7 million in 2011, were placed at the bottom rung of long subcontracting chains. Without a labor contract, they might not be provided with statutory minimum wages, overtime payment, social security, rest days and holidays, and occupational health and safety protection. They risk not receiving full pay, or any pay at all, upon the completion of the project; not to mention getting paid in cash on a monthly basis in accordance with the law.

Labor dispatch services have grown rapidly since the opening of the first such agencies by local governments, when officials sought to create jobs by deploying laid-off workers following successive waves of privatization and restructuring of state industries. During the 1990s, private domestic firms and multinationals also began to take advantage of dispatch labor, absorbing the unemployed, rural migrants, and fresh graduates. Dispatch work—wherein the “user of the work” is separated from the “employer of the person”—provides a powerful shield for the user firm against dispatch workers’ claims to receive the same levels of wages and social insurance benefits as regular workers. Compared to directly hired employees, dispatch workers often receive inferior health insurance, pensions, maternity packages, skill training and other benefits, and they are paid less. They also can be laid off at any time. At seven surveyed state-owned and joint-ventured automobile plants in five provinces, in the mid-2000s, Lu Zhang found that temporary dispatch workers were paid only half to two-thirds the wages of regular workers, even when they “had to shoulder heavier workloads and perform less desirable tasks.” When severe industrial accidents occurred, sometimes labor agencies and user firms took advantage of the fact that there was no law to hold them jointly responsible for the victims and work-injury compensation.

Even when workers muster the courage to sue their employers, they are often unable to present evidence, such as a written labor contract or a wage statement, so they cannot prove the existence of an employment relationship or a violation of the law. Xin Chunying, Deputy Director of the Legislative Affairs Office of the Standing Committee of the National People’s Congress, confirmed that before 2008, 60 percent of workers had “only short-term contracts, usually one-year contracts or even shorter.” Employers of restructured state enterprises had aggressively moved to conclude short-term, non-renewable contracts with employees to cut labor expenditures. Private and foreign “sweatshops” refused to sign contracts with workers to keep costs down (by evading overtime premiums and welfare benefits) and to increase labor flexibility (by easily firing workers to cope with market fluctuation). Despite the strengthening of workers’ individual rights during the 1990s and early 2000s, the law enforcement gap continued to grow.
INTRODUCING NEW LABOR LAWS

In 2005, political authorities drafted a new labor law to enforce higher labor standards and more inclusive policies for Chinese workers, including subcontract workers. In March 2006, during the 30-day public consultation of the draft law, over 191,000 comments were received from legal scholars, academics, business associations, labor rights organizations, and other stakeholders. “This number,” highlighted by Mary Gallagher and Baohua Dong, “far exceeded the comments received about other important and controversial laws.” On 29 June 2007, the government passed the Labor Contract Law after making successive amendments to accommodate competing demands from various interest groups. Legal scholars widely agree that the law, coming into force on 1 January 2008, is the most significant piece of Chinese labor law reform in more than a decade. Eli Friedman and Ching Kwan Lee underline the new law’s “positive material consequences for certain segments of workers.” However, the state continued to suppress labor conflict by refusing to guarantee workers’ collective rights, such as independent unionism and the right to strike.

The 2008 Labor Contract Law restricts the widespread use of short contracts to evade employer responsibility. It seeks to protect employees’ right to an open-ended contract after signing two consecutive fixed-term contracts, or following ten years of service. This is to enhance job security and work stability for employees. A written contract is to be concluded within the first month of employment. A copy of the signed contract is to be given to the employee. Employers that fail to do so are required to pay double wages for the term of employment completed without a written labor contract. Workers can terminate their labor contracts and still receive severance pay (one month’s wages for every year worked) if they resign because of employer violations.

The 2008 Labor Contract Law also specifically protects subcontract workers against discrimination. By law, if disputes over work and employment arise, dispatch laborers are to have the same access as direct employees to government-administered dispute resolution. The law also stipulates that subcontract workers should be entitled to “equal pay for equal work.” Moreover, labor service agencies are required to sign contracts and enroll workers in local social insurance schemes. Despite the tightening of labor dispatch statutory regulation, subcontracting has continued to grow. By 2011, there were 27–37 million dispatch workers in enterprises and government organizations throughout the country, and the number has grown in the following years.

An employment contract is significant proof of the establishment of the labor relationship, the legal basis for making wage and social insurance claims. Large-scale surveys clearly show the positive impact of the 2008 Labor Contract Law on formalizing employment relations. The “Rural-Urban Migration in China” Project (hosted by an Australian National University research team) found that in 2008, 80 percent of surveyed workers (4,756 rural migrants and 6,239 urban workers) in 15 cities of nine municipalities and provinces had labor contracts. A closer look revealed that a far higher proportion of urban workers (91 percent) received a contract compared with migrant workers (66 percent), attesting to the segmentation of the labor force by household registration status, as well as by skill level and education. Rural migrants, compared to their urban counterparts, generally have weaker bargaining power. Still, the overall high rate of surveyed employees with a contract shows the tangible effect of the law, even when reports revealed
that high-profile employers (such as Huawei Technologies and Nine Dragons Paper) had terminated contracts with long-serving workers just before the law went into effect.\textsuperscript{34} The enforcement of requirements for written employment contracts was facilitated by the specific and easily enforced punishments defined in the legal provisions. The China Urban Labor Survey, conducted by the Chinese Academy of Social Sciences’ Institute of Population and Labor Economics, shows a positive association between labor contract rights and social insurance protection.\textsuperscript{35} In 2010, the survey team found that while rural migrants were far less likely than urban workers to enjoy a range of benefits, those with contracts were far more likely to have pension (43.8 percent) and healthcare benefits (38.5 percent) than those who did not have labor contracts (14.9 percent and 13.2 percent, respectively). The protective effect of the law on local workers was also clear. The survey reported that 92.3 percent of locals with contracts had pensions (compared to 74.5 percent of those without contracts), and 88.3 percent had healthcare (compared to 72.1 percent of those without contracts).\textsuperscript{36} The findings make clear, however, that despite gains, social insurance coverage for \textit{all workers} had not been attained. While the law reaffirms pre-existing social insurance responsibilities on employers, it does not impose new punishments or significantly higher fines than previous regulations for violating employers.\textsuperscript{37}

By law, the comprehensive social insurance program consists of five parts: old age pensions, medical benefits, maternity benefits, work-related injury benefits, and unemployment benefits (see Table 7.1). During the 2008–2009 global financial crisis, when numerous companies were either struggling to survive while laying off workers or going bankrupt, local governments allowed employers to divide the insurance program and purchase only some of its five parts at the lowest possible cost to ease their financial burden and minimize layoffs.\textsuperscript{38} Local governments, hard pressed to keep jobs as a means to preserve social stability, conceded to employers’ demands to cut pensions and welfare benefits for workers. Meanwhile, millions of workers were laid off, returning to the countryside to live on small plots of land, if only as a temporary solution.\textsuperscript{39}

In the wake of the economic recession, in October 2010 the central government passed the Social Insurance Law, which came into force in July 2011. On top of the five types of insurance, the law required a housing fund (previously optional). Employers were responsible for calculating social insurance fees, withholding payments for themselves and their employees, and making timely payments to the Social Insurance Bureau and the Housing Fund Bureau. While the precise fee structure varies by enterprise and region, on average the total contribution constitutes some 40 percent of the wage, with about 15 percent deducted from the worker’s wage and the remainder paid by the employer. The minimum social insurance contribution base is determined by the local statutory minimum wage. With the steady increase in local minimum wages, the social security contribution base has risen.

To increase revenues and improve labor stability, local governments have become more interested in enforcing social security provisions. But a functioning, universal system of fund transfers has yet to be installed despite new experiments to coordinate online mobile payments and withdrawals. Disputes over employment terms in relation to wages, social benefits, and other issues also have exploded.
Labor legislation, workers, and the Chinese state

Table 7.1  China's Social Insurance System, 2017

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<th>Category</th>
<th>Contribution*</th>
<th>Remarks</th>
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<tr>
<td></td>
<td>Employer rates (%)</td>
<td>Employee rates (%)</td>
</tr>
<tr>
<td>Pension</td>
<td>10–22</td>
<td>Around 8</td>
</tr>
<tr>
<td>Medical</td>
<td>5–12</td>
<td>Around 2</td>
</tr>
<tr>
<td>Unemployment</td>
<td>Around 2</td>
<td>Around 1</td>
</tr>
<tr>
<td>Maternity</td>
<td>0.5–1</td>
<td>–</td>
</tr>
<tr>
<td>Work-related injury</td>
<td>0.5–2</td>
<td>–</td>
</tr>
<tr>
<td>Housing fund</td>
<td>5–12</td>
<td>5–12</td>
</tr>
</tbody>
</table>

Note: *The social security contribution amount in each category is calculated by utilizing the employee's pay and multiplying it by different percentages required by the local government. The contribution base is a figure determined by the employee's average income in the previous year. For new hires, the starting pay may be used as the social security base during the first year.


LABOR DISPUTE RESOLUTION AND SETTLEMENT

Government statistics indicate that in 1996 48,121 labor disputes were accepted for arbitration (including individual and collective cases), involving 189,120 persons nationwide (see Figure 7.1). The incidence of arbitrated labor disputes has grown rapidly, along with mounting labor protests, amidst China’s deepening market reforms. In the global economic crisis of 2008, when millions of workers were laid off, the number of cases rocketed to 693,465 (nearly double that of the previous year), involving more than 1.2 million laborers across the country. Following a brief decline in 2010 and 2011, labor dispute cases shot up annually, reaching an unprecedented 813,859 cases in 2015. As China’s economy slows, as predictions suggest, conflicts over unpaid wages and social insurance benefits and layoffs, and the number of arbitrated cases, may increase.

On 1 May 2008, the Labor Dispute Mediation and Arbitration Law took effect, fueling a sharp rise in labor disputes accepted for adjudication. The law streamlined dispute resolution procedures and extended filing periods from 60 days to one year following the
dispute. It also lowered the fee structure for labor dispute resolution (canceling arbitration fees, the legal fees for arbitration of disputes, which had been prorated according to the size of the award sought). Between mid-2008 and early 2009, as Chinese manufactured exports plummeted, regions such as Guangdong, Jiangsu, Zhejiang, Beijing, and Shanghai allowed some bigger disputes to go directly to court to shorten the appeal process.

Even before the caseloads swelled in arbitration committees and court rooms, beginning around 2006 Beijing leaders sought to revive mediation in both arbitration and litigation, and, at the firm level, to minimize open confrontations of adversaries in the streets. Wenjia Zhuang and Feng Chen detail state efforts to assure the central role of mediation in defusing potential mass incidents to restore social stability. The “success rate of mediation” became a factor in the annual performance assessment of local labor officials and judges, directly linked to bonuses and promotion. Before arbitration, arbitrators were to visit the workplace to conduct mediation. If pre-arbitration intervention failed, arbitrators pressured disputants to reconcile in the case handling process. Failing this, a mediation procedure following arbitration would be formally set up to prevent an appeal to the court. At every stage, extrajudicial methods were widely adopted to settle cases promptly, with arbitrators and judges working to persuade workers that “the mediated outcome is the best possible result,” even when the “conciliated compensation” amount was far lower than one that might be ruled by the courts.\textsuperscript{40}

\textit{Figure 7.1 Arbitrated labor disputes in China, 1996–2015}

<table>
<thead>
<tr>
<th>Year</th>
<th>Persons</th>
<th>Cases</th>
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<tbody>
<tr>
<td>1996</td>
<td>100,000</td>
<td>900,000</td>
</tr>
<tr>
<td>1997</td>
<td>120,000</td>
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<td>2002</td>
<td>220,000</td>
<td>200,000</td>
</tr>
<tr>
<td>2003</td>
<td>240,000</td>
<td>100,000</td>
</tr>
<tr>
<td>2004</td>
<td>260,000</td>
<td>0</td>
</tr>
</tbody>
</table>

\textit{Note:} Cases of individual and collective labor disputes are included. From 2009 collective labor disputes have been officially defined as disputes involving ten or more employees (previously a collective dispute was defined by involvement of three or more employees).

To prevent labor conflicts from escalating, the party-state called for cross-departmental efforts to resolve collective problems through mediation and a wide range of soft strategies. Mediators no longer were required to be arbitrators or judges; they were joined by lawyers, trade union cadres, neighborhood labor protection station officers, and other government representatives. In the event of non-payment of severance pay, work teams fast-tracked the sale of enterprise assets to clear the owed wages to disgruntled workers, rather than waiting for court outcomes. The overarching goal for the government was to bargain with worker leaders to reach extralegal resolution as quickly as possible. In “buying stability” by “dishing out cash payments or other material benefits in exchange for compliance,” the government undercut wider reform and the growth of labor mobilization seeking to influence government policy. At the same time, significant coercion was involved in state efforts to manage labor disputes and social unrest. Further, in handling collective lawsuits, judges have insisted that cases be filed individually to fragment and isolate the plaintiffs.

Dispatch workers, like other workers, have attempted to seek justice and economic compensation by taking legal action. Using the keyword search function of the Supreme People’s Court centralized database of court judgments, Philip Huang demonstrates the marked increase of lawsuits over “dispatch work” in basic level courts: from 59 cases in 2012, to 248 cases in 2013, to 1,255 in 2014, followed by a slight decline to 1,190 in 2015. One documented legal case in 2012 concerned a steel piping dispatch worker who was paid only 1,500 yuan per month during his two-year employment, compared to other employees of the company who were paid 6,000 yuan per month for comparable work. When his contract with an employment agency was terminated in 2011, he demanded that he receive the same pay for doing the same work as other workers. The court verdict read:

Equal work, equal pay is a basic principle of our nation’s labor laws. However, equal work refers not just to the same kind of work, but also to equal labor ability, skill, and equal results and so on. Those issues are not within the capacity of the court to determine.

In Huang’s critical analysis, the court declared “the text of the Labor Contract Law to be empty words that cannot be enforced in actual practice.”

SOCIAL STRUGGLES OVER CHINA’S LABOR LAW

New provisions tested by rights-claiming citizens, including a number of (partial) worker victories in high-profile strikes and protests, have expanded workers’ consciousness of legal rights. In December 2012, the Standing Committee of the National People’s Congress amended the Labor Contract Law, effective 1 July 2013. The major amendments aimed to strengthen the protection for the rights and interests of dispatch workers.

First, the revised law stipulated that “temporary” dispatch work should be restricted to a position with a maximum duration of six months. Second, it stated that such positions should be limited to “auxiliary” operations, meaning a position that supports the principal business activity. Third, it permitted a dispatch worker to take up a “substitute” position to replace another employee who is absent for a specific period of time due to maternity leave, off-the-job study, or other reasons. Liu Genghua, a researcher with the Chinese Academy of Labor and Social Security who conducted field research in Anhui
in 2014, noted “obvious breaches” of the law, “such as dispatch workers working in the same work positions for more than 2 years (clearly does not fall within ‘temporary’) or when more than 80 percent of employees of an enterprise are dispatch workers (clearly does not appear to be ‘auxiliary’ or ‘substitute’ for the business).” This finding suggests that the dispatch worker exception to the three job categories has been ignored, eroding the law’s intended labor protections.

Going a step further, on 1 March 2014, the government ruled that within the next two years, enterprises would be required to lower the proportion of dispatch workers to meet the legal limit—that is, not exceed 10 percent of their workforce. By 1 March 2016, the statutory period designated for enterprises to reduce their dispatch staff to the 10 percent level expired.

A Chinese Academy of Labor and Social Security research team, led by Miao Chun Yu, found that at the China Post Group Corporation (incorporated in 1997 to manage the national postal service), the number of dispatch workers was sharply reduced from 461,300 in 2013 to 180,500 in 2015. Similarly, during the same period, at the Agricultural Bank of China, the total size of dispatch labor was slashed from 34,800 to 11,200. The overuse or abuse of dispatch workers in other state-owned enterprises, and the non-state sector, however, remains a cause for concern.

On the whole, while government legislation clearly indicates the desire to stabilize and formalize employment relations, the two-tiered structure of work and labor has continued. This dual system is problematic not just from the perspective of subcontract workers whose salaries and benefits are usually far smaller than those of direct employees, but also from that of regular workers who encounter greater difficulty in making collective demands on employers as they now must compete with dispatch laborers. Moreover, Asia Briefing Ltd., a subsidiary of Dezan Shira & Associates (a specialist firm in foreign direct investment practice), offers advice to clients on using multiple employment approaches, such as outsourcing of an entire project, to replace dispatch labor. Outsourced workers share characteristics with dispatch workers, such as lower wages, lower social insurance, and less security.

**CONCLUSION**

This chapter has assessed the post-socialist Chinese state’s drive for economic and social transformation through successive legal reforms over the past 40 years, with a focus on labor legislation and workers’ defense of their rights to wages and social welfare. Government actions and rising labor protest in recent decades have broadened employment and workplace rights for all, including preliminary steps to overcome the rural/urban divide associated with differential rural and urban household registration, and to include the growing segment of subcontract workers in the new legal framework. But the state has also prioritized competitiveness, profitability, and flexibility for employers vis-à-vis workers’ protection, thereby preserving the unequal structure of work and employment.

During the 1990s, China’s working class experienced sharp changes, including a shrinking public sector as a result of large-scale industrial layoffs, a growing private sector, and an increasing number of rural migrants recruited by private and foreign firms. With higher labor mobility and greater emphasis on profit, reformers moved to eliminate the decades-old socialist entitlements enjoyed by urban state workers. The promulgation of
the 1995 Labor Law was followed by the acceleration of corporatization and privatization in the late 1990s and 2000s. In response to growing labor disputes, strikes, and protests, the Hu-Wen government and its successor, since 2013 the Xi Jinping-Li Keqiang administration, have strengthened the basic rights of some workers, while deepening economic reforms in ways that weaken the protection of state sector workers and pave the way for the use of temporary and contract workers in both state and private enterprises.

Through “stability maintenance” and “social management,” the government seeks to break up organized worker actions at the door of arbitration committees and civil courts, while encouraging workers to adjudicate their grievances through mediation and other informal acts involving extralegal means. Without effective leadership by trade unions, workers are impelled to rely overwhelmingly on their own efforts to fight for economic compensation and benefits, many of them stipulated in the law. In the face of powerful employers, workers with higher rights awareness seek to escalate disruptive actions, drawing attention from stability-sensitive officials at the local and higher levels. In numerous cases, workers have won limited concessions over wages and welfare benefits. Marc Blecher writes of labor resurgence in today’s China:

Of course there have been labour protests, which grow quantitatively from year to year. But qualitatively they lack the sharply radical edge they had in the 1950s and 1960s, focusing now mainly on economic grievances specific to a particular enterprise. And, while protesting workers have often won redress, they have not achieved much in the way of more lasting changes in policy or social relations.53

We suggest, however, that workers, learning from the struggles of recent decades, including hard-won victories in lawsuits and other battles, have inspired others. Protesting workers have, to some extent, influenced employer and government policies. The whole arbitration and litigation system is a response to worker pressure. Furthermore, some social welfare reforms were implemented to construct an emergent worker citizenship infrastructure in direct response to worker demands for more equal, inclusive, and decent employment conditions. With each loophole that the government closes, however, corporations have moved to circumvent the new regulations.

Another key question remains enforcement of the law. Discrepancies between rights promised on the books and those delivered are huge. In China’s urban and rural transformation, numerous workers from low-end services, construction, and manufacturing industries are still not provided with a formal labor contract or such rudimentary benefits as health insurance and pensions. These informal laborers are trapped at the bottom of the highly stratified labor market.

Overall, the government seeks to bring employment into a formalized structure that limits violations on some issues and in some parts of the workforce. In our ongoing research and future agenda, we strive to draw more attention to the presence of hundreds of thousands of interning students from vocational schools and colleges who are employed at below minimum wages during their “internships.” While performing identical work to other production workers, they are not legally classified as “employees”; their official status remains that of “interns.” We document the fact that some employers have collaborated with local governments and school administrations to exploit legal loopholes incentivized by the convenience of obtaining student interns under short-term employment and by the low cost of student labor, including the non-contribution of
Handbook of protest and resistance in China

social insurance premiums. The super-exploitation of student workers, one of the hidden groups of contingent workers, further exposes the deficiencies of existing labor legislation. Social and class inequalities are deepened when cost-conscious employers are tapping into precarious local workers, rural migrants, dispatch workers, and student laborers to maximize profits, at the expense of workers’ well-being. Labor challenges, including legal activism, will inevitably confront a tactical mix of reconciliation and repression on all fronts, resulting in uncertainty and instability.

NOTES

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15. Lee, Against the Law; Thomas B. Gold, William Hurst, Jaeyoun Won and Qiang Li, eds., Laid-Off Workers in a Workers’ State: Unemployment with Chinese Characteristics (New York: Palgrave Macmillan, 2009);
Labor legislation, workers, and the Chinese state


20. China’s birth rates began to drop during the 1970s as the state promoted delayed marriage and spaced births. With the launch of the one child policy in 1980, birth rates plunged further in the following decades. China’s population, Deborah Davis analyzes, “will age as quickly as did that of Germany, Italy, and Japan.” The long-term impact of the relaxation of birth control on the Chinese labor force, and its gender composition, is to be observed. See Deborah S. Davis, “Demographic Challenges for a Rising China,” Daedalus: Journal of the American Academy of Arts and Sciences 143, no. 2 (2014): 26–38.


The three waves of the China Urban Labor Survey were conducted in 2001, 2005 and 2010. The five surveyed cities are Shanghai, Wuhan (Hubei), Shenyang (Liaoning), Fuzhou (Fujian) and Xi’an (Shaanxi). In the third wave, the sixth city, Guangzhou, provincial capital of Guangdong, was added.


The Supreme People’s Court has digitalized court judgments and made them publicly available. As of February 2018, more than 43 million court judgments were publicized online, and thousands of new cases added daily. China Judgments Online (中国裁判文书网): http://wenshu.court.gov.cn/.


Handbook of Protest and Resistance in China

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