


# THE IMPACT OF CHINA'S LABOR CONTRACT LAW ON WORKERS

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## Photos

The photographs on the cover of this report depict (from left to right, top to bottom): job seekers at a Jiangsu employment center, assembly line workers on break in Guangdong, construction workers in Beijing, a Guangdong waitress, road workers in Shanxi, and airport employees in Guangdong. All photos in this report were taken by Manfred Elfstrom and are copyrighted. They may not be downloaded, reproduced, copied, stored or manipulated in any manner or form whatsoever without the prior written permission of Mr. Elfstrom or the International Labor Rights Forum.

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## INTRODUCTION

On January 1, 2008, the *Labor Contract Law of the People's Republic of China* (LCL) went into effect. It was the country's most significant piece of labor legislation in over a decade. Whereas China's 1994 *Labor Law* attempted to consolidate the early reform era's scattered workplace regulations and adapt them for a market economy, the LCL aimed to rein in the worst aspects of the nation's new labor relations regime and achieve a modicum of workforce stability.

In the chaotic world of post-"reform and opening" China it had become routine for construction sites to wait until the end of the year to pay workers—and many workers were even then sent home without any pay whatsoever. Shady "labor dispatch" companies (*laodong paiqian gongsi*) helped bosses skirt responsibility for their employees by obscuring labor relationships in a tangle of paperwork and spoken promises. Sweatshop exposés shamed powerful multinationals. Slavery in backwoods brick kilns shocked the nation. Strikes, road-blockings and other forms of worker protest constituted the largest single category of China's rising "mass incident" rate,[1] while the official All China Federation of Trade Unions scrambled to redefine its role. Unsurprisingly, workers tended to float from job to job, rarely investing much in any single position or skill.

The LCL initiated many significant changes.[2] First, it mandated written contracts for all workers: any employer that did not sign a contract with an employee was required to pay that employee double his or her wages for each month worked without a contract, starting with the second such month.[3] Second, the law required a non-fixed-term contract for any employee who had worked for an employer more than ten years or who had already signed two successive fixed-term contracts.[4] Third, it further clarified the responsibilities of employers to workers acquired through labor dispatch agencies (such as equal pay with permanent employees for equal work), and the role of unions and collective bargaining.[5] Fourth, the LCL reaffirmed existing work injury, social insurance, and wage and hour provisions.[6]

The legislation spurred an unprecedented debate. International and domestic business groups predicted that the law would have a largely negative impact on business in China, while labor groups decried undue corporate influence over the latter stages of the law's

[1] Andrew Wedeman, "Enemies of the State: Mass Incidents and Subversion in China," paper Presented at the annual meeting of the American Political Science Association, Toronto, Canada, September 2009.

[2] A useful exploration of the LCL's changes can be found in E. Patrick McDermott, "Industrial Relations in China - Ball of Confusion," in K. Townsend and A. Wilkinson (eds) *Research Handbook on Work and Employment Relations*, Edward Elgar, Cheltenham, (forthcoming).

[3] National People's Congress, *Labor Contract Law of the People's Republic of China*, Articles 10, 82, January 1, 2007.

[4] *Labor Contract Law*, Article 14.

[5] *Labor Contract Law*, Articles 4, 43, 51, 53-54, 58, 67, 92.

[6] *Labor Contract Law*, Articles 17, 38, 74.

drafting process.[7] As 2007 drew to a close, employers used a variety of methods to avoid their imminent legal responsibilities, such as firing and then rehiring the same workers in order to get around the provision granting ten-year employees the right to non-fixed-term contracts.[8] Chinese non-governmental organizations (NGOs) and ACFTU, in turn, raised awareness of the law through trainings, booklets and mass "legal publicity" (*pu fa*) events. The international debate over the law forged new bonds between Chinese and foreign workers' rights advocates. Shanghai Normal University's Professor Liu Cheng, for example, traveled to the United States to rally support for the LCL.[9] These bonds have continued to deepen and hold great promise.

However, since the law went into effect, the international and domestic Chinese media have become fixated on the question of whether increased labor market regulation has sharpened the difficulties of China's export sector during the economic downturn— an exceedingly difficult question to answer given the range of other factors at work: falling global demand, new government incentives for Chinese manufacturers, frozen (and then unfrozen) minimum wage increases, currency movements and changing local regulations. Labor activists, meanwhile, have begun to shift their focus to other worthy causes, such as collective bargaining and pension reform.

The actual implementation of the LCL deserves more attention. The number of labor disputes accepted by Chinese arbitration panels and courts nearly doubled in 2008 over the year before.[10] While many factors contributed to this upsurge in litigation, the LCL was surely one. What other effects has the law had?

Absent an accompanying strategy of worker community-building and solidarity, the litigation of individual workers' cases can only move any country partway toward full protection of workers' rights.[11] Yet even as we prepare for the next struggle, we must learn all we can about how legislation like the LCL has impacted workers thus far. This report is meant as an initial exploration of these lessons.

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[7] "Undue Influence: Corporations Gain Ground in Battle over China's New Labor Law —But Human Rights and Labor Advocates Are Pushing Back," *Global Labor Strategies*, http://laborstrategies.blogs.com/global_labor_strategies/files/undue_influence_global_labor_strategies.pdf, March 2007.

[8] The most prominent such case was that of the electronic giant Huawei. See Chen Hong, "Thousands of Huawei Staff 'Quit,'" *China Daily*, http://www.chinadaily.com.cn/bizchina/2007-11/03/content_6228248.htm, November 3, 2007.

[9] "The Global Battle Over New Rights for Chinese Workers," *Global Labor Strategies*, http://laborstrategies.blogs.com/global_labor_strategies/2007/04/in_a_historical.html, April 3, 2007.

[10] Labor disputes double in 2008 amid slowdown, *Xinhua*, http://www.chinadaily.com.cn/bizchina/2009-05/09/content_7760281.htm, May 9, 2009.

[11] It has even been argued that by focusing exclusively on legal advocacy, workers' groups are preventing working class solidarity. See Ching Kwan Lee and Shen Yuan, "The Anti-Solidarity Machine: Labor NGOs in China," Paper presented at the Conference on "The Changing Face of Chinese Labor and Employment", Cornell ILR School, September 26-28, 2008.

*Interviews with Workers*

The report is based on interviews with 367 workers in the Pearl River Delta and one city in the Yangtze River Delta. In 2002, these two regions accounted for 34.6 percent and 28.3 percent of the country's total export value, respectively.[12] The interviews were conducted between January and May 2009. During this period, China was still experiencing the worst effects of the global financial crisis. Factories in both regions had shut down by the thousands, leading to protests over unpaid wages and a mass exodus of workers from precisely those areas where the interviews were conducted. After reaching their lowest point in February 2009, China's export industries recovered somewhat, even leading to labor shortages in some places.[13]

All of the workers interviewed during the course of this research were "migrant workers," meaning rural Chinese citizens, often from the interior, who "migrate" to urban areas in search of employment opportunities. Migrants make up a majority of the workforce in the manufacturing sectors of cities like Guangzhou, Shenzhen and Suzhou, and the construction sectors of cities like Beijing and Shanghai, but have only limited access to local public services, such as education for their children or job training programs because of the household registration or the "*hukou* system." In late 2009, the National Development and Reform Commission announced that migrants with stable jobs would be given "permanent urban residence certificates,"[14] thus potentially removing a primary source of discrimination against China's rural population. However, it is unclear at the time of this writing how this new policy will be implemented, and a number of similar attempts at reform of the "*hukou* system" have had little practical impact.[15]

*Interviews with Businesses*

Since the earliest reforms designed to create a legal protection regime for workers were implemented in the mid-1990s, the Chinese government has acknowledged conflict of interest between employers and employees.[16] Yet there has been a tendency of late on the part of both opponents and proponents of the LCL to conflate the interests of capital and labor. For example, East China University of Politics and Law Professor Dong Baohua, one the LCL's earliest and fiercest opponents, wrote in January 2008 that "enterprises, workers, and the government" are all "on the same side" and that the law is harmful both

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[12] Sam Ng, "China: Tale of Two Deltas," *Asia Times Online*, http://www.atimes.com/atimes/China/EI06Ad01.html, September 6, 2003.

[13] Terence Poon and Andrew Batson, "China's Exports Continue Recovery," *The Wall Street Journal*, http://online.wsj.com/article/SB125790615310142901.html, November 12, 2009; "Labor Shortages Become Problems after Spring Festival," *CCTV.com*, http://english.cctv.com/program/bizchina/20100221/104091.shtml, February 21, 2010.

[14] Zhao Chunzhe, "Rural Migrant Workers to Get Permanent City Residency," *China Daily*, http://www.chinadaily.com.cn/china/2009-12/10/content_9154815.htm, December 10, 2009.

[15] Kam Wing Chan and Will Buckingham, "Is China Abolishing the Hukou System?" *The China Quarterly*, 195, September 2008.

[16] Sheila Oakley, *Labor Relations in China's Socialist Market Economy*, (Westport CT: Quorum Books, 2002), pg. 102-103; Mary Gallagher and Junlu Jiang, "Guest Editor's Introduction," *Chinese Law and Government*, Vol. 35 no 6 (November-December 2002), pg. 3-15.

to that unity and to the interests of each group individually, with businesses losing flexibility, workers losing jobs, and the government consequently facing social instability.[17] Supporters of the LCL have meanwhile strained to argue that, on the contrary, the legislation will bring benefits to workers and companies alike, protecting employees' rights while increasing the sophistication of Chinese human resources managers.

In this report, we do not assume a unity of interests between management and workers. We acknowledge that improvements in workers' rights will necessarily come at a cost to some businesses. But we also seek to understand what space exists for enterprises to grow within the law. Businesses in China must ultimately learn to rely on more than wage cuts to make profits, and the sooner they find other sources of efficiency, the better. Thus, in order to gain a better understanding of the perspective of management in regards to China's evolving labor protection regime, we pair extensive worker interviews with the results of 23 conversations with Chinese and foreign executives and managers from across the country.

This discussion, it should be noted, is also set in the broader context of the course of the phenomenally dynamic Chinese economy. We hear with increasing frequency from the highest levels of the Chinese government the need for China to move from an economic model heavily dependent on exports to one in which the demand of the country's own internal market plays a larger role in economic growth. There are many complex factors involved in such a transition, but there is broad agreement that increasing the security and purchasing power of Chinese workers, as the new labor legislation aims to do, would contribute significantly to the growth of an internal market for goods and services, thus benefiting the economy overall.

Our research is intended to serve as a resource for foreign NGOs, foundations, universities and unions that hope support to Chinese workers and engage productively in the country's legislative process; for companies seeking a socially responsible path to success in China; and for Chinese labor advocates in need of empirical data to guide their efforts.

[17] Dong Baohua, "'The Labor Contract Law' Will Lead to a Situation of 'Three Losses'" *('Laodong hetong fa' jiang lingzhi 'san shu' jumian*), *Dong Baohua's Blog*, http://blog.sina.com.cn/s/blog_4fab7fbf01008lsn.html, January 22, 2008.

## KEY FINDINGS

In this report, we reaffirm the findings of several existing studies by NGOs, academics and city-level branches of the ACFTU. It departs from many of them, however, in its emphasis on migrant workers and in its data on how the LCL has affected different age groups, education, and work positions. The following are a few of the report's key findings:

- More workers have signed contracts since the LCL went into effect, but the number with contracts is still exceedingly low, at least in the regions surveyed, considering that the law requires that *all* employees have a formal contract. Sixty percent of the interviewees had a contract at the time of their interview; 53 percent said that they had contracts before the law went into effect. Many workers interviewed during the course of this research complained that their contracts lacked provisions required by the LCL.

- Enrollment in work injury insurance has increased significantly. Among interviewees, the percentage with insurance increased from 39.5 percent to 49.5 percent after the LCL went into effect. Again, this is still well below the 100 percent required by law.

- The law has helped older workers less than it has younger workers, as illustrated by the gradual decline by age in the number of workers with labor contracts and social insurance. While 66 percent of workers ages 16-24 had a labor contract at the time of their interviews, for example, this percentage dropped to 64 percent for ages 25-32, 60 percent for ages 33-40, and 56 percent for workers ages 41-52.

- In general, the workers interviewed relied on mass media such as television (64 percent), newspapers (46.6 percent), and the Internet (44.7 percent) as their primary source of legal information. Workers relied on informal sources, as well, such as friends (30.8 percent) and other workers (26.5 percent). Sources varied widely according to other variables, such as age and education, with older or less educated workers relying much more heavily on informal sources.

- Labor protections seemed to vary widely by industry. While our small sample size for some industries may have biased our results, we noted very sharp differences between, say, workers in the furniture and hardware sector, who were least likely to enjoy social insurance (35 percent) or contracts (50 percent), and, say, service sector workers, who fared the best in our survey (74 percent of whom had insurance).

- Interviews with management revealed fear of certain provisions of the law, such as open-ended contracts, but also an appreciation of the stability that the LCL could bring to Chinese labor relations more generally.

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

These findings have led us to several conclusions and recommendations, several of which we elaborate on at the end of the report, that depart from the narrow results of our survey to draw on a range of policy discussions.

- *The battle to ensure that all workers have signed labor contracts is far from won. Authorities must bring more pressure to bear on noncompliant employers.*

  Sixty percent of workers having contracts is not enough. More migrant workers in particular must be brought into formal labor relationships. One possible way to do so would be to introduce tougher criminal and civil sanctions against business owners who refuse to sign contracts.

- *Labor activists, government officials and trade union cadres must focus not only on contract coverage, but also the process of signing contracts.*

  It is not uncommon for workers to sign blank contracts or foreign-language contracts or to have their contracts modified later without their consent. Some workers interviewed even saw the quality of their contracts decline after the LCL went into effect. The law provides new avenues for collective bargaining. Further study is needed on how the union or other, less formal groupings of workers can make the best use of these avenues.

- *A multi-faceted approach to legal education is needed in order to reach older workers in particular.*

  While the internet and other new media have great potential for publicizing the LCL and other laws, in order to reach as much of the migrant working class as possible, NGOs, the ACFTU and others may need to adopt more community-centered methods of organizing.

- *Access to legal assistance for workers must be expanded.*

  Despite reforms, the legal process is still too costly for workers. One means of making arbitration and courts more accessible would be to expand Shenzhen City's experiment in attorney fee-shifting to other parts of the country.

- *Activists must monitor conditions in backward "nuts and bolts" factories.*

  Fresh strategies are needed for consumer activists to monitor less "branded" parts of supply chains, such as the manufacturing of literally the nuts and bolts that go into finished products.

- *Responsible businesses can take advantage of certain aspects of the LCL.*

  There is space for more business-side innovation on improving worker rights; the benefits of lower turnover in LCL-compliant enterprises has been emphasized before, but it needs to be emphasized more.

## THE IMPACT OF THE LABOR CONTRACT LAW

### Existing Research

Much ink has been spilled in analysis of China's LCL, yet many of the resulting reports have, as noted in our introduction, centered on the law's consequences for businesses. Yao Xianguo, Dean of the College of Public Management, Zhejiang University, for example, conducted a survey in 2008 that found that firms that were not compliant with existing legislation but that later came into compliance with the LCL experienced labor cost increases of 33 percent, while law-abiding firms saw increases of only 0.69 percent.[18] Such surveys are open to a number of different interpretations: both pro- and anti-LCL proponents can find fodder in Dean Yao's findings.

Other studies include research into the impact of the LCL by academics, city-level branches of the ACFTU and labor rights NGOs. The Beijing Federation of Trade Unions (BFTU), for example, found that 96.2 percent of workers in the city had signed formal labor contracts by September 2008, a rise of 4.7 percentage points over the year before.[19] However, the BFTU survey focused on workers with local household registration rather than migrant workers. Roughly 30 percent of the city's long-term residents (*chang zhu renkou*) lack a local Beijing urban registration (*hukou*).[20] Only 32.8 percent of the migrant workers surveyed by the union had signed contracts, while the rate for all workers in the survey stood at 96.2 percent.

A group of students at Nanjing University conducted an ambitious survey of working conditions in the several Yangtze River Delta cities during the financial crisis. Among other findings, they discovered that 46.3 percent of workers in Wenzhou did not have contracts.[21]

Around the same time as the BFTU survey was conducted, Tao Wenzhong of the Capital University of Business and Economics interviewed 972 workers and managers of 54 enterprises in Beijing's Chaoyang District on their experience of the Labor Contract Law.[22] Similar to the union's survey, he found that 93.9 percent of interviewees had signed formal labor contracts. Of Professor Tao's interviewees, 5.6 percent were workers

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[18] "Jobs, Yes, but a Return to the Sweatshop?" *ChinaStakes*, http://www.chinastakes.com/2008/12/jobs-yes-but-a-return-to-the-sweatshop.html, December 30, 2008.

[19] "Report on the Situation of Beijing City's Implementation of 'The Labor Contract Law of the People's Republic of China'" (*Guanyu beijing shi guanche 'zhonghua renmin gongheguo laodong hetong fa' qingkuangde diaoyan*), *Youxiu Lunwen Pingxuan,* http://yxlw.acftu.org/template/6/file.jsp?cid=16&aid=330, February 26, 2009.

[20] "Outsiders Make Up Stable Portion of the Long-Term Population of Beijing's Six Districts" (*Beijing changzhu renkou wailai zhan sancheng juji liu liu qu de jingwai jingnei shuliang teping*), *Xinhua*, http://news.xinhuanet.com/politics/2009-11/14/content_12452901.htm, November 14, 2009.

[21] Wang Chen, "An Investigation of the Conditions of Rural Migrant Workers' Rights During the Financial Crisis" (*Jinrong weiji beijing xiade nongmingong quanyi zhuangkuang diaocha*), *Laodong falü zanzhu tongxun*, 2009.

[22] Tao Wenzhong, "The Situation of Labor Relations After the Enactment of the Labor Contract Law" (*Laodong hetong fa shishi hou de laodong guanxi zhuangkuang*), forthcoming paper, 2009.

with Beijing household registration but from rural areas of Beijing, while 9.1 percent were workers from rural areas entirely outside the municipality.

Professor Tao also found a drop in workers' satisfaction with their contracts since the LCL went into effect.[23] This echoes the criticisms of some workers in our own survey, as described below. It also matches the findings of the Shenzhen Dagongzhe Migrant Worker Center, which released a report in 2009 documenting precisely this phenomenon.[24] The Dagongzhe report has justly been cited frequently in the international media.[25]

Dagongzhe interviewed 320 workers around Shenzhen, most of them migrants, and discovered that businesses were engaging in a number of different tricks to circumvent the LCL, including using English-language only contracts, blank or covered-over contracts. Employers divided contracts into two parts, with half a worker's wage on each part and the overtime only calculated off of one of them, resulting in workers receiving half the overtime wages owed them. Many companies employed a worker for 6-day weeks at 6.7 hours per day as a means of getting around overtime requirements. Most importantly, 26.6 percent of workers surveyed still worked without contracts.

**Research Method**

The 367 workers interviewed for this report came from six roughly geographical areas: Shenzhen, Dongguan, Zhuhai, and Guangzhou in Pearl River Delta, as well as Suzhou in Yangtze River Delta (see Table 1).

Interviewees included both individuals who had been in contact with local NGOs, as well as workers randomly approached outside factory gates and in marketplaces. Questions covered workers' labor contracts and social insurance, as well as their views on the utility of the law overall to protect their rights. Several dozen surveys had to be discarded because they were illegible or too incomplete to be usable.

Given this selection process, it is difficult to generalize from our results to China's migrant labor nationwide, yet local, in-depth reports such as this one are key to developing a better understanding of LCL implementation at local levels, particularly within critical regions such as the Pearl River Delta and Yangtze River Delta.

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[23] Presentation by activist at conference, February 2009.

[24] Shenzhen Dagongzhe Migrant Worker Centre, "New Ongoing Violations of Labour Contract Law in China," translated by Workers Empowerment and IHLO, *Worker Empowerment*, http://www.workerempowerment.org/en/newsletter/18, June 12, 2009.

[25] See, for example, "Chinese Labor Laws Buckle as Economy Darkens," *Reuters*, http://www.reuters.com/article/idUSTRE51335C20090204, February 4, 2009.

**Table 1. Interview Locations**

| Location | Number Interviewed | Percentage |
|---|---|---|
| Shenzhen - North | 162 | 44.1 |
| Shenzhen - South | 73 | 19.9 |
| Zhuhai and Dongguan | 12 | 3.3 |
| Guangzhou | 77 | 21.0 |
| Suzhou (Yangtze River Delta) | 43 | 11.7 |
| Total | 367 | 100 |

**General characteristics**

Table 2 shows that the average age of migrant workers interviewed during the course of this research was 26, with approximately three quarters of the interview respondents being male and one- quarter female. This gender ratio does not reflect the overall gender balance in the Pearl River Delta or Yangtze River Delta, as many factories hire only women workers and it is estimated that women make up a majority of employees in some sectors.[26] Our imbalance is likely a result of the fact that males outnumber females at the non-profits that helped us with this study. We hope future researchers will fill this serious gap in the report.

Most workers interviewed for this research had attained a middle school education, with some high school experience. *The Law of the People's Republic of China on Compulsory Education* provides for schooling up to and including middle school or nine years of schooling. Migrants tend to finish their schooling after middle school, if not before, in order to begin searching for work. Approximately half of the interviewees came from five provinces: Hunan, Henan, Sichuan, Hubei and Jiangxi. These are provinces are all major exporters of migrant labor.

The vast majority of workers we interviewed (all but 10 percent) were employed in some type of manufacturing, with the remainder in service industries. Moreover, within the manufacturing sector, the majority of interviewees were employed in electronics, followed by footwear, battery, and machine production (See Table 2). These industries are all major engines of growth in the two regions surveyed.[27]

However, not all the workers we interviewed were unskilled laborers. Identifying interviewees' precise work positions was difficult, but we estimate that 37.2 had office jobs and 62.8 percent had manual jobs. Roughly 15 percent of the interviewees engaged in activities like quality control (*pinguan*), operations and logistics management, (*yunying guanli*), and "assistant manager of guest services" (*kefu fujingli*). Again, though, all were "migrants," as they were employed outside their home provinces.

[26] Pun Ngai, *Made In China: Women Factory Workers In a Global Workplace, Durham*: Duke University Press, 2005.
[27] "Gross Industrial Output for PRD in 2002, Selected Industries," *The Greater Pearl River Delta*, http://www.thegprd.com/about%5Cindustry.html, accessed on February 12, 2010.

While the workers interviewed for this research were employed in a number of different companies within the industries mentioned above, three specific corporations stand out, as they employed approximately 12% of all the workers: the Hantai Shoe Factory in Shenzhen, the Haizhi Battery Corporation (LLC) in Huizhou, and the Shenzhen Xinbang Transportation Company.

The Hantai Shoe Factory in Shenzhen (Hantai) is a footwear production company, which counts among its clients such well-known companies as Wal-Mart, Sketchers, and Fila and employs approximately 4,000 individuals, down approximately 50 percent as a result of the financial crisis. Hantai has previously been the subject of reports chronicling labor abuses within the company, such as a 2008 report by China Labor Watch, which focused on the factory's relationship with Wal-Mart.[28]

The Haizhi (also called Haze) Battery Corporation in Huizhou is a US-invested corporation, established in 2003, that employs over 2,000 workers in the Guangdong city of Huizhou. The Shenzhen Xinbang Transportation Company, located in Futian district Shangbu Industrial Zone of Shenzhen, is a shipping company with a fleet of over 600 vehicles, employing over 5,000 personnel.[29]

**Table 2. Interview Respondents General Characteristics**

| | |
|---|---|
| Average Age | 26 |
| Sex | 74.8% Male |
| | 25.2% Female |
| Average Education | Middle School Graduate |
| | Some High School Experience |
| Home Province | Hunan (22.5%) |
| | Henan (11.1%) |
| | Sichuan (9.6%) |
| | Hubei (9.2%) |
| | Jiangxi (7.0) |
| Industry | Electronics (24.2) |
| | Footwear (13.6) |
| | Service Industry (10.1) |
| Work Type | 37.2 Office |
| | 62.8 Manual |
| Labor Contract | 53% Before LCL |
| | 61% After LCL |
| Worker Injury Insurance | 39.5% Before LCL |
| | 50.5% After LCL |
| Social Insurance | 41.2% Before LCL |
| | 49.7% After LCL |

[28] See, for example China Labor Watch, "Domination of World's Leading Retailer Wal-Mart: 'Save Money, Live Better': Workers' Nightmare," July 15, 2008, available at http://www.chinalaborwatch.org/20080715Wal.htm.

[29] See the Xinbang Shipping Corporation Website, http://www.xbwl.cn/website/main.jsp.

## Protection Under the Law

How are migrant workers being protected under the PRC's emerging labor protection regime? This project collected data on three key issues facing migrant workers in regards to their legal labor rights in China: access to a labor contract, the ability to obtain work injury insurance, and access to social insurance.

*Access to Labor Contracts*

Labor contracts are often considered to be central to workers' legal rights in China. As in other countries, they delineate workers' terms of employment, including salaries, hours, and overtime benefits. Equally importantly, however, contracts help to prove a labor relationship between an employee and his or her employer (*laodong guanxi*) should any disputes arise, thus paving the way for more smooth labor arbitration or court proceedings. The LCL states clearly that each and every worker must sign a contract. In fact, this is one of the central accomplishments of the law, if not *the* central accomplishment.

Our research suggests that the number of workers with contracts has grown somewhat since the law's enactment. Sixty percent of the workers interviewed for our report said they had a labor contract after the implementation of the LCL on January 1, 2008. In contrast, only 53 percent interviewees said they had had a contract before the law. However, given the importance of contracts to the LCL, it is surprising that a full year after the law went into effect to great fanfare more workers have not been able to sign documents attesting to their labor relationship.

Moreover, the percentage of interviewed workers with contracts varied somewhat when other variables were taken into account, most notably the age of the workers. Older workers, for example, were less likely to have a labor contract than younger workers. While 66 percent of workers ages 16-24 currently had a labor contract—again, still a low number considering that the law mandated that 100 percent have contracts—this percentage dropped to 64 percent for ages 25-32, 60 percent (the average percentage) for ages 33-40, and 56 percent for workers ages 41-52. Education had little impact on the likelihood of signing a contract: only 60% of workers with a college degree had signed a one.

Even workers who do sign labor contracts may not be protected from exploitation, as labor contracts are often nothing more than blank templates, signed by workers and filled out later by employers. Many contracts simply include a list of worker responsibilities. As one worker described during his interview, "The contract I signed with my current factory is not legally formal, and not even as good as my previous one."[30] Of course, without true collective bargaining, employers may simply refuse to hire workers who steadfastly demand to sign a labor contract. The process of signing contracts is as important as contract rates.

[30] Interview #187, Shenzhen, March 10, 2009.

*Work Injury Insurance and Social Insurance*

Access to injury insurance is also an important issue for migrant workers. Dangerous work environments, the use of heavy machinery without proper safety training, long hours that leave workers tired and negligent, and the constant push for greater speed and productivity all contribute to labor injuries. Migrants tend to be employed in small private enterprises that lag far behind capital-intensive, state-owned enterprises and even private enterprises that were formally state-owned enterprises in safety precautions.[31] By some estimates, migrants account for over 80 percent of the total number of injuries and deaths in mining, construction, and manufacturing operations.[32]

Access to "social insurance" (*shehui baoxian*), a catch-all category that includes pensions, work injury insurance, medical insurance, maternity insurance and unemployment insurance, is also an increasingly contentious issue for migrant workers. By law, employers are required to contribute to the government-run pension program, regardless of whether their employees are migrants or employees with a local household registration (*hukou*). However, migrant workers' position in the current system is problematic for a number of reasons. First, many employers still do not pay into the system despite collecting contributions from their workers. Second, the high mobility and large turnover rate for migrant labor makes it difficult to benefit from this system. Until very recently, migrant workers could not transfer their accounts to their new place of work, or even to their place of birth, thus limiting the utility of the social security system to these workers even if they did pay into the system.[33] The system is currently changing, with more transfers already allowed and a completely new system is expected soon.[34]

The LCL deals very little with work injury insurance or social insurance, as these are covered by other legislation, such as the State Council's 2003 *Regulations on Work Injury Insurance*.[35] However, it requires that a company pay compensation to any employee who resigns because the company did not provide him or her with insurance.[36] The law also mandates that all contracts include employers' insurance commitments[37]

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[31] Meei-shia Chen and Anita Chan, "Occupational Health and Safety in China: The Case of State-Managed Enterprises," *International Journal of Health Services*, Volume 40, Issue 1, 2010.

[32] China Labor Watch, "The Long March: Surveys and Case Studies of Work Injuries in the Pearl River Delta Region," March 2007, pp. 2.

[33] "Systematic Government Theft of Migrant Workers' Retirement Pension," *China Labor News Translation,* http://www.clntranslations.org/article/31/systematic-government-theft-of-migrant-workers-retirement-pensions, July 2008.

[34] "New Pension Fund Rules Benefit Migrant Workers," *CCTV.com*, http://english.cctv.com/program/bizchina/20091230/102000.shtml, December 30, 2009; "Draft Law of Social Insurance Draws Nationwide Debate," *Xinhua News English [Online]*, 20 February 2009, available at http://www.npc.gov.cn/englishnpc/news/Legislation/2009-02/20/content_1471096.htm; Congressional Executive Commission on China, *Annual Report 2009*, (Washington, DC: US Government Printing Office), 10, October 2009, pp. 69.

[35] State Council, *Regulations on Work Injury Insurance (No. 375)*, April 27, 2003.

[36] *Labor Contract Law*, Articles 38, 46.

[37] *Labor Contract Law,* Article 17.

and requires that the labor administrative departments of local governments "perform surveillance and inspection" of "employers' participation in social insurance" and "other labor surveillance issues as prescribed by relevant laws and regulations."[38] In this way, the legislation reaffirms provisions in the 1994 *Labor Law*, such as the right of workers to social insurance[39] and the requirement that all workers receive compensation for work injuries and illnesses.[40]

According to the workers interviewed during the course of this research, only 39.5 percent had injury insurance before 2008, compared to the 49.5 percent who currently have injury insurance, an increase in coverage of 10 percent. The major gains in access to labor injury insurance seem to have come largely for younger workers, as only 29.6 percent of workers ages 16-24 had access to injury insurance before 2008, while 52.4 percent currently have access.

Despite the systematic exclusion of migrant works from full access to the current government pension system, the percentage of workers having social insurance has risen by approximately 8 percentage points since the beginning of 2008, from 41.2 percent before to 49.7 percent after. Again, younger workers have benefited the most, with increases in social insurance workers in the youngest age group (16-24) improving 16 percentage points since 2008.

As with the rate at which workers are signing contracts, these improvements should be considered in the light of the fact that by law all of China's workers should have both work injury and social insurance, not half of China's workers.

*Industry to Industry Comparison*

Our research was biased toward certain industries. Almost a quarter of our interviewees worked in the electronics sector, for example, while only 6 percent worked in logistics. Yet the differences in labor conditions between the main sectors in our sample were intriguing. They suggest the need for a targeted, industry-specific approach to strengthening enforcement of the LCL.

While 60 percent of all workers in the sample had access to a labor contract, only 50 percent of those working in the furniture and hardware industries had access to such contracts. Workers in the furniture and hardware industry were also significantly less likely to enjoy social insurance, with only 35 percent of workers in this industry reporting that they had such insurance, compared to roughly 50 percent of all workers.

In addition, workers in the electronics and footwear industries, two of the largest industries in the sample, and two important industries in the Pearl and Yangtze River Deltas, had slightly below average rates of work injury insurance. Forty-seven percent of

[38] *Labor Contract Law*, Article 74.
[39] *Labor Contract Law*, Article 3.
[40] *Labor Contract Law*, Article 73.

electronics workers and 45 percent of footwear workers had access to such insurance, compared, again, to roughly 50 percent of all the workers interviewed from all sectors.

Workers employed in service industries (including logistics and transportation), however, had higher than average rates of access to both work injury and social insurance. Fifty-eight percent of service workers reported having work injury insurance, while 74 percent reported having social insurance. More in-depth research on these differences is needed.

**How Workers Are Learning About the Law**

How do Chinese migrant workers obtain legal information? This is an important question for NGO activists, union cadres, and labor officials alike. One response to the shortcomings in labor law implementation must be an even greater effort at educating workers about their rights. Of course, information about the letter of the law is not enough; workers must learn how to use laws and legal channels effectively. They must, moreover, make demands based on interests that go beyond any single regulation. What, though, is the most efficient way of reaching them?

In general, the workers we interviewed (using a multiple-choice format) tended to obtain legal information through traditional media sources like television (64 percent) and newspapers (46.6 percent), as well as newer mass media, such as the internet (44.7 percent). Yet the sources that workers accessed varied significantly according to their age and education. While the internet played an important role in helping younger, more educated workers obtain legal information, for example, for older, less educated workers, use of this resource was extremely limited.

Specifically, although 46.6 percent of the entire sample relied on the Internet, only 20 percent of workers above the age of 30 used this resource, compared to 50.5 percent of those under 30. Moreover, while approximately 77 percent of workers with a university or polytechnical degree reported using the internet to obtain legal information, only half of those with high school experience or a high school degree and only 20 percent of those with a middle school degree or middle school experience did so. No workers with an education level below middle school reported using the internet to obtain information.

Older workers relied on personal ties for legal knowledge. A full 37.5 percent of interviewees over 30 cited friends as a source for information, compared to 29.6 percent of those under 30, while 40 percent of older workers got their knowledge from other workers, compared to 24.3 of younger workers. The pattern held for other direct, personal sources of information: NGOs (25 percent versus 21.4 percent), family members (20 percent versus 16.5 percent) and people from the same hometown (*laoxiang*) (20 percent versus 16 percent).

New technologies are a useful resource for China's migrant workers. They can spread information quickly and facilitate collective responses to specific problems. However, given that most migrants attain only a middle school education, the last level of education supported by the state, and few workers with a middle school education or less get their

legal information online, the internet is clearly not the most efficient means of disseminating information regarding the LCL and other labor regulations to large segments of the migrant labor population.

**Table 3. Migrant Workers' Sources of Legal Information**

| | Total Sample | Younger Workers (<30) | Older Workers (>30) | Education: Elementary or Less | Education: Middle School | Education: High School | Education: University |
|---|---|---|---|---|---|---|---|
| Television | 64% | 63.6% | 65% | 44.4% | 73.7% | 48.4% | 64.6% |
| Newspapers | 46.6% | 48% | 45% | 11.1% | 38.4% | 48.4% | 59.5% |
| Internet | 44.7% | 50.5% | 20.0% | 0.00% | 20.2% | 50.0% | **77.2%** |
| Friends | 30.8% | 29.6% | 37.5% | 22.2% | 27.3% | 25.8% | 30.1% |
| Workers | 26.5% | 24.3% | 40% | 55.6% | 30.3% | 24.2% | 18.9% |
| NGOs | 22.1% | 21.4% | 25.0% | 11.1% | 20.2% | 24.2% | 21.5% |
| Family Members | 17% | 16.5% | 20.0 | 33.3% | 13.1% | 12.9% | 21.5% |
| Hometown Associates | 16.6% | 16.0% | 20.0% | 33.3% | 17.2% | 14.5% | 13.9% |
| Radio | 11.9% | 12.1% | 7.5% | 0.00% | 5.0% | 9.7% | 21.5% |
| Labor Bureau | 11.7% | 12.1% | 12.5% | 0.00% | 9.0% | 17.7% | 11.4% |
| Government Legal Aid Centers | 8.7% | 6.8% | 17.5% | 11.1% | 10.1% | 12.9% | 3.8% |

*Note: Workers were allowed to choose more than one source*

**Workers' Views of the Labor Contract Law: A Combination of Hope and Doubt**

Finally, to what extent do workers have faith in the LCL's ability to protect their rights? In response to our questions, approximately 33 percent of the workers "completely agreed" (*wanquan tongyi*) that signing a labor contract would safeguard their legal rights, while almost 50 percent of the sample "agreed" (*tongyi*). This general support for the legislation remained high among workers who had direct experience with labor law. Approximately 80 percent of the 100 workers who themselves had gone through labor arbitration or the court system still supported the idea that the LCL could help workers defend their rights.

However, this surface optimism was mixed with doubts over enforcement of the law, as well as pragmatism about tactics. When workers were allowed to express themselves in more detail during the in-depth portion of interviews, they often provided a more nuanced analysis of their views. Even those workers who "agreed" or "strongly agreed" that labor contracts could protect their rights expressed strong reservations.

The work of other researches has also shown this same coexistence of support and cynicism regarding Chinese labor laws and governmental and semi-governmental labor institutions. In a study of Labor Arbitration Committees in Dalian City in Northeast China, E. Patrick McDermott found high levels of satisfaction with the arbitration process on the part of workers (and businesses) he interviewed, as well as a strong willingness by

workers to recommend the process to others.[41] In a survey of Shanghai workers, though, Mary Gallagher noted how workers became more cynical about legal channels even as they resolved to use arbitration and courts again and even as their sense of their own efficacy rose. She dubbed this condition "informed disenchantment."[42]

Our research shows somewhat more resilient faith in the overall legal system among workers than in Gallagher's analysis. Yet some of the comments below point to more doubt about the legal system than that found by McDermott. Given Gallagher's focus on Shanghai, McDermott's focus on Dalian, and our research in the Pearl and Yangtze River Deltas, these variations may be a function of local conditions. They may also be related to the timing of the different studies, as our interviews were conducted approximately one year after the LCL's enactment, while Gallagher and McDermott carried out their research before the law went into effect.

Pragmatism about tactics was strong among our interviewees. Many interviewees expressed a preference for collective solutions to labor disputes. For example, one worker, who "agreed" that signing a contract could protect his rights went on to explain:

> "It should help [referring to the LCL], but it's hard to say, because as a migrant worker, very often you can't compete with the factory. If you're in a group (*qunti*) it's possible to have more influence, but I still believe the Labor Contract Law is fair."[43]

The most potent expressions of collective action are strikes or protests, which can be quite effective. A recent survey of 100 recent labor protests found that "in only three cases did the workers clearly lose either by having their demands rejected or by being sacked after taking protest action;" in 37 cases, workers' demands were "fully or partially met;" in 21 cases, "the local government intervened but with no clear result;" and in the remaining 39 cases, "the final outcome was unclear."[44]

But not all collective solutions necessarily involve public displays of resistance. Workers may bring successive, individual legal cases rather than a single collective case (which is often exceedingly difficult if not impossible). They may combine a legal action with collective and direct expressions of discontent to managers inside the workplace. Moreover, the emotional backing of a community is often needed for an individual to have the strength to go through with an individual case.

Many of our interviewees expressed dismay in the job done by labor regulators. Despite "strongly agreeing" with the idea that the law can protect workers' rights, one worker

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[41] E. Patrick McDermott, forthcoming paper in *Journal of Labor and Industry*.

[42] Mary E. Gallagher, "Mobilizing the Law: 'Informed Disenchantment' and the Development of Legal Consciousness," *Law and Society Review*, December 2006.

[43] Interview #148, Shenzhen.

[44] China Labour Bulletin, "Going it Alone: The Workers' Movement in China (2007-2008)," http://www.clb.org.hk/en/files/share/File/research_reports/workers_movement_07-08.pdf, July 9, 2009.

stated:

> "While overall workers' rights are safeguarded better than before, government functional departments (*zhengfu zhineng bumen*) don't do a good job investigating violations of the law. Workers are disadvantaged group in society (*ruoshi qunti*)."[45]

Indeed, China's labor inspectors are too few (albeit more numerous in proportion to China's population than are American inspectors to the U.S. population)[46] and underfunded. In a context somewhat different from the Pearl River Delta's factory inspectors, 48 mine safety inspectors in Hunan collectively tendered their resignations in May 2009 because they said that they could not "meet the tough rules on safety."[47] Too often, the inspectorate can only react after the fact to problems, if at all.

Workers we interviewed were also skeptical of legal implementation in China more generally. As one said, "[The LCL] might be good. However, in some factories, the Labor Contract Law is not really being enforced on the ground."[48] Two other workers expressed similar sentiments regarding the importance of proper implementation: "It might be better. But the government does not strictly enforce it and does not implement it thoroughly."[49]

Some workers expressed hope that the LCL could protect them, even though this hope appeared to contradict their prior experiences:

> "We all come from economically backward regions, and came to Guangdong to take care of our family. However, in Guangdong we've all had experienced with bosses who embezzle and flee with our salary, and have no guarantee of our wages. Now, the Labor Contract Law will fundamentally guarantee our legal rights."[50]

Workers' support, however clouded by doubt and balanced by harsh experiences, could go a long way in promoting the transparency and stability in the labor market that China seeks. However, absent full implementation of the law, many workers will continue to be subject to extreme exploitation, and doubt both the local and central level government's commitment to the rule of law. One worker in Shenzhen put it best:

> "It will become better if the government can strictly enforce [the law]. If the

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[45] Interview #232, Longhua.

[46] There is one inspector for every 35,000 workers in China, versus one for every 66,258 workers in the United States; the International Labour Organization's benchmark is 1 per 10,000. See Meei-shia Chen and Anita Chan, "Occupational Health and Safety in China," 2010; AFL-CIO, "Number of OSHA Inspectors by State Compared with ILO Benchmark Number of Labor Inspectors," http://www.aflcio.org/issues/safety/memorial/upload/_40A.pdf, accessed on February 10, 2010.

[47] Stephen Wong, "China's Mine Inspectors Bite the Dust," *Asia Times Online,* http://www.atimes.com/atimes/China/KF05Ad01.html, June 5, 2009.

[48] Interview #178, Shenzhen.

[49] Interview #1128, Shenzhen.

[50] Interview #549, Guangzhou.

government does not respond, many migrant workers will be gone."[51]

**Businesses' Views on the Labor Contract Law**

In addition to interviews with the low income workers most affected by the LCL, our research attempted to capture the viewpoints of management and white-collar workers on the legislation, particularly their sense of how it would impact the business community and the Chinese economy more generally.

A total of 23 interviews were conducted with management and white-collar workers across a number of industries in Guangdong, Zhejiang, Beijing, and Shanghai in the Yangtze River Delta. Interviewees were contacted through personal and professional relationships. Unlike the majority of workers interviewed during the course of this research, all respondents had a university education, and most were relatively knowledgeable of the LCL's details. Their views, however, varied widely.

*Pressures on Businesses*

Some management-side interviewees warned of doomsday scenarios as a result of the new legislation, while others expressed more optimistic views regarding the law's long-term impact. One manager working in a business communications company in Zhejiang, for example, offered up the following:

> "It's hard to say [about the impact of the LCL]. In my opinion, the Labor Contract Law will increase the minimum wage for workers and increase labor costs for companies. Perhaps, enterprises will reduce the number of people they hire in order to cut costs. Or, perhaps, because of the increase in pay... companies will have to decrease the quality of their goods, such that they are of less quality than what was promised. This will reduce the market share for Chinese goods in both the international and domestic markets, and ultimately influence the state economy. Of course, this is a simple assumption, and we have to look at the practical implementation when evaluating any legislation."[52]

Others suggested that certain specific aspects of the LCL, most notably those clauses providing workers with access to a non-fixed term contract after signing two fixed term contracts, place an undue burden on enterprises.[53] One interviewee, a consultant in Shanghai, argued that very often it is the workers who are at fault for breaching the terms of labor contracts and that the law should be reformed to reflect this situation[54] (we would argue that the law is already quite clear about the obligations of both parties and, judging from the results of our survey, that employers are more likely than workers to be in violation).

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[51] Interview #1150, Shenzhen.

[52] Interview Group II 002 Zhejiang, December 8, 2009.

[53] *Labor Contract Law*, Article 14.

[54] Interview Group II 001, Shanghai, November 13, 2009.

*Upsides for Businesses*

Yet those managers who were interviewed during the course of the research did not believe all aspects of the LCL were harmful. One business management consultant in Shanghai, for example, expressed support for clauses in the law that protect business secrets when workers leave a company.[55]

> "A few individuals take company trade or technology secrets (such as client information), sometimes for profit, and in violation of the labor contract's clauses on 'changing jobs' (*tiaocao*). This can lead to losses for the original employer. In this instance the restrictive clauses within the Labor Contract Law are very necessary."[56]

More broadly, many managers spoke approvingly of the law's ability to "stabilize" (*wending*) and "standardize" (*guifan*) industrial relations in the long term. Over half used these terms or said that the LCL could end up reducing "social contradictions" (*shehui maodun*). In the opinion of one white collar worker employed in finance,

> "In the long term, yes, [the legislation will have a positive impact], because it can stabilize the labor market, provide a stable supply of labor, and guarantee social stability, and be helpful in promoting domestic consumption and restructuring the economy. In the short term, it will give some companies a lot of pressure, especially those with thin profit margins."[57]

There is evidence that such macro sentiments may be useful on a micro level. For example, a 2008 Booz Allen Hamilton study of firms operating in China found that 33 percent cited "poor employee retention" as a prime reason for lost competitiveness.[58] A recent report released by Business for Social Responsibility (BSR) and the Levi Strauss (LS) Foundation meanwhile describes a pilot program wherein a Vietnamese factory partnered with local NGO to provide workers with legal training and include the workers in a "Project Management Team" that strove to resolve a series of abuses discovered in a baseline analysis of conditions at the plant. As a result, the workforce stabilized after a sharp fall the year before and turnover fell from 6 percent to 3 percent; the company in turn gained from greater worker input on efficiencies.[59]

Obviously, it is not the role of labor activists to ensure workplace stability. But greater appreciation of the benefits of labor law among employers is a good thing.

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[55] *Labor Contract Law*, Article 23.

[56] Interview Group II 001.

[57] Interview Group II 007, Shanghai, December 12, 2009.

[58] Christoph Bliss, Ronald Haddock, Conrad Winkler, and Kaj Grichnik, "China's Shifting Competitive Equation: How Multinational Manufacturers Must Respond," http://www.boozallen.com/media/file/Chinas_Shifting_Competitive_Equation.pdf, March 4, 2008.

[59] Business for Social Responsibility, "Moving the Needle: Protecting the Rights of Garment Factory Workers," http://www.bsr.org/reports/BSR_LeviStraussFoundation2009.pdf, October 2009.

## CONCLUSIONS AND RECOMMENDATIONS

Our report shows the complex ways in which the LCL has impacted society, especially the lives of migrant workers. The law has had very different impacts for young versus old workers, service employees versus manufacturing employees, and, of course, labor versus management. This obvious fact calls for more multi-faceted strategies aimed at strengthening the LCL's implementation. Below are a few suggestions. They are meant as a starting point to further conversation, yet they may be extremely useful in helping to move beyond simple, formal legal training for migrant workers, and towards a more practical understanding of how to use the law and empower workers within this growing labor rights protection regime.

***The battle to ensure that all workers have signed labor contracts is far from won. Authorities must bring more pressure to bear on noncompliant employers.***

Despite the extraordinary level of attention that the LCL received even before its enactment, large numbers of employers clearly still refuse to sign contracts with their employees or provide basic social and work injury insurance. The LCL makes notable advances in terms of replacing fines to the state with mandates that companies compensate workers themselves for various infractions. For example, Article 82 states, "If an employer fails to conclude a labor contract in written form with a worker in more than one month but less than one year after the date of starting to use him, it shall pay the worker double amount of his salary every month." However, attacks on the law by prominent businesspeople and fickle local government attitudes toward implementation, especially during the early months of the global financial crisis, may have emboldened lawbreaking employers to continue to chart their own course.[60] Implementing guidelines promulgated nationally on September 18, 2008 also loosened the LCL's conditions on firing workers, among other things.

Stiffer criminal and civil penalties directed at individual owners could speed implementation of the LCL's main provisions, delivering better protections for workers and leveling the playing field for law-abiding companies. At present, the law already states that bosses can be "investigated for criminal liabilities" for forced labor, violence against workers, and especially dangerous working environments.[61] During the recently-concluded meeting of the National People's Congress, the ACFTU further proposed that

[60] For example, Zhang Yin, head of the Nine Dragons paper company ignited fierce debate by criticizing the LCL during the 2008 meeting of the Chinese People's Political Consultative Conference; see "Rich CPPCC Member Kicks Up Storm," *Xinhua* via *China Daily*, http://www.chinadaily.com.cn/china/2008npc/2008-03/10/content_6521877.htm, March 10, 2008. Anecdotal stories of government back-tracking abound; see, for example, Dan Harris, "China's New Labor Contract Law. Harmonized Out Of Existence?" *China Law Blog*, http://www.chinalawblog.com/2008/12/chinas_new_labor_contract_law_3.html, December 8, 2008. Guangdong weakened penalties against employers in the wake of the financial crisis in an especially controversial way; see "Guangdong Inspectorate: Enterprise Managers Need Not be Arrested for Ordinary Crimes" (*Guangdong jiancha yuan: qiye laozong she yiban fanzui ke bu kouzhu*), *China.com.cn*, http://www.china.com.cn/news/txt/2009-01/07/content_17068446.htm, January 7, 2009.

[61] *Labor Contract Law*, Article 88.

the country's "criminal code be revised to specifically target employers who flee their responsibilities to pay back-pay."[62] Such penalties could be extended to failures to sign contracts. They would have to be sustained, though. Short crackdowns, like those launched following revelations of slave labor in Shanxi brick kilns, have delivered dramatic headlines but not final resolutions to problems.[63]

***Labor activists, government officials and trade union cadres must focus not only on contract coverage, but also the process of signing contracts.***

Several of our interviewees decried the poor quality of their contracts. As noted, their experiences echo the findings of a survey conducted by Dagongzhe, which found large numbers of blank contracts, foreign-language contracts, covered-over contracts and contracts with illegal conditions. Clearly, simply having a contract is not enough. The quality of a contract is also important, and the greatest guarantee of quality is an equal bargaining relationship between employers and employees. Better yet, workers should bargain collectively with their bosses.

The ACFTU was instrumental in the drafting and passage of the law and gained new space to bargain on behalf of workers through the LCL's extensive articles dealing with collective contracts. Subsequent laws, such as Shenzhen's *Regulations on the Growth and Development of Harmonious Labor Relations* even encouraged the union to stand on the side of workers in the event of a strike, a dramatic step forward in a country that removed the right to strike from its constitution in 1982 (but, it should be emphasized, never actively banned strikes, either). At the outset of the financial crisis, the union appeared to put collective bargaining on hold.[64] Now, with the worst of the crisis apparently behind China, reports suggest that the ACFTU is ready to revisit the issue.[65] At the urging of its citywide union federation, Guangzhou is contemplating new rules that would require employers to regularly engage in collective bargaining with unions who demand it—or face fines.[66]

Who is best situated to advance collective bargaining? There is considerable doubt among observers of Chinese labor relations as to the national-level ACFTU's willingness to seriously confront employers; highly publicized union organizing campaigns, such as the one launched in Chinese Wal-Mart stores in 2006, have resulted in weak contracts.[67]

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[62] Raymong Li, "Unions Target Bosses Who Dodge Back Pay," *South China Morning Post*, March 10, 2010.

[63] China Labour Bulletin,"Brick Factories in Hubei Continue to Use Forced Labour Despite 'Crackdown,'" http://www.china-labour.org.hk/en/node/100665, January 29, 2010.

[64] IHLO, "Guangdong Provincial Trade Union Suspends Collective Wage Negotiations," http://www.ihlo.org/LRC/W/271108.html, November 2008.

[65] China Labour Bulletin, " Will the New Year see a resumption of collective bargaining in China?" http://www.clb.org.hk/en/node/100649, January 5, 2010.

[66] Zhu Fengjun, "If Workers Want Wage Increases, Enterprises That Refuse to Bargain May be Fined 20,000 RMB" ('*Zhigong yu zhang xin qiye bu tanpan huo jiang fa liang wan'*), Southern Metropolis Daily, http://gcontent.nddaily.com/a/21/a2137a2ae8e39b50/Blog/cef/9fb5c3.html, March 18, 2010.

[67] See Marc Blecher, " When Wal-Mart Wimped Out: Globalization and Unionization in China," *Critical Asian Studies*, 40:2, 2008; China Labor News Translations, " The Bad and the Good of the Wal-Mart

Qiao Jian of the China Institute of Industrial Relations argues that enterprise-level union cadres, often derided as stooges of management and local governments, are actually more "member-oriented" than acknowledged and eager to play a more active role on behalf of workers.[68] Others have hailed the example of Wenling City in Zhejiang, whose trade union council negotiated an industry-wide wage agreement with the city's woolen textile mills in 2004,[69] though the continued practical impact of that agreement is unclear. More research is needed on workers' own attitudes toward collective bargaining and what avenues are available for workers to directly access the process, possibly aided by NGOs or informal workers' associations.

***A multi-faceted approach to legal education is needed in order to reach older workers in particular.***

Young migrant workers have clearly benefited the most from the LCL. They are most to have signed labor contracts and to enjoy work injury insurance and social security. It is probably not a coincidence that young workers are also the most likely to use the internet to access legal information. However, we have also observed that, with the exception of those older workers with specific questions relating to their own jobs, attendees at NGO-sponsored legal trainings tend be young. We suspect the same is true for government-run legal aid centers.

Clearly, it is vitally important for good legal information to reach those who are just beginning their careers. However, older workers still compose a large portion of the migrant workforce. According to a 2006 State Council research report on migrant workers, 61 percent of migrants are aged 16-30; 23 percent are aged 31-40; and 16 percent are 41 or older.[70] Young people make up the bulk of the migrant population, but hardly all of it. Another reason for reaching out to older workers is that some of them (likely a small minority in the country's export processing zones but more numerous in other parts of the country) carry with them crucial memories of alternative, collective and state-run modes of production and experiences that span the whole of China's reform process.

It may be useful for NGOs, local ACFTU branches and others to adopt more holistic, community-centered approaches to legal education in order to engage older workers missed by online forums and word-of-mouth legal classes. The Asia Monitor Resource Centre's publication *Organizing Strategies for Informal Economy Workers*, while focused on the informal sector, offers some useful ideas that could be applied to manufacturing

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ACFTU Collective Agreement," http://www.clntranslations.org/article/38/wal-mart-contract, May 18, 2009.

[68] Qiao Jian, "Between the State and the Market: Multiple Roles of the Chinese Trade Unions from the Perspectives of Shop Stewards," *Employee Relations*, 32:1, 2010.

[69] All China Federation of Trade Unions, "Putting up Pay Rates Through Bargaining," http://www.acftu.org.cn/template/10002/file.jsp?cid=77&aid=408, July 15, 2005.

[70] China Labour Bulletin, "Migrant Workers in China," http://www.china-labour.org.hk/en/node/100259, June 6, 2008.

workers, as well.[71] For example, it examines how Hong Kong activists were able to build up community appreciation among working class and middle urbanites for high-rise janitors, an appreciation that could be transformed into solidarity when the janitors demanded better conditions. A similar "community appreciation" approach could, perhaps, reach isolated older workers in China's export processing zones, thus improving their legal rights consciousness, while developing solidarity across a broader spectrum, of the workforce.

A different language may also be needed. Whereas younger workers might thrill to notions of legal "rights," their parents may be more receptive to the idea that society as a whole has certain "responsibilities" toward them that go beyond a particular regulation. Ching Kwan Lee has described this divide in the context of northern "rustbelt" workers in state-owned enterprises versus southern "sunbelt" workers in private enterprises. But the same may be true for different generations within the sunbelt itself. [72] The point is not to simply repackage the LCL or any other law so it is appealing to older workers, but to open the conversation beyond the letter of the law to include core values, not only welcoming older workers but playing to their strengths.

***Access to legal assistance for workers must be expanded.***

As described above, many workers interviewed during this project expressed both hope for the developing legal protection regime, as well as doubt regarding the extent to which these measures will be fully implemented. This combination suggests that the PRC government has a window of opportunity in which to support the use of the formal labor dispute resolution system. Indeed, this conjecture appears to be supported by the rapid growth in the number of workers currently attempting to use the legal system in order to resolve disputes.[73]

One way the government might provide low-income migrant labor with better access to the legal system is by lowering economic barriers to entry. While the system was moved in this direction with the promulgation of the *2007 Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes*, which increased the time limit for arbitration application to one year from 90 days[74] and eliminated arbitration application fees,[75] workers still face a number of obstacles when attempting to secure legal representation. One significant problem facing low-income workers is the high cost of attorney fees.

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[71] Sri Wulandari, *Organizing Strategies for Informal Economy Workers*, Hong Kong: AMRC and Asian Labour Exchange, 2008.

[72] Ching Kwan Lee, *Against the Law: Labor Protests in China's Rustbelt and Sunbelt*, Berkeley: University of California Press, 2007.

[73] Wang Wen, "Labor Disputes Skyrocket in Beijing," *China Daily*, December 10, 2009, available at http://www.chinadaily.net/metro/2009-12/10/content_9154121.htm; "Labor Dispute Double Amid Slowdown," *China Daily* [Online,] May 9, 2009, available at http://www.chinadaily.com.cn/bizchina/2009-05/09/content_7760281.htm.

[74] National People's Congress, *Law of the people's Republic of China on Mediation and Arbitration of Labor Disputes*, Article 27, December 29, 2007.

[75] *Law on Mediation and Arbitration of Labor Disputes,* Article 53.

According to statistics from the Guangdong Provincial government, average wages for migrant workers in that province were just under 1,300 RMB (approximately US$189), while attorneys' fees in Shenzhen can be as high as 5,000 RMB for representation in a labor dispute case.[76] Given this situation, the vast majority of workers with labor disputes face a clear economic disincentive to hiring a lawyer, as only workers with labor disputes large enough to cover the cost of attorney fees are willing to do so. One way the government may change this dynamic is through the implementation of one-sided fee-shifting regulations.

Procedures like these exist in the U.S. Fair Labor Standards Act and civil rights legislation. They require the losing defendant (and never the plaintiff, i.e. never the worker in labor cases) to pay the attorney fees of the winning party. In the fall of 2008, the Shenzhen City government began to implement *Regulations on the Growth and Development of Harmonious Labor Relations* in its special economic zone. These regulations allow up to 5,000 RMB in attorney fees to be paid by the employer, should a labor arbitration or court case find in favor of the employee.[77] If the *Regulations on the Growth and Development of Harmonious Labor Relations* were to be extended to include the remaining Shenzhen city districts, as well as other locales, this could significantly decrease financial barriers for migrants seeking to use the formal labor dispute resolution system to resolve disputes.

***Activists must monitor conditions in backward "nuts and bolts" factories.***

Our industry-to-industry data is sparse. However, some industries nonetheless stand out as particularly exploitative, such as the furniture and hardware sectors. There are plenty of anecdotal stories to corroborate these findings. For example, in 2005, several advocacy groups reported abuses at the Italian furniture maker DeCoro's Shenzhen plant, the largest sofa manufacturing facility in the world. In October that year, DeCoro management arbitrarily slashed wages by 20 percent. On October 28, ten workers went to factory management seeking an explanation and to try to reverse the wage cuts. Management responded by confiscating their factory ID cards so they could no longer enter the factory. On October 30, these workers staged a sit-down demonstration in front of the factory. The following day when these 10 workers attempted to enter the plant, they were physically assaulted and beaten by five Italian supervisors, and required hospitalization.[78]

DeCoro is not an exception. The same conditions prevail among the makers of small

[76] Liang Xingni, "Attorney Fee-Shifting and Labor Rights in China," *Labor is Note a Commodity*, December 14, 2009, available at http://laborrightsblog.typepad.com/international_labor_right/2009/12/attorney-fee-shifting-and-labor-rights-in-china.html.

[77] Standing Committee of the Shenzhen People's Congress, *Regulation on the Growth and Development of Harmonious Labour Relations in the Shenzhen Special Economic Zone*, Article 58, September 23, 2008.

[78] The National Labor Committee, "Workers in China Making Furniture For Levitz and Jennifer Are Beaten and Hospitalized," http://www.nlcnet.org/article.php?id=545, November 16, 2005.

hardware components or even power tools. These industries present a particular problem for international activists: they are less closely associated with a major brand that can be used as a pressure point than are toys manufactured by Mattel, for example. Supply chain links must be highlighted better. New partnerships regarding the manufacture of basic parts, the nuts and bolts of consumer goods, for example, must be made that mimic the sweat-free garment activism of students, and the government garment procurement guidelines increasingly passed by municipalities in the U.S. and elsewhere.[79]

***Responsible businesses can take advantage of certain aspects of the LCL.***

Finally, the increase in both worker injury and social insurance coverage among migrant laborers since the implementation of the Labor Contract Law demonstrates that positive advancements in workers' rights are indeed possible. Businesses can meet these obligations, while still maintaining their competitive edge. After all, those workers who had gained coverage since the LCL's went into effect still had a job at the time of their interviews. Their companies had not folded.

It is likely that part of the reason for this expanded insurance coverage is that employers saw a greater cost from non-compliance, such as costs associated with injury compensation, drawn-out lawsuits and strained relations with local governments. The same may be said for the increased, albeit still insufficient, contract rates shown by our research. Provisions in the LCL like the one guaranteeing double payment of wages to workers who work more than a month without a contract are clear and hard to avoid; more employers may consequently view signing a contract as the cheapest option.

Local officials, the ACFTU and NGOs must therefore continue to strive to raise the costs of non-compliance, through strengthening workers' ability to bargain with and monitor their employers at the point of production, through resisting the watering down of the LCL through various local implementing guidelines and through continuing to bring cases to court and demanding more rigorous inspections of workplaces by labor bureaus. But there are also ways that responsible enterprises can themselves actively contribute to better implementation of the LCL while still growing their businesses.

The global "corporate social responsibility" (CSR) discourse has slowly shifted from ineffective in-house audit regimes to schemes for greater worker participation. Hong Kong's Students and Scholars Against Corporate Misbehavior (SACOM) has helped establish workers committees in China through agreements with a major electronics manufacturer with what appear to be positive results for all parties.[80] As mentioned above, Business for Social Responsibility and the Levi Strauss Foundation have commissioned a report comparing efforts at improving labor conditions in garment factories through worker participation and sustained NGO and brand engagement. The report finds benefits for both employers and employees, with workers not only enjoying

[79] For example, the SweatFree Purchasing Consortium, a partner of ILRF, has linked communities that commit to "sweat free" government procurement policies. See http://www.buysweatfree.org.

[80] SACOM, " Towards a New Worker-Based CSR Model:A Pilot Labor Rights Training Program in China," http://sacom.hk/category/campaigns/sacom-hp-labor-rights-training, September 23, 2009.

higher earnings but companies also gaining better line feedback on manufacturing inefficiencies.[81]

Our own interviews with executives and managers showed, as noted, a great diversity of opinion. Many were fearful of the LCL's effect. Others, though, saw ways that the law could actually benefit their work. Sometimes, the benefits were simply positive tradeoffs, such as the provisions on company secrets. More often, the benefits were seen to be a long-term stabilization of the labor market and "standardization" of contracts.

Of course, as stated in our introduction, not all companies will benefit from better implementation of the LCL. That is simply a fact and it is, ultimately, an acceptable fact. In an interview with *The Economic Observer Online*, Renmin University's longtime champion of labor rights, Professor Chang Kai, argues that while "most businesses oppose the Labor Contract Law because of their misunderstanding of it," China cannot "protect the interests of such businesses that become rich by squeezing their workforce."[82] This was the understanding behind the government's passage of the law in the first place.

***Laws like the LCL are not enough.***

Our investigation of the LCL's impact, while preliminary, has shown that more attention must be paid to the variety of outcomes for workers generated by this single piece of legislation. When pushing for new laws, such as pension reforms or regulations regarding collective bargaining, we must ask: how will older workers experience a certain piece of legislation? How will workers actually access the law? Which industries' workers are most in need of support? How can we encourage better business compliance? Laws, even very good ones, are not everything, however.

NGOs, the ACFTU, and their international supporters must help Chinese workers demand more than the minimum that they are due under labor regulations. Workers must, moreover, learn to make their demands on the shop floor proactively, not only when an abuses reach the level of severity that requires a trip to an arbitration panel, or court, or hospital. They must, finally, ensure that they have a strong voice in all important company decisions and in society more broadly. Only then will they truly become "masters in their own house" (*dang jia zuo zhu*).

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[81] Business for Social Responsibility, "Moving the Needle," 2009.

[82] "The End of China's Low-Cost Labor?" *The Economic Observer Online*, http://www.eeo.com.cn/ens/biz_commentary/2008/03/06, March 6, 2008.