

LABOR MARKET IN CHINA: LABOR RIGHTS, INTERNAL MIGRATION, AND CURRENT TRENDS

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Summary: Introduction; I. China's economic growth and the role of its labor market; II. Internal migration within China; III. Current situation of the labor market in China and labor rights; Conclusions.

Abstract: One of the pillars of China's booming economic growth is its labor market. Behind the world's second-largest economy -made up of a labor force of over 900 million and based on the foundation of solid and growing economic stability- is a working population subject to very different labor conditions to those of its western competitors, thereby creating an advantage and a high degree of attractiveness for foreign investors. This paper explores the labor market and labor rights in China, the role played by the government, workers' organizations and international actors, migration flows as well as the prospects of a country considered to be the "factory of the world".

Keywords: labor market, labor rights, rural-urban migration, China

INTRODUCTION

China, the leading country of one of the most spectacular transformational stories of our time, is determined to become the world's leading economic power. As the world's most populous country according to the most recent census, with more than 1.404 billion people,⁴ China lies well ahead of its main competitor, the United States of America,⁵ a country which Beijing estimates it will surpass as the world's leading economic power by 2025.

The economy of the People's Republic of China is the world's second largest in terms of nominal GDP. It has also become the largest in purchasing power parity according to the International Monetary Fund (IMF)⁶. Since the initiation of reforms

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⁴ UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, POPULATION DIVISION. *World Population Prospects: The 2017 Revision*, New York (UN), 2017. Custom data acquired via website, September 2017, available at <https://esa.un.org/unpd/wpp/DataQuery/>

⁵ The United States is estimated to have a population of 323 billion making it the third most populous country in the world, see U.S. CENSUS BUREAU: *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2016 - 2016 Population Estimates*, Suitland, 2016.

⁶ INTERNATIONAL MONETARY FUND. *Report for Selected Countries and Subjects*, Washington D. C., 2014.

and development in 1978, China has exceeded all expectations reaching a GDP growth of 6.7% in the second quarter of 2018, up from 6.9% during the same period in 2017, according to a statement from the National Bureau of Statistics (NBS) in July, 2018⁷. For the entire year 2018, the Chinese government targets growth at around 6.5%, the same as in 2017, and this amid intensifying tariff battle with the US as well as efforts to deleverage debt and financial risks⁸.

However, in our globalized world⁹, capital remains the only force that truly transcends borders as labor relations remain dependent on the internal regulations of individual countries¹⁰. In China, this powerful economic development has moved far faster than progress in labor rights.

Although the situation has changed significantly since reforms began in 1978, China still lacks an efficient framework for labor rights comparable to those implemented by its western competitors, and even the application of the existing framework is in many cases still ineffective. The Labor Contract Law¹¹, which sought to unify all employment matters into a single legal body, was approved in 2007. However, its scope is not all-encompassing, and a large part of the provisions of the previous Labor Contract Law from 1995¹² remains in force. The result is a considerably fragmented regulatory framework that hinders the understanding of the system by foreign investors¹³.

This paper provides a brief guide to the current situation of labor relations in China and analyzes the prospects and challenges the nation faces as it looks to rise to the top of the world's economy.

I. CHINA'S ECONOMIC GROWTH AND THE ROLE OF ITS LABOR MARKET

Following the proclamation of the People's Republic of China in Tiananmen Square in 1949, a paternalistic regime came to power which, for most Chinese workers, guaranteed a series of rights considered a social contract in exchange for political loyalty. This was a historic moment for a country which at that time was in a precarious economic situation, with little to no scientific and technological development, a small industry and high poverty rates.

Most of these workers, especially those from urban areas, gained job stability and access to housing; only a small percentage were recruited from rural areas to cover

⁷ NATIONAL BUREAU OF STATISTICS OF CHINA. *Preliminary Accounting Results of GDP for the Second Quarter and the First Half of 2017*, Xicheng, 2017. http://www.stats.gov.cn/english/pressrelease/201707/t20170718_1514198.html

Accessed May 2018

⁸ Trading Economics. <https://tradingeconomics.com/china/gdp-growth-annual>

Accessed September 2018

⁹ SAURA, J.R., REYES-MENENDEZ, A. y ALVAREZ-ALONSO, C. Do online comments affect environmental management? Identifying factors related to environmental management and sustainability of hotels. *Sustainability*, in Special Issue e-Business, 10(9), 3016. doi: 10.3390/su10093016, 2018

¹⁰ BENNETT D., YÁBAR D.PB. y SAURA J.R. University Incubators May Be Socially Valuable, but How Effective Are They? A Case Study on Business Incubators at Universities. In: Peris-Ortiz M., Gómez J., Merigó-Lindahl J., Rueda-Armengot C. (eds) *Entrepreneurial Universities. Innovation, Technology, and Knowledge Management*. Cham, Switzerland: Springer. doi: 10.1007/978-3-319-47949-1_11, 2017

¹¹ Labor Contract Law of the People's Republic of China, (promulgated by the Nat'l People's Cong., July 5, 1994, effective Jan. 1, 2008).

¹² Labor Contract Law of the People's Republic of China, (promulgated by the Nat'l People's Cong., Jun. 29, 2007, effective Jan. 1, 1995).

¹³ SAURA, J.R., PALOS-SANCHEZ, P.R. y RIOS MARTIN, M.A. Attitudes to environmental factors in the tourism sector expressed in online comments: An exploratory study. *International Journal of Environmental Research and Public Health*. 15(3), 553; doi:10.3390/ijerph15030553, 2018

production peaks which means that there was very little migration from the countryside to the cities. This situation led to a deceleration of the Chinese economy compared to its capitalist competitors, suggesting the need to introduce new reforms for regeneration.

Starting in 1978, Deng Xiaoping, the so-called 'Architect of Change,' would lead a period of surprising economic growth, radically boosting the economy without changing the country's political foundations. In the first period of reforms (1978-1984) controls on the agricultural sector were relaxed considerably, thus allowing the emergence of small-scale industries. Along with the devaluation of the yuan, China managed to establish an economic model of investment, savings and cheap exports which has been maintained to this very day. In addition to un-collectivizing agriculture and surprisingly increasing the productivity of farmers, China opened to foreign investment and the creation of private enterprises.

The second period of reforms (1984-1993) decentralized state control and allowed the provinces to invest in growth formulas. Private companies changed the work landscape and did not have to give to their workers the same benefits as those enjoyed by employees of state-owned enterprises –their working conditions rested in the hands of the free market– which meant the progressive dismantling of the socialist contract. By removing the social benefits that the workers had traditionally enjoyed, companies started growing and became more competitive, creating huge business opportunities.

From 1979 to 1995, 220 million new jobs were created, 20 million more than under the traditional socialist system. Between 1979 and 1998, 14.7 million new jobs were created per year, significantly more than the 8 million new jobs created per year under Maoism.¹⁴ Although the great population difference between the urban and rural sectors was clear in this early period, economic reform generated great changes in socio-economic conditions, both within and outside the agricultural sector, which favored the growth of rural enterprises. In a stable environment with little competition, the peasants' initiative and entrepreneurial ambition led to the rise of rural enterprises, which multiplied the number of workers from 22 million in 1978 to 123 million in 1995.¹⁵

Despite this growth, over 500 million peasants have moved from rural areas to urban centers since 1978. In 1972 the rural population accounted for 82.81% of the country's total population. By 2016, it accounted for less than half (43.22%) according to World Bank estimates¹⁶, showing an important increase of migration flows within the country. By contrast, this change took place over a period of 150 years in Europe; whereas in Latin America it took over two centuries. This excessive acceleration in the urban population was a consequence of the improvement of the economic foundations and the need to provide the rapidly industrializing economy with an appropriate labor force.¹⁷

¹⁴ GONZÁLEZ GARCÍA, J. and XUE DONG L. *El mercado laboral en China: situación actual y perspectivas*. Comercio Exterior, Vol.49, num.7, 1999, p. 627.

¹⁵ GONZÁLEZ GARCÍA, J. and XUE DONG L. *El mercado laboral en China: situación actual y perspectivas*. Comercio Exterior, Vol.49, num.7, 1999, p. 630.

¹⁶ World Bank Staff estimates based on United Nations, World Urbanization Prospects, <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=CN>
Accessed May 2018

¹⁷ With this fact, the collateral damages of this rural immigration have manifested. "The unprecedented influx has created overcrowding, social disorder and downward pressure on wages in the cities, as the Chinese economy, even with impressive double-digit growth, fails to create enough jobs to accommodate all rural migrants. Thus the most ambitious among them see leaving China as an attractive option." More about the migration phenomenon of Chinese workers at KWONG, P. *Chinese Migration Goes Global*. YaleGlobal Online, 2017
<https://yaleglobal.yale.edu/content/chinese-migration-goes-global>

These socio-economic developments were accompanied by changes, both positive and negative in the workplace¹⁸. While they brought reduced political control in the workplace, freedom to choose an occupation, access to consumer goods and wage increases, millions of workers displaced from rural areas suffered from extremely harsh working conditions and others employed by state-owned enterprises lost their jobs without the possibility of relocation.

In 1995, China's first unified national labor code came into force (The Labor Law of the People's Republic of China). Featuring 107 articles in 13 Chapters that included basic rights such as the promotion of employment, wages, working hours and protection of child labor, it was published and promoted intensely by the Chinese government with the aim of normalizing the principles and conditions of employment but was also widely criticized for its significant shortcomings. As stated by Article 1 of the Labor Law, the main purpose is to "protect the legitimate rights and interests of workers, readjust labor relationship, establish and safeguard the labor system suiting the socialist market economy, and promote economic development and social progress".

The lack of effectiveness in their application by local governments, employers' unfamiliarity, ignorance on the part of workers and the fear of retaliatory behavior limited the effectiveness of the law in practice. In the ensuing 10 years, these limitations resulted in all kinds of cases of labor rights' abuses committed by (mostly foreign) companies on workers.

By this time, the creation of employment was no longer associated with political factors or ideology; it was now subject to market forces and labor capacity, skills, and abilities of workers. Conditions were therefore very different. In an environment in which a booming and aggressive industry desperately needed labor, the weak and limited labor regulations laid out by the Labor Contract Law of 1995 were not enough to prevent the violation of many workers' labor rights, leading to non-payment of wages, excessive working hours, poor security conditions and mass layoffs. Worker discontent was reflected through the emergence of strikes and demonstrations and even collective suicides in several company workforces.

In an effort to calm this labor unrest, the Chinese authorities focused the common consensus framework between workers and companies on the employment contract. Even though they provided both job opportunities and business profits, contracts were not always very useful and were often either signed without all the necessary information or not signed at all.

There was also another new development in this critical socio-occupational context¹⁹: the mobility of workers was initially not up to company needs²⁰. New technologies demanded a higher level of employee training, and consequently, the Chinese labor market became more dynamic, thus bringing an end to the traditional socialist full employment model.

In this labor scenario, it was not until 2001 that changes in the Chinese labor market began to take place. These changes, always linked to the structural and

Accessed May 2018

¹⁸ SAURA, J.R., PALOS-SANCHEZ, P, y DEBASA, F. El problema de la Reputación Online y Motores de Búsqueda: Derecho al Olvido. *Cadernos de Derecho Actual* 8, 2017, pp. 221-229

¹⁹ PALOS-SANCHEZ, P., HERNANDEZ-MOGOLLON, J.M. y CAMPON-CERRO, A.M. The Behavioral Response to Location Based Services: An Examination of the Influence of Social and Environmental Benefits, and Privacy. *Sustainability*, 9(11), 1988, 2017. doi:10.3390/su9111988

²⁰ SAURA, J.R., PALOS-SÁNCHEZ, P. y REYES-MENENDEZ, A. Marketing a través de Aplicaciones Móviles de Turismo (M-Tourism). Un estudio exploratorio. *International Journal of World of Tourism*, 4 (8), 2017, pp. 45-56

institutional changes in the global economy, took center stage during China's entry into the World Trade Organization (WTO).

On December 11, 2001, after 15 years of arduous negotiations, China entered as the 143rd member of the WTO and brought about the arrival of goods from all over the world to the globe's largest market and, at the same time, the flow of Chinese products to all these nations. Foreign companies, notably European and American, have significantly increased their investments in China, an improvement reinforced by the simplification of requirements to open factories in a variety of sectors, a greater security for investors and an increasing supply of jobs (especially in the textile industry).

From this moment on, Chinese authorities increased their efforts to guarantee worker rights. Among other measures, they granted workers the right to leave their jobs immediately if exposed to situations that endangered their lives or infringed on health and safety regulations.

Migrant working conditions were also boosted by recommendations from the State Council. In 2005, the Ministry of Labor and Social Security of China issued an order stating that the formalization of a written contract was not essential for a worker to demonstrate the existence of an employment relationship with their employer, offering legal overprotection to millions of Chinese workers. That was a major achievement

All these measures were the prelude to the most important labor changes of the last 15 years. These were introduced in 2008 with the enforcement of the "Mediation and Arbitration Law"²¹, the Employment Promotion Law²² and, most importantly, the Labor Contract Law of the People's Republic of China, the primary source of labor law in the country. These laws brought the country closer to labor regulations that reflected international best practices, with an emphasis on fixed-term and indefinite employment contracts required by law and more developed mechanisms for conflict resolution.

The Labor Contract Law introduces important improvements in labor protection without limiting the ability of companies to compete in the market by encouraging the conclusion of fixed-term employment contracts, modifying the maximum probation periods, and improving the internal processes of business restructuring. The Employment Promotion Act introduces measures to combat discrimination against internal migrants, establishes a framework for vocational training and guidance, and encourages employers and companies to invest in workforce training. Finally, the Law on Mediation and Arbitration of Labor Disputes improved the effectiveness of agreements in labor disputes, simplified and reduced the procedure for workers, and tightened costs in the event of employer non-compliance.

The Labor Law of 1994 established three ways to resolve labor disputes: litigation, arbitration, and conciliation. The latter has proved to be the most popular form of resolution, but litigation is gaining ground due to the broad capacity of courts to protect labor rights through foreclosures, sanctions and the like. Due to China's aggressive economic growth, the deprivation of its business world and the workers' growing awareness of labor law, an increasing number of employees are going to court to have their rights recognized.

This, in fact, benefits the authorities as they look to defuse labor disputes through legal channels. At least half of judgments handed down are favorable to workers,

²¹ Current term. Formally: The Law on Mediation and Arbitration of Labor Disputes of the People's Republic of China (promulgated by the Nat'l People's Cong., Dic, 28, 2007, effective May 1, 2008).

²² Employment Promotion Law of the People's Republic of China (promulgated by the Nat'l People's Cong., Aug. 30, 2007, effective June 1, 2008).

though the number varies remarkably depending on the province. As a result, the working conditions of Chinese workers have thus improved considerably in recent decades.

However, workers' demands are continuous, and unrest is commonplace.²³ In a country where the right to strike is not contemplated as such (only under the Chinese Federation of Trade Unions, or ACFTU, which is controlled by the government itself), therefore leaving employees participating in strikes open to arrest (not strictly for striking but for altering traffic, business or the social order), labor conflicts have been increasing progressively since 2008.

Labor disputes peaked in 2015 and 2016.²⁴ While 200,000 labor disputes were recorded in 1999, by 2008 the number had risen to one million. Since then, most of the provincially-set minimum wages have grown by over 20% a year, and there have been very few territories that permit minimum wages below the equivalent of 100 € a month or one € per hour.

In a study by Xiliang Feng, an analyst at China's Capital University of Economics and Business, around 75% of labor disputes are wage-related, while less than 2% are related to working conditions²⁵. Additionally, in a third of cases, the conflict is resolved by an agreement between the parties without the intervention of the judicial system. Access to the internet and social networks makes an increasing number of workers aware of their rights and allows them to organize themselves appropriately to attain their demands, a development that has led to an increase in protests across the country.

This change in conditions has led many companies to look for other, more profitable places to produce their products. China does not publish factory closure or relocation figures, but based on an analysis by Justina Yung of Hong Kong Polytechnic University commissioned by the Hong Kong Federation of Industries, the number of plants held by Hong Kong enterprises operating in the Pearl River Delta near Hong Kong fell by nearly a third between its peak in 2006 and 2013. Many of those factories moved to lower-wage countries²⁶. China's labor costs have grown above the inflation rate for years, according to BMI Research, and are currently four times those of Bangladesh, Cambodia, Myanmar, and Laos.

In recent years, it has been observed that the spectacular pace of economic growth experienced by China especially after the Great Proletarian Cultural Revolution that took place from 1966 until 1976, traditionally based on a development strategy

²³ This improvement of the working conditions is a reflection of the economic and social evolution that is taking place in China. Respect for the law and human rights has direct positive consequences on society and although violating it in the short term can increase profits, it removes the incentive to invest in people or in new technology, so eventually hindering growth. See MATTIOLI, M.C. and SAPOVADIA, V.: "Laws of Labor.", *Harvard International Review*, 26 (2), p. 60-64.

²⁴ Data extracted from an illustrative map of labor disputes prepared by China Labor Bulletin, <http://maps.clb.org.hk/strikes/en>
Accessed June 2018

²⁵ See, FENG, X.: "Research on Characteristics of China Labor Disputes in the Social Transition", *International Industrial Relations Association -ILERA- 16th World Congress, 2012*, <https://pdfs.semanticscholar.org/ad3f/a7dbf846fa5cbcb9af87cbf64db1f5540f5.pdf>
Accessed June 2018

²⁶ INVEST HONG KONG: *The Pearl River Delta Greater*, Hong Kong, 2014, pag.131
http://www.investhk.gov.hk/zh-hk/files/2014/05/InvestHK_GPRD-Book_Eng_Apr2014.pdf
Accessed June 2018

centered on exports and labor-intensive production, has been changing to now focus on an economic strategy of internal investment²⁷.

This strategic shift away from an excessive dependence on the external market towards an increase in domestic consumption and promotion of the country's services sector has not yet compensated for the decline in exports, but it has managed to stabilize the economy and the working conditions of employees who are increasingly aware of their rights.

II. INTERNAL MIGRATION WITHIN CHINA

With Deng Xiaoping, the Chinese economy of the mid-70s received an unprecedented economic boost, thanks to the entry of foreign investment and the creation of private companies. This phenomenon, in the following years, facilitated the progressive and accelerated liberation of the markets, in which little by little the socialist social contract was dismantled to give way to the competitiveness and efficiency of the companies.

The disappearance of the old privileges collected in the socialist and centralist model, such as free housing or life work, were some of the collateral damage caused by this accelerated growth. These aggressive changes implied drastic consequences on the model of social justice and therefore on the priorities of the population, because, "in only twenty years [the Chinese system turned into] to be recognized as one of the most egalitarian societies in the world to occupy almost the last place in distributive terms of income "²⁸. According to Lei Guang, "massive rural-urban migration in China had started with a decline in the state's power early in the reform, and it continued in spite of lingering migration control by state"²⁹. This theory is in line with a large part of the authors who consider that the Chinese state has mainly become an obstacle to urban-rural migration, unlike others who think that the flows are facilitated by a certain sponsorship of the State.

This change of system had a profound effect on the Chinese society of the time, which saw that the imbalance in wealth (especially in rural compared to urban areas) was getting higher, (maintaining even that inequality in the distribution of wealth to this day, since the implementation of the open door policies of the late 70's, until the year 2012, has increased by almost 200%), which together with the lack of incentives in the rural areas, the drop of the prices of the agricultural products and the high cost of the factors of production positioned the large cities of the prosperous coast as an attractive destination to improve their living conditions. As it is suggested by Athar Hussain and Youjuan Wang, "migration widens employment opportunities and should thereby raise return to education and increase the economic incentive to acquire further education"³⁰.

Undoubtedly, the accelerated growth of the cities was not caused exclusively by the mass migration of the population from rural to urban areas, but other factors such as the rapid growth of the birth rate, lower mortality rates, changes in the planning and urban planning had an important implication in this phenomenon. In spite of everything, there is no doubt that the magnitude of the migrations from rural to urban population in China at that time did not have any precedent in comparison

²⁷ Confirmed by the government at the last Chinese National People's Congress (NPC) held, <https://www.cnbc.com/id/100520513>

Accessed July 2018

²⁸ FERNÁNDEZ LOMMEN, Y. *China, la construcción de un Estado Moderno*, Ed. Catarata, 2001, p. 200.

²⁹ GUANG, L. *The State Connection in China's Rural-Urban Migration I*. International Migration Review, June 2005, Vol.39(2), pp. 354-380

³⁰ HUSSAIN, A. And WANG, Y. "Rural-Urban Migration and Marginalization" (Wu, F. and Webster, C.), *Marginalization in Urban China. Comparative Perspectives*, International Political Economy Series, Palgrave Macmillan, New York, 2010, p. 142

with their competing economies at international level and it had an important impact on the product market in China.

If in 1972, the total rural population of the country was 82.81%, in 2016 it represented less than half with 43.22%, according to World Bank estimates³¹. In Europe this change implied 150 years and in Latin America more than two centuries. This exaggerated urban population acceleration was no more a consequence of the economic improvement and the need to provide the labor force to the ebullient industrialization.

However, in this context, the Chinese government's policies have been aimed at or control labor migration and avoid a massive eviction of rural areas through effective tools such as the so-called Hukou, the household registration system that identifies both the location of a home and its rural/urban type. It has been used as a means of restricting the geographical mobility of the Chinese population since 1949³². As described by Tashenova and Kubeeva³³, hukou household registration system is based on four basic principles:

- Migration, especially in urban- areas should be permitted only in cases when it is accompanied by economic development;
- Migration from rural to urban- areas should be strictly controlled;
- Need to control movement- between towns with the same size population;
- Should be encouraged to move- from larger to smaller settlements, as well as between rural areas.

With this, the government has managed to effectively control these migratory flows, however, to a certain extent they have turned out to be counterproductive on certain occasions since it is difficult to find adequate job profiles and has involved significant economic costs and the welfare of citizens of rural areas.

Several experts recommend the progressive elimination of these restrictive Hukou policies to control these exoduses and implement public policies based not on job offers, but on high-yield investments in rural areas and municipal governments, especially in health and education, mobilizing resources needed to attract migrants when there is potential³⁴. The Chinese government faces a problem related to young rural-urban migrants who have become one of the most vulnerable segments of the Chinese population, as Juhua Yang explains³⁵. This new-generation rural-urban are referred to as *xin sheng dai nong min gong* and they usually have no sense of belonging, which causes sometimes social exclusion and barriers to integration into their host societies

³¹ World Bank Staff estimates based on United Nations, World Urbanization Prospects, available at <https://datos.bancomundial.org/indicador/SP.RUR.TOTL.ZS?locations=CN>

³² YUK-PING CHOI, S. "Migration, Family, and Masculinity in Postsocialist China", *Masculine Compromise: Migration, Family, and Gender in China*, University of California Press, Berkeley, 2016, p.7

³³ TASHENOVA, L.V. and KUBEEVA, A.E. "Internal Migration in China: Features and the Main Trends of Development", "Education and Science Without Borders", Vol 2, Issue 2, Prague, 2010, p. 33

³⁴ PARK, A. Rural-Urban Inequality in China, World Bank, p.200

³⁵ YANG, J. "Social Exclusion and Young Rural-Urban Migrants' Integration into a Host Society in China", *The ANNALS of the American Academy of Political and Social Science*, (648 (1), 2013, p.52

III. CURRENT SITUATION OF THE LABOR MARKET IN CHINA AND LABOR RIGHTS

Labor law in China does not differ significantly from international standards except for forced labor (legally permitted for convicted prisoners and those convicted in administrative labor sanctions) and the freedom of association (to be discussed in detail below). The violation of labor rights is not due to a precarious normative system; rather it can be attributed to deficiencies in its application. The most relevant factors for the growth of labor disputes concern working hours, wages, discrimination, security measures and social benefits.

We will now analyze some of the most relevant labor issues to provide an insight into current working conditions in China.

A) CONTRACT REGIME AND TERMINATION OF EMPLOYMENT RELATIONSHIP.

When looking at the regulatory context in which workers are hired in China, observers must first look at the Labor Contract Law approved on June 29, 2007, which came into force in 2008. This legislation, though it sought to consolidate all labor issues in a single framework, is limited in scope and thus forces the application of provisions from previous labor legislation, namely the Labor Law of 1995.

There are other regulatory matters that are also regulated autonomously such as maternity, matters relating to the social security system or trade unions. These laws are usually supplemented by regulations that specify the general governing principles and make their application more practical but at the same time make their normative framework more complex.

Administrative jurisdiction in labor matters lies with the Ministry of Human Resources and Social Security, which is responsible for developing and enforcing the laws and is divided into different Labor and Social Security departments with regional and local competence (usually sanctions and inspections) in their own territories.

With regards to the labor contract itself, Chinese labor law establishes that it must include basic information (such as the identification of the parties involved, duration, job description, place, hours, remuneration, and responsibilities, among others), and can be negotiated between the two parties.

This must be written and must be formalized within a maximum of one month from the beginning of the provision of services by the worker, as penalties may be imposed otherwise. These penalties oblige the company to pay the employee twice his salary for up to a maximum period of 12 months and, even if this has not yet been formalized in writing, it will be understood that the worker is permanently employed by the company.

Employment contracts must include probation periods determined expressly in the contract. During this period, the salary of the worker cannot be less than the local minimum and must be at least 80% of the contractual wage. If the decision is taken that the worker is unsuitable for the position, notice of at least three days must be given to ensure that the employee in question is not entitled to compensation. The length of the probation period is dependent on the duration of the contract.

Though permanent contracts are encouraged, there are several different types of contract, among them fixed-term, objective-based and permanent. A worker can acquire permanent status after fulfilling one of the following three conditions: working at the company for 10 or more consecutive years while being less than ten years from retirement; when a state-owned enterprise is required to put in place a

new contract due to restructuring; or renewing after two contracts of fixed duration.

A contract can be terminated by either the company or the employee at any time. Chinese employers can terminate employee contracts as long as they do so in accordance with certain laws and regulations. There are several situations in which a company is not permitted to terminate an employee's contract, including pregnancy, occupational illness or if the employee in question has worked at the company for more than fifteen years and is less than five years from official retirement.

Workers are not eligible for compensation or prior notice in the following circumstances: the employee does not comply with the terms of the contract during the probation period; the employee seriously violates company rules; there is a breach of duty or significant damage to the company; the employee is prosecuted for an offense under the law; the employee has additionally established an employment relationship with another employer which materially affects the completion of his tasks with the first employer, or he refuses to rectify this conduct after the same is brought to his attention by the employer; the employee uses such means as deception or coercion or takes advantage of the employer's difficulties, to cause the employer to conclude an employment contract, or to make an amendment thereto, that is contrary to the employer's true intent.

An employee must be provided 30 days' prior written notice and severance: the employee has fallen ill or sustained a non-industrial injury and, at the end of the medical treatment period, can neither engage in the original work nor in other work arranged by the company; the employee is incompetent and remains incompetent after training or assignment to another post; if performance of the original employment contract becomes impossible due to a major change in the objective circumstances upon which the employment contract was based at the time of its conclusion, and consultations between the parties fail to produce agreement on amendment of the employment contract.

The calculation of this allowance considers the average salary of the last twelve months, with a maximum of three times of average local salary (per the official tables). Total compensation cannot exceed the average annual salary.

The compensation, if the period worked is between six months and a year, will be one month's salary. If it is less than six months, it will be only half a month's salary. If the dismissal is contrary to the law, the worker has the right to request reinstatement or compensation of up to twice the amount mentioned previously.

There must be a period of notice of 30 days in the following cases: when the worker has been incapacitated to perform his work, provided that this situation lasts after the period of medical leave, the probation period, or after the change of position; in cases where there is low performance of the worker followed by a change in position or a period of training and in the event that the circumstances under which the contract is signed suffer substantial variation that prevents the achievement of the objectives signed in the contract. This notice period can be corrected with the payment of an extra month of work.

In regards to collective dismissals, the competent authorities have a leading role, as according to the new Labor Contract Law they must approve any restructuring of staff that the companies intend to carry out. They must give 30 days' notice to the trade unions or workers (if the company does not have a union) and the authorities must give effect to these measures, including priority criteria to include or not include certain workers affected (such as contract types or duration in the company).

The threshold to consider collective redundancies is more than 20 workers or 10% of the workforce in a company. The reasons why the employers can carry out these collective dismissals are: the employer is undergoing restructuring under the Enterprise Bankruptcy Law³⁶; the employer has serious difficulties in terms of production or operation; the employer switches production, introduces a major technological innovation or revises its business method, and, after the amendment of employment contracts, still needs to take that step; other major changes in the objective economic circumstances relied upon at the time of conclusion on the employment contracts.

The termination of the contract by the worker is less restricted than by the employer. It can occur at any time and a period of notice of 30 days must be respected in any case (with exceptions in certain circumstances such as threats, illegal orders or in which the life of the worker is endangered).

With regards to hiring procedures, it is necessary to consider an important term within the contracting processes: hukou or the system for temporary residence permits and registration of residence applied among Chinese nationals previously mentioned when migration was analyzed. Chinese workers have freedom of movement throughout the country but the moment they decide to work and live in a place other than where their hukou is, their social rights (such as education or housing) are scaled back to avoid labor disputes. To avoid disputes it is advisable to hire workers whose hukou coincides with the place where the company is located or with their residence permit in force.

Hiring in China is carried out directly by the company or through intermediaries such as public or private employment agencies, fairs or by other means of communication. Different means are available to businesses according to the particular situation.

Foreign companies are free to hire workers through the so-called Labor Service Corporations, created by the government and which maintain continuous contact with the Representative Offices of foreign companies. These organizations are responsible for many of the human resources management tasks that companies need such as facilitating the selection of personnel, training, social security procedures, obtaining visas and work permits, legal advice and transmission, and management of hukou. Among these organizations is FESCO, the first body created for this purpose and which leads the market share of these services. There are other corporations, however, such as China International Intellectech Corp. (CIIC), China Star Corp., China International Talent Development Center, and China International Enterprise Co-operative Corp.

B) WORKDAY AND PERMITS

The working day in China consists of 40 hours per week distributed across five eight-hour days. This time can be extended, following union consultation, for a maximum of 36 hours per month. There are several reasons why these guidelines may not be adhered to, such as emergency repairs to equipment, lines of transportation or public supplies that are out of service and which can, therefore, affect production; natural disasters, accidents; and other reasons that may endanger the life, safety or health of workers.

Workers are entitled to eleven days of vacation per year, Chinese New Year or Spring Festival, Qingming Festival (tomb-sweeping festival), Labor Day, Dragon Boat Festival, Moon Party or Mid-Autumn Festival and national holidays. In addition, workers have the right to days off relative to the number of years worked in the company and their work experience, but these entitlements must be established in

³⁶ Enterprise Bankruptcy Law of the People's Republic of China (promulgated by the Nat'l People's Cong., Aug. 27, 2006, effective June 1, 2007).

the contract, collective labor contract or worker manual. Each province usually grants a series of additional days (between 7 and 20) to married men over the age of 25 or women over 23, in line with the policy of delaying the marriage age.

Overtime pay is 150% of normal pay on a normal working day, 200% if on a rest day and 300% if over the holiday period. Employers who do not grant employees vacation must compensate them with 300% of his daily wage for each day.

Permits exist covering maternity leave (after the birth of the child, with a duration of 90 days), bereavement (between one and three days in case of death of direct relatives), sick leave (illnesses and accidents) and marriage (usually three days after the wedding).

C) COLLECTIVE RELATIONS, UNIONS AND STRIKES

The All-China Federation of Trade Unions (ACFTU) is the only recognized and legal labor organization in the country. All company unions depend on this organization and any form of independent trade union organization is illegal.

Despite the deep changes in the Chinese economy since the late 1980s, the main function of the ACFTU is still to help the government maintain social and political stability, using social programs, providing legal counsel for workers and opposing workers' mobilizations so that they have an autonomous basis of collective bargaining power, without actually impinging on the defense of the working class. Because of this situation, and because of their links with the government and employers (as they are directly financed by the companies), unions are strongly criticized by workers³⁷.

Although the system of labor dispute resolution in China is similar to that of Western countries (tripartite and composed by workers, employers, and government), in practice the workers' share is not represented as it should be. This situation leads to circumstances that favor the violation of labor rights, as reprisals to union representatives who truly try to defend the interests of their colleagues. In July 2017, controversy unleashed after the arrest of Chinese activist Hua Haifeng for investigating abusive labor conditions in footwear factories of a famous American clothing brand. In September 2016, three labor activists were given suspended sentences of up to three years related to their involvement with "overseas organizations hostile to China." They had been helping workers in the southern province of Guangdong win payment of wages and unpaid benefits in disputes against employers, but were convicted for "ignoring national laws and organizing mass gatherings that disturbed social order"³⁸.

However, this does not prevent labor activism in China, rather the opposite. There has been a notable increase in the number of strikes and protests by workers in all sectors of industry and all regions of China in recent years, and they are now practically on the agenda, being normalized by trade unions. Factories of foreign companies such as IBM, Walmart, and vendors of major brands such as Apple and Samsung have been embroiled in labor disputes to improve and not worsen the conditions of their workers, projecting to the world the reality of a change in the employment circumstances.

³⁷ An example in <https://www.bloomberg.com/news/articles/2016-11-10/beijing-wants-one-union-to-rule-them-all>.

³⁸ Zeng Feiyang, director of the prominent labor rights group the Panyu Workers' Centre, was given a three-year sentence suspended for four years, while his co-workers Tang Huanxing and Zhu Xiaomei received 18 months suspended for two years, according to information published by The Guardian on September 27, 2016. See in <https://www.theguardian.com/world/2016/sep/27/china-labor-activists-sentenced-for-helping-workers-in-wage-dispute>

Accessed July 2018

Despite this situation, labor legislation has in recent years evolved to favor the conditions of workers and thus their bargaining power with the company. New labor regulations allow union participation in matters such as collective agreements, the determination of internal company regulations and even individual dismissals. Collective bargaining has gained prominence in recent years through this unique tool available to the government and it is, for the time being, the only one legalized in terms of workers' organization.

At this critical point of workers' representation, where union activism and repression by the central government grow at the same speed, it is essential for China's correct and stable development that both employers and the official union recognize this new reality and adapt to the circumstances demanded by the market.

China has not ratified any of the conventions of the International Labor Organization relating to freedom of association and collective bargaining, although it has done so with regards to child labor and labor discrimination.

D) SOCIAL SECURITY.

Social Security contributions are mandatory in China, representing an additional payment of around 40% of the worker's salary (though percentages may vary from one municipality/province to another).

These contributions are made up of three compulsory funds which must be paid by both workers and employers (medical care, unemployment, and retirement pensions) and two voluntary funds which only the employer must pay (accidents at work and maternity).

In addition to these, there also exists a wage overhead for companies of the so-called Housing Fund which, although it is also prescriptive, is not part of the Social Security system. Workers and employers are required to participate in this fund to build, buy or rehabilitate employee housing. As in the case of insurance, expatriate workers are not allowed to participate in it.

E) FOREIGN WORKERS' REGIME.

As noted above, the labor regime in China is governed by a single set of rules, regardless of worker nationality. There are only a few exceptions for foreigners, namely certain exemptions in matters of tax and social security and the need to obtain visas and residence permits for expat workers.

Chinese law gives priority to Chinese nationals when filling vacancies for foreign-funded enterprises, except in cases that require overt special needs. Generally, foreign companies hire Chinese personnel across the board except for management positions, where very specific technical know-how is needed in the initial years following the establishment of a company.

For a foreigner to work in China, a work permit and visa are required, and they must apply for a residence permit. The issuance of a Z visa (work visa) takes several months and the procedure follows several steps. A letter of notification for a work visa must be requested by the Chinese employer to the Office of Foreign Affairs, and Local Department of Labor and Social Security in order for a license to be acquired to hire a foreigner.

Foreign workers must apply for a Z visa or work visa at the Chinese Embassy or Consulate in their country of origin. Upon arrival in China, they must apply for a work permit at the local Department of Labor and Social Security and the residence permit at the corresponding police station within 30 days of arrival.

The Development Regulation of the New Social Security Law began implementation on October 15th, 2011. Pursuant to this law, it is mandatory for foreign workers to contribute to Chinese social security, which has in turn increased labor costs for companies with foreign workers. These costs are borne by both employees and workers of companies with foreign workers who have a work permit, foreign specialist certificate, or other types of employment certificate or are employed by local employers or foreign-based companies and assigned to China. These workers must be affiliated with the Chinese Social Security system and are obliged to contribute compulsory benefits in China unless there is a Social Security Agreement between China and the country of origin of the worker in question.

F) LABOR COSTS. WAGES

Businesses in China must pay their workers the minimum wage established by local authorities and they must communicate this information to the Council of State. This is determined based on economic development, living standards, corresponding security contributions and CPI (Consumer Price Index), and varies according to the geographical areas and worker qualifications; they are therefore not a reliable indicator of real wages in China. It should be noted that Chinese minimum wage does not include food, transport and housing allowances, social security contributions, housing funds, and overtime compensation for providing services under certain conditions (night shifts, harmful environments or extreme temperatures) in addition to the voluntary special pay on the Chinese New Year.

In areas where openness to foreign firms has been greater, wages are higher because of competition for labor, high turnover, and local regulations. It is advisable for any foreign investor to know the average salary of the area where they plan to invest and set up a company, to contact one of the labor service corporations, the Labor Bureau or one of the agencies designed to promote foreign investment.

With respect to the differences in minimum wage levels from province to province across the People's Republic of China, it is worth mentioning that general trends differ greatly from each other due to faster growth in less developed regions than in developed regions. The minimum wage growth rate in Shanghai dropped to 8.4% in 2016 while the Guangdong provincial government announced that it would maintain 2015 minimum wage levels in 2016 and 2017. In contrast, Guizhou Province saw the greatest rise in minimum wage levels in 2016: 55%. From June 2015 to June 2016, 22 regions changed their minimum wage levels and in 2016, the average growth rate fell to 14.5% from 17% in 2015. As a summary, it can be mentioned that Beijing has established a monthly minimum wage of 1720 yuan per month (263 USD), Shanghai a minimum of 2190 yuan per month (335 USD), Tianjin a minimum of 1850 yuan per month (283 USD) and Chongqing with 1500 yuan per month (230 USD)³⁹.

CONCLUSIONS

As it has been analyzed, China has a sufficiently developed legal system to defend workers' rights and improve their quality of life; the problem lies in the deficiencies in the application of this legal system. Except for forced labor and freedom of association, there is no significant difference in standards when compared to international labor rights. There is, however, a lack of enforcement, a lack of commitment from authorities and the absence of trade union organizations to ensure that labor rights improve considerably.

³⁹ According to official data from the Ministry of Human Resources and Social Security: http://www.mohrss.gov.cn/lbgxs/LDGXqiyegongzi/LDGXzuidigongzibiaozhun/201509/t20150929_221690.htm.

Despite this, it is undeniable that advances have been made, although perhaps not at the desired pace and scope. Discontent and the growth of social conflicts have forced the authorities to gradually create a system for improving working conditions, but its inadequate implementation has led to a rise in labor disputes.

The Chinese labor legislation is inefficient because it depends on inspections, which in turn depend on inspectors and their powers. Inspections in China are scarce in general, and a negative and consistent report of the business reality is rarely issued, deriving responsibility for sanctioning to the courts and saturating them in the process.

This, coupled with a shortage of labor, has forced regional governments to increase the minimum wage to retain their workers, causing many foreign investors to relocate their industries to neighboring Asian countries such as Vietnam, Cambodia or Bangladesh where labor costs are lower and where they can replicate the market conditions that initially drove them to China.

In March 2016, Oxford Economics published an investigation indicating that the productivity-adjusted labor costs in China are only 4% cheaper than in the US, a fact caused by a rise in wages in the country at a far higher rate than the increase in productivity, as well as the strengthening of the yuan in recent years. The study shows that manufacturing production for each employee in the United States grew by 40% from 2003 to 2016, up from 25% in Germany or 30% in Great Britain. While productivity has doubled in India and China, the US remains between 80% and 90% more productive.

According to estimates by ANZ Bank economists, there will be a transition made in these Asian countries by foreign and Chinese multinationals from now until 2030. However, the relocation of some foreign industries does not appear to have had a major impact for two main reasons. In neighboring countries, such as Cambodia, there are signs that workers do not tolerate terribly low wages for a long time since many of them are heavily unionized. Also, in recent years China's economic policy has moved towards absolute independence, just as in previous years it had focused on foreign investment. Not surprisingly, 71% of the foreign companies consulted for Roland Berger's 2015 Business Confidence Survey said that the reason for operating in China is the subsequent ability to easily supply products to its lucrative market.

It should also be noted that China is now in the middle range of Asian countries in terms of cheap labor and has a long way to go before reaching minimum wage rates in the more developed Asian countries such as Japan and South Korea. Productivity is even higher than wages and experts estimate that it will continue to rise⁴⁰.

China's labor market faces significant structural problems such as poor enforcement of the legal framework for the protection of labor rights, an aging population and an increase in wage costs. These do not, however, prevent the country from remaining the primary destination for foreign investment and manufacturing and a gateway for products into the Asian market. Tariff battles, migration, legal barriers remain the most relevant challenges that the Chinese economy must face in the coming years.

⁴⁰ Chinese market is estimated that in 2020 will represent 20% of the global market, a similar level to that of North America and Western Europe. These positive estimates are the result of a study conducted by Euromonitor and published in the Financial Times on February 27, 2017. <https://www.ft.com/video/566dc6b8-db59-38b9-b5ce-07205c76626c>

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