

CHINA

Public Policy

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This policy brief discusses employment laws and policies in China, with a particular focus on laws and policies related to the employment of vulnerable groups of people including older workers, female and migrant workers. Rather than discussing all employment policies, the most significant legislation will be highlighted as a general introduction to current policies as they relate to the quality of employment in contemporary China.

This brief includes four sections:

- An in-country policy context that introduces the reader to the policy background of China. This section describes the economic reform and its impacts on China’s labor market and employment, briefly touches on China’s pre-reform economic and social systems, and introduces the political environment in which laws and policies are made and enforced.
- A discussion of four of the dimensions of quality employment: Compensation and Benefits, Development and Learning, Health and Safety, and Employment Predictabilities, as well as an overview of the major public policies affecting each dimension. Laws and policies included in this brief are only from mainland China.
- A contextual focus on China’s urban-rural distinction and migrant workers.
- A brief conclusion on the implications of policy for quality of employment in China.



TABLE OF CONTENTS

In-Country Policy Context	2
Policy Overview— Dimensions of Quality of Employment	4
Contextual Focus— China’s Urban-rural Distinction and Migrant Workers	13
Implications for Quality of Employment	15

This brief uses the Quality of Employment Framework to discuss the effect of public policies in China.

IN-COUNTRY POLICY CONTEXT

From Iron Rich Bowl to an Active Labor Market

China's economic reform started in 1978 and has successfully transformed the country from a state-planned system to a market-oriented economy. After three decades of reform, the Chinese GDP has risen from 362.4 billion yuan (\$53.3 billion United States Dollars (USD)) in 1978 to 30.067 trillion yuan (\$4.42 trillion USD) in 2008. China's GDP grew by 9% in 2008, making it one of the world's fastest growing economies despite the impact of the global financial crisis. Over the past thirty years, a more market-oriented labor market has emerged in China through a growing urban private sector, as state-owned enterprises (SOEs) have downsized.

Dramatic economic developments in China necessitates a change in employment laws and policies in order to keep the pace with the new economic environment. It should be noted that China's pre-reform socialist economy had promoted an "iron rice bowl" employment system. Under this system, workers were guaranteed lifetime employment, food, housing, healthcare, children's education, and even clothing. As such, the "iron rice bowl" not only signifies lifetime employment in the socialist economy, but also captures the meaning of employment benefits and urban workers' privileges. Few regulations were enforced with regard to workers' rights and employment contracts were non-existent. Today, the iron rice bowl system is slowly dying out. Consequently, new policies relating to different aspects of job and quality employment, including wage, benefits, and health care, are emerging as the state government responds to the new economic system.

Jobs and Quality of Jobs

Despite some progress on reforms, a sizable surplus of labor still exists in China's rural sector and state-owned enterprises. With China's urbanization process accelerating over the last decade, more than 200 million people have left the countryside for cities. Estimates from 2006 found that only 180 million were still working on the land, 200 million had switched to other industries, and about 100 million comprised the surplus workforce. Currently, over 120 million rural workers are "on the move," making their way into towns seeking jobs and employment opportunities.¹ In addition, from 1999 to 2005, more than 21 million workers were laid off as the results of downsizing SOEs. While the major reform of SOEs and massive layoffs are over, those laid-off workers have struggled of returning back to the labor

market. Since massive layoffs occurred mostly in traditional industries, such as coal, textiles, and machinery, those laid-off workers often lack the necessary education and skills to be competitive in China's new market economy; in addition, their age and experiences in traditional industries cannot help and translate into employment opportunities.

Labor surplus supports a low-level wage structure and has long been a key factor of China's high economic growth rate. However, labor surplus also gives employers leverage in the labor relationship and leaves vulnerable workers, such as the middle-aged, migrant workers without necessary skills and education, and fresh college graduates without much work experience, at a disadvantage. The global financial crisis and economic downturn of the past two years hit the export industry first, causing factories to shut down and putting migrant workers out on the street, college-educated Chinese also have joined the unemployment group.²

Given China's labor market and the country's current economic structure, there is a lack of motivation from the employer's perspective to adopt the quality job concept. Therefore, the main challenge facing China's policy makers in coming years is to absorb surplus labor into quality jobs, and encourage employers (perhaps mandatory) to strategically foster a healthy labor relationship. National and local policies to improve the quality of employment, a concept still new to China, needs to be developed.

Labor Laws, Policies, and Implementation

China promulgated a Labor Law in 1994, a milestone of labor protection development in China, and introduced a new Labor Contract Law on January 1, 2008 to increase the rights, as well as protection of the rights, of the workforce. The two labor laws established a framework to protect China's labor force, and promote and maintain a productive human talent pool for the market-oriented economy. The laws also helped clarify the responsibilities of government, the employer, and the market. It must be noted that, given the huge variations and disparity in social and economic development inside China, Chinese labor laws, like other Chinese laws, are full of principles, rules, and political statements, and depend heavily upon local administration for policy implementation. Therefore, it is often observed that economically advanced provinces, special enterprise zones, and major metropolitan areas (including political

capitals of provinces or chief administrative cities) have offered and implemented more “generous” labor policies than other areas.

In addition, while labor laws and policies were traditionally made predominately by the Ministry of Labor, in 1998, China established the Ministry of Labor and Social Security (MLSS) to replace the former Ministry of Labor. The new administrative body is in charge of the national labor and social security policy implementation, including labor force management, labor relations, social insurance programs, and the development of labor and social security policies. The new administrative body has also acquired several sectors and departments from the Ministry of Personnel, the Ministry of Civil Affairs, and the Ministry of Public Health. The establishment of MLSS itself has been viewed as a symbolic reform. Since its formation, labor regulation and control have gradually withdrawn in response to the market and societal needs in labor protection, and laborers’ wellbeing has emerged.

POLICY OVERVIEW



DIMENSIONS OF QUALITY OF EMPLOYMENT

- ⇒ Indicators of Fair, Attractive, and Competitive Compensation & Benefits

Employees' basic needs are secured, and fair and equitable distribution of compensation and benefits among employees is promoted.

Overview

Before the reforms, compensation and benefits were determined and provided by the state. The new market-oriented economy and privatization of most Chinese industries mandated regulations on compensation and benefits. For now, the government's policies have focused on workers' protection, so that fair working hours can be compensated appropriately in order to meet workers' basic needs. While equitable distribution of compensation and benefits have been assumed between male and female employees in China, which has found to be problematic,³ laws and policies give favorable consideration to aged workers particularly for their benefits.

Minimum Wage

Minimum wage policy was implemented in response to the abuse of labor, in particular at the early stage of economic reform in 1993 that led to the 1994 Labor Law.⁴ The huge labor surplus, due to the country's population and its relatively low level of industrialization, had given private companies considerable leverage in the labor relationship. Employees in private companies were often underpaid or forced to work overtime without pay. The 1994 Labor Law clarified for the first time the role of the state, local governments, and the employers in determining and enforcing the minimum wage. "The distribution of

wages shall follow the principle of distribution according to work and equal pay for equal work. The level of minimum wage shall be raised gradually on the basis of economic development. The State shall exercise macro regulation and control over total payrolls" (Section 46). "The State shall implement a system of guaranteed minimum wages" (Section 48). The employer, both state-owned and private, needs to determine its wage level according to minimal wage as well as "the nature of its production and businesses and economic efficiency" (Section 47).

According to the 1994 Labor Law, Section 48, specific standards on minimum wage are determined by the Departments of Human Resources, Labor and Social Security in the local governments of provinces, autonomous regions, or municipalities, due to varying rates of economic development across cities and regions. The state determines that minimum wage should be based on the lowest cost of living expense for laborers and their dependents. Consideration is given to the national average wage level, local economic productivity, employment (or unemployment), and regional wage differences. Consequently in 1995, 130 cities formulated policies in accordance with the 1994 Labor Law to regulate the minimum wage of workers in private enterprises, which included the role played by trade unions. Administrative punishment for employers who failed to comply with the minimum wage policy was also implemented.⁵

In 2004, the MLSS issued the "Minimum Wage Regulations," which symbolized the overall implementation of the minimum wage system in the Chinese labor market.⁶ The policy also extended the minimum wage protection to part-time workers and provided a more stringent penalty for violation. In 2007 the minimum wage system, was further improved.⁷ The new policy was in response to certain problems that arose in implementing minimum wage policies. For example, certain cities and provinces set the minimum wage arbitrarily without scientific data or evidence and some employers treated the minimum wage as regular wage. In addition, the MLSS instructed that local governments adjust the minimum wage every two years, and the minimum wage be increased by a rate that would not be lower than the rising percentage of the consumer price index. While the 2007 policy encourages employees to report minimum wage violations, it lacks any enforcement mechanisms.

The 2008 Labor Contract Law does not change much about the minimum wage regulation, rather reinforces that

employees' wages should not be lower than the minimum wage, even for employees in the probation period. Since the implementation of minimum wage policy in 1996, the minimum wage has been increasing nationwide. However, studies indicate that the minimum wage has not matched the increasing rate of salary. From 1996 to 2006, while the national average worker's salary had increased from 206 to 1789 yuan per month, an increase of 13.5% per year, the national minimum wage had increased from 209 to 538 yuan per month, an increase of 9.9% per year. The minimum wage to average wage ratio had been declining.^{5,8} To put it in perspective, while the ratio of minimum-to-median wage was about 45% on average in OECD countries in 2004, in China, the ratio of minimum-to-average wage was 41% in 1996 and 30% in 2006.^{8,9,10}

In practice, huge regional minimum wage variations exist; cities and provinces implement their policies on minimum wage standards depending on the area's specific situation.

Figure 1 displays the minimum wage in five major cities in 2008. In addition to the variation in minimum wage levels, cities also have discrepancy to decide when and to what extent to adjust the minimum wage levels. For example, in 2008, big cities like Beijing, Shanghai, and Shenzhen adjusted the minimum wage to keep pace with high inflation. But, the Labor and Social Security Department of

Figure 1: Minimum Wage Example



City	Effective Date	Increase Rate %
Beijing	07/01/2008	9.6
Shanghai	04/01/2008	14.3
Shenzhen	07/01/2008	17.6
Chengdu	12/26/2007	12.1
Tianjin	10/05/2008	22.4

Source: Xu & Lam, summarized from city government publications. New minimum wage regulations in these cities became effective in 2008.

Hunan province announced that the minimum wage would remain the same as the last year due to the severe economic situation.

Working Hours and Paid Leave

The 1994 Labor Law defines the “regular work hour” and “required overtime pay,” which later led to the establishment of paid leave regulations. According to the 1994 Labor Law, employees are not allowed to work more than eight hours-a-day, forty-four hours-a-week (Section 36). Currently employees in China usually work five days-a-week with two days off, which achieves a better work-life balance. The 1994 Labor Law further sets the limit of overtime work. “Working hours can not be prolonged more than one hour-a-day in general, or more than three hours-a-day if necessary, due to special reasons or under the condition that the physical health of the employee is guaranteed.” This provision prevents workers from long working hours due to unfair contracts. Furthermore, employers have to pay overtime work according to the pay scale listed in Section 44: 150% of the worker's salary for regular overtime, 200% for working on days of rest (i.e., weekends), and 300% for working on legal holidays.

In addition to overtime pay, the 1994 Labor law states that employees are entitled to paid annual leaves after working for more than one year continuously (Section 45). The length of the leave is not clearly stated, however. In the “2008 Regulations on Paid Annual Leave of Employees” issued by the MLSS, the length of annual paid leave is clarified.¹¹

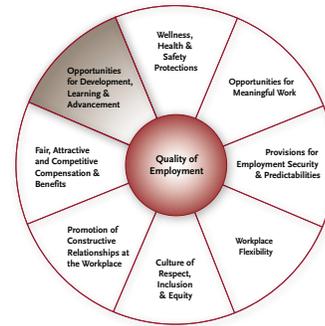
Table 1 displays the entitled paid leave in accordance to employee's years of employment.

Table 1: Paid Leave

Years of Employment	Paid Leave Days
Completed one year but less than 10 years	5
Completed 10 years but less than 20 years	10
Completed 20 years and above	15

Source : Article 3 of 2008 Regulations on Paid Annual Leave of Employees.¹¹

It is worth noting that the annual paid leave days are based on the cumulative years of employment (CYE). Employees are entitled to annual paid leave even in the first year of employment with the current employer if he or she has a previous employment record registered in the local labor department. The intention of protecting and rewarding employees, in particular the aged long-time employees, is clearly shown in the paid annual leave policy. More paid leave days are prescribed to those who have more cumulative years of employment. However, employees often work continuously without taking days of rest or annual paid leave, either by choice, due to the worry of job security, or by demand of their employer. The 2008 MLSS Regulation states that if employees are willing to give up his or her annual paid leave due to the work demand, the employer should pay 300% of the worker’s wage in compensation.



➤ Indicators of Opportunities for Development, Learning, & Advancement

Job skill development and advancement are promoted for employees of as many industrial sectors, employment statuses, and life/career stages as possible.

Overview

Job skill advancement and employees’ personal development have for decades been guided by a number of regulations issued by the state in China. In addition to the 1994 Labor Law, regulations include the Education Law (1995), the Vocational Training Law (1996), the Enterprise Employee Training Regulations (1996), the Enterprise Management Training Plan (1996), and the Higher Education Law of China (1998). Most of these regulations were introduced when education and skills training again became a top priority for the country in the mid-1990s. These laws and policies are supplemented by regional and local training regulations and policies.

General Rules

In 1993, the State Council issued the “Reform and Development Plan for Education in China,” which indicates: adult education in China should emphasize continuing education and on-the-job training. Consistently, the 1994 Labor Law allows the state to specify the technical standards for its nominated occupations and implement the vocational qualification system. The law points out the necessity of on-the-job training and also requires that employers would establish a on-the-job training system, funds training programs and be able to train employees systematically pertaining to their specific industry needs and detailed business circumstances. In 1995, the Education Law further indicates that all professional and technical employees have the right to ask for, as well as the obligation to undertake, continuing education and/or on-the-job training.

Consequently, a 1995 policy—the Temporary Regulations on Continuing Education for Professional and Technical Personnel in China—specifies that all senior and middle-ranking professionals and technical staff should receive at least 40 hours of off-the-job training per year, and junior ranking staff no less than 32 hours. In 1996, the first piece of legislation on vocational education—the Vocational Training Law—became effect in China. The law mandates all employees who are taking skilled jobs to take training and examinations, and obtain the job-required qualification(s).¹²

In the past two decades, these laws and policies have established a preliminary continuing education and vocational training framework in China to promote building a talent pool via efforts from employees, employers, and local governments. However, these regulations are not compulsory in the sense that no penalties will be extended to those who do not observe the regulations; there is also a lack of uniformed enforcement mechanism. Again, policy implementation across the country shows inconsistency; some provincial and local governments proactively implement the law, others continue to treat vocational education and training as a low priority and make little effort or investment in improving worker's training.

Structure of Vocational Training

Vocational education in China consists of both schools and training programs, and is provided at three levels: junior secondary, senior secondary and tertiary.¹³ Junior secondary vocational education refers to the vocational and technical education after primary school education and is a part of the nine-year compulsory education. The secondary level mainly refers to the vocational education in the senior high school stage for training of four years, though some programs only require three years. There are vocational high schools, specialized secondary schools, and skilled worker schools that enroll junior high school graduates and train them to directly engage in production activities. Tertiary vocational education lasts from two or three years and mainly enrolls graduates from regular high schools and secondary vocational schools. In recent years, graduates from secondary vocational schools have been increasing; its increased percentage in all vocational school graduates results in a gradual link between secondary and tertiary vocational education.¹³

During the early stage of economic reform, the modernization of industry boosted the popularity of vocation training. By 1998, about 58% of high-school-aged young adults elected to gain various technical competencies at vocational schools.¹⁴ In 2001, there were about 18,000 secondary vocational schools (including vocational high schools, specialized secondary schools and skill workers school), with enrollment of more than 11 million students.¹³ However, the figure went down to 38% in 2002, and although it rebounded by a small percentage recently, has not regained the peak of the last decade.

At present, vocational training is mainly conducted and managed by the departments of education and labor, but enterprises and employers are encouraged to provide vocational training for their own employees. In fact, employers have always driven the content of vocational preparation, and been the main supporters of technical training. Millions of employees in China have participated in their companies' regular or special training activities, during the last quarter of the century. Private vocational training schools have also flourished in this kind of partnership.¹⁴ The development of vocational training, especially the formal cooperation between companies and schools as well as between industries and educational institutions, is a breakthrough for China's entire education system. Nevertheless, only 14.6% of enterprises established vocational training policies and only 16.7% employees participated in training.¹⁵

Migrant Workers and Vocational Training

Various influences on China's economy have affected educated and uneducated workers alike. Unskilled labor working in export-based and labor-intensive manufacturing industries has been the driving force for China's economic growth. In these manufacturing industries, the opportunity to generate value-added revenue is low, and advanced technical and education requirements are therefore unnecessary. In the last three decades, such industries have been staffed by migrant workers rather than a formally trained and skilled workforce. The majority of migrant workers have just less than 9 years of formal education on average.¹⁶ As a result of the current global financial crisis and economic recession, large-scale lay-offs of migrant workers in the manufacturing industries occurred. Helping

migrant workers get through the economic recession, while still training large numbers of migrant workers to promote and preserve a large pool of talent to meet China’s new economic growth in innovative technology-based industries, has proved challenging.

In 2008, the State Council issued a statement regarding the promotion of employment and re-employment given special concerns over migrants and recently unemployed workers.¹⁷ Among other supporting policies and programs, the State Council indicates the importance of connecting employment with vocational training and subscribes that migrant workers, as well as unemployed workers, can receive a vocational training subsidy. Again, implementation of this policy is up to local and city governments that are responding in various ways. For example, the Beijing City Government issued the Regulation on Vocational Training Subsidy in 2009; the city is to use the unemployment insurance fund, in contract with vocational training schools and institutions, to provide qualified migrant workers and unemployed workers with free training opportunities.¹⁸ In Guangdong Province, the government quadrupled its vocational training program in 2009, teaching four million migrant workers.¹⁹ Though many local governments started with a focus on improving migrant workers’ job skills, they found the real challenge was to enroll enough trainees and to access sufficient numbers of qualified teachers.²⁰



➤ Indicators of Wellness, Health, & Safety Protections

Protection of employees’ safety and health at their worksites is mandated, and their physical and mental well-being is promoted. In the case of job-related injury or illness, compensation or other forms of social protection are offered.

Overview

China’s workplace safety, in particular the safety of their coal mines, has drawn wide international attention. It was reported that in 2004, while China produced 35% of the world’s coal, it reported 80% of the total deaths in coal mine accidents, according to statistics with the State Administration of Work Safety.²¹ In another measure, while China’s GDP was 13.6 trillion yuan in 2004, with 136,700 accidental deaths recorded over the same time period, a ratio of about one death per 100 million yuan of value produced by the economy.²² The state government is aware of the importance and the seriousness of production safety and is responding with a series of policies for the protection of workers’ safety and the promotion of workers’ physical health and wellbeing.

Workplace Safety

The 1994 Labor Law states the responsibilities of the employers and the rights of the workers regarding workplace safety. The law states that employers are responsible for establishing a system for employees’ safety, subscribing the safety standard required by the state government, and teaching employees safety procedures in order to prevent workplace accidents (Section 52-53). Employers also have to perform regular health checks for those employees who are engaged in hazardous environments (Section 54). For work requiring special operation, employers need to provide special training for the employees so they can acquire the relevant qualifications (Section 55). In addition, local governments and employers have the obligation to establish a system statistical report and document the incidence of

injuries, death, and cases of occupational disease (Section 57). It is worth noting that employees are entitled to refuse working if that operation would endanger their safety. The right to protect their own physical health is stated in the 1994 Labor Law, Section 56. The 1994 Labor Law is unclear about which administration sector in the State Council should be responsible for making and enforcing the standard for industrial safety.

The State Council, while facing increased criticism about its lack of proactive measures to prevent workplace accidents and improve workplace safety, issued the Production Safety Law in June 2002. This law supplements the fundamental rules established in the 1994 Labor Law. It declares the principle for industrial and workplace safety and focuses on prevention for the first time. The 2002 Production Safety Law is the foundation of production safety policies in China. It covers the responsibilities of different parties, namely the state government, local governments, employers, trade unions, and employees. Responsibilities of the parties include setting up standards, supervision and administration, education and training, monitoring the company, and the legal liability of violation of the safety law.

The role of trade unions was emphasized in the 2002 Production Safety Law. "The trade unions shall organize the workers to participate in the democratic management and supervision of the production safety of the entity where they work so as to safeguard the legal rights and protect the interests of the workers in production safety" (Section 7). Thus, trade unions are entitled to examine whether the safety facilities are appropriately installed at the workplace; require the employer to change or modify its operation in accordance with the prescribed safety measures and standards; stop the operation if continuing would endanger the safety of employees; and participate in workplace injury investigations (Section 52).

According to the 2002 Production Safety Law, employers must purchase occupational injury social insurances, and pay insurance premiums for the employees (Section 43). Employees that suffer industrial injuries are entitled to claim compensation from their employers. In 2003, a state-sponsored employment-based occupational injury insurance program was established.

For the coal mining industry, the reality is that greater demand for energy production in the world's fastest growing major economy has come at the cost of safety. Governments have had difficulties enforcing the current regulations on even the large state-owned mines where massive disasters took place. While the state government pledges more strict safety regulations to reduce the

country's staggering annual number of coal-mining deaths, it also takes administrative approaches, including: setting aside additional funds for compensation for injured or killed miners. A consideration of work-safety records in evaluations of government officials also occurs. Large coal mining firms are encouraged to merge with smaller ones, as bigger operations tend to pay more attention to safety (about 20,000 of China's 28,000 mines are small, privately owned, and less well-policed ventures).²³

Health Care

Before the reforms, all employees that worked in the state-owned enterprises were able to receive health care provided by the state-owned public health system. The issue of health care emerged along with the development of China's market economy. Privatization, new joint-venture companies, rural-to-urban migration, and the growing number of small businesses have left millions of workers living without appropriate health care insurance. In addition, early market-oriented reforms that occurred in the public health system further jeopardized the workers' physical wellbeing as health care became less affordable for workers without health care insurance. With the reform of the country's social welfare system, the central government endeavors to establish a healthcare social insurance system that is adaptable to the market economy and protects workers, especially low income and retired persons.

The State Council issued a statement in 1998 regarding the commitment to establish the basic medical insurance system for workers.²⁴ This document drew the blueprint for a mandatory healthcare social insurance system for all employees in urban cities including migrant workers; workers in the rural areas can optionally join the program. Consequently, in 1999, a state-sponsored social insurance program for basic healthcare was established that requires contributions from both employers and employees. Almost all urban companies and organizations, including governmental and non-governmental agencies, state-owned and collective enterprises, joint venture corporations, and private companies that employ more than 50 workers, must offer the health care social insurance program and adhere to the regulations.

Employers contribute 6% of their total payroll costs and employees contribute 2% of their salaries to the healthcare fund. While the Ministry of Labor and Social Security works with the Ministry of Health and Ministry of Finance to establish the standard of basic medical services, the payment calculation method, and prescribed drug lists, it is, in practice, up to the local labor security administration departments to use their discretion in setting the

concrete standard and methods of implementation. The new social insurance health care program has not been implemented without concerns and problems. There has been a low enrollment rate, employers' lack of motivation to participate, and local government's lack of interest in enforcing the law. In response to many of these issues, the State Council issued a supplementary document in 2002, "Guidelines to Properly Solve Certain Problems of Medical Insurance Reforms."²⁵ These guidelines addressed three constituencies: business, local governments and low income workers. Employers that had financial difficulties and were not able to contribute to the healthcare insurance, the Guidelines lowered the rate of the employers' contribution and established a coordination fund. The Guidelines asked local departments to further regulate health care institutions, to clearly define healthcare institutes and drug stores, and to set up a rule for fair competition in order to decrease the healthcare cost. As bribing contributed to the increased healthcare cost, the Guidelines urged local governments to establish a system for supervision and inspection and to increase transparency and liability of health care management. For low-income workers and those who could not pay for healthcare insurance, the Guidelines encouraged local departments to reform the medical expenses distribution system, and allow the use of the welfare supplementary fund and other resources to aid these workers.

The basic healthcare social insurance program covered 94 million workers at the end of 2002. To further increase the program participation rate, the MLSS in a 2003 memo²⁶ set up a goal of at least 60% health care insurance program

participation in big and medium size cities. Municipalities and provincial cities should attain 70% and higher. The rest of the cities should at least achieve the target of 50%. This clear goal received adequate attention and positive response. In 2007, the basic medical insurance system covered 221 million people, up from 157 million in 2006.²⁷ The State Council issued the Guidelines to start the pilot project of the basic medical insurance for all urban residences in 2007.

Special Protection for Women

The 1994 Labor Law sets up rules to provide special protection for female workers, such as prohibiting female workers from working in certain physical labor intensity areas, including underground mines, high above the ground, in low temperatures or in cold water. Also, employers could not arrange work for pregnant workers or ask them to work overtime and nightshifts. Female workers were entitled to have maternity leave for no less than 90 days.

A 1995 Law on Maternal and Infant Health Care and a two-decades old policy, *Female Workers' Labor Protection Regulation* of 1988, currently under revision, provide additional protections to female employees, particularly during pregnancy and maternity. Employers cannot decrease salary or terminate the labor contract during female workers' pregnancy and maternity. In addition to 90 days maternity leave, each new mother is also entitled to have one hour per day deducted from working hours for the purpose of feeding for a year.



➤ Indicators of Provisions for Employment Security & Predictability

Stable provision of employment opportunities for job seekers is promoted, clear communication of terms of employment is facilitated, and protecting the job security of the employed is a policy objective.

Overview

With the abolishment of the “iron rice bowl” employment system, China’s new 2008 Labor Contract Law is by and large the only thing that can predict job security or employment predictability. Overall, the new law provides a certain degree of job security by limiting the termination of labor contracts to a few scenarios. The intention of the lawmakers to protect sick, injured, female, and elderly workers is also clearly shown in the new legislation.

Cancellation and Termination of Contract

The new 2008 Labor Contract Law builds upon a 1995 labor law but is considered a law that will fundamentally change the employer-employee relationship by empowering workers and protecting workers’ rights. Major changes to the law include increased regulations on written labor contracts, use of temporary workers, and severance pay. The 2008 Labor Contract Law applies to all employers, no matter how few employees a business may have. It requires all labor contracts be in writing and imposes significant penalties on employers for failing to comply. Employees can claim double salary for months worked without a contract for up to 12 months’ salary.

To ensure the job security of workers, the new 2008 law provides a complex set of rules and conditions under which the employers or employees may terminate employment contracts. If employers do not pay wages or into the social

security fund, act against the law, or assign workers to do hazardous work, employees have the right to terminate the contract. Furthermore, employers are allowed to lay off workers only if they file bankruptcy, have serious difficulties running the business, or cannot stop the deficit after having changed products, making technological innovation or adjusting business operation. Should an employer require mass layoffs, workers who have worked the longest for the employer or whose family has no other income and have seniors or minors to support, have the priority to stay. Moreover, employers are not allowed to terminate the contract under the following conditions:

- Any worker who has an occupational disease or was injured at work and has lost or partially lost the capacity to work for the employer;
- Any worker suffering from illness or is injured outside of work, and the period of medical treatment as prescribed has not expired;
- Any female worker who is in pregnancy or maternity leave;
- Any worker who has been working for the employer for more than 15 years continuously and is less than five years away from legal retirement age.

In the case of any of the following circumstances, the employer may cancel the labor contract:

- The worker falls ill or is injured for a non-work-related reason, and is not able to bear the original post after the expiration of the medical treatment period as prescribed, nor can the worker assume any other position as arranged by the employer;
- The worker is incapable of doing the job and remains so upon training or upon adjustment to the post;
- The circumstances on which the labor contract is based changes significantly, resulting in the inability to perform the terms of the contract, and no agreement concerning the modification of contents of the labor contract is reached after consultation between the employer and the worker.

Under the new law, when unilaterally terminating employees for any reason, the employers must first give notice to applicable labor unions (though no approval is required from the labor union) and notify the worker in written form 30 days in advance or after it pays the worker an extra month’s salary. Besides the economic compensation, workers can receive financial help from the unemployment insurance system.

Unemployment

Unemployment was not a problem before economic reforms in 1978. The Chinese government was responsible for ensuring full employment by assigning jobs to all urban residents of working age. However, when state-owned enterprises were closed or restructured due to marketization, about 20 million state-owned enterprise workers lost their jobs by the end of 1990s.²⁸ These workers lost not only their jobs but also their benefits as the state-owned enterprises provided them retirement pension, housing, and health care. No social security structure or system had been established to take care of unemployed workers during the early stages of economic transition. Consequently, unemployment became a crucial problem of the state government.

The unemployment rate in China has stabilized at around 4% over the last ten years, which is relatively lower than many developing countries and some developed countries. It is worth noting that the official statistical figures only count the urban residents who registered as unemployed. Migrant workers from rural areas to cities, as well as non-registered unemployed workers, are not counted. "According to the State Statistical Bureau, unemployment only refers to urban residents who 1) possess a non-agricultural residence card; 2) are within a certain age range (16 to retirement age); 3) are able and willing to work; 4) have registered with the local labor bureau for unemployment".²⁸

The State Council issued the "Regulations for Unemployment Social Insurance" in January 1999, requiring the labor protection departments at state and municipal levels to implement the state-sponsored unemployment social insurance program.²⁹ The purpose of the program is to ensure the basic living standards of the workers during unemployment and to help the workers find reemployment (Article 1). The unemployment insurance fund consists of payments from the employers and workers, accumulated interest of the fund, and supplementary funds from the government. Employers pay 2% of the basic wage of the workers for the insurance and workers pay 1% of their

salaries (Article 6). Provinces and municipalities can build up their unemployment insurance regulative fund to subsidize the basic unemployment insurance fund.

The unemployment fund pays for insurance, medical care during unemployment, pension for the family of deceased workers during unemployment, and subsidized money for job training and job hunting (Article 10). Workers who are entitled the unemployment benefits are those 1) who participated in unemployment insurance for at least one year; 2) are involuntarily unemployed; 3) have registered as unemployed and ask for new jobs (Article 14). The unemployment benefits persist according to the length guidelines found in Table 2.

Table 2: Unemployment Benefit Length

Payment	Benefit
1-5 years	Up to 12 months
5-10 years	Up to 18 months
More than 10 years	Up to 24 months

Source : Article 17 of 1999 Regulations for Unemployment Social Insurance

MLSS and Ministry of Finance issued a note jointly in 2001 on setting up pilot cities for increasing the coverage of unemployment social insurance. The central government endeavored to cover more unemployed workers in the unemployment insurance program, as the great number of unemployed workers could become a source of social upheaval. In 2008, the population covered in the unemployment insurance was 124 million, increased 7.55 million from 2007. Of the total, the number of migrant workers enrolled is 15.49 million, increased 3.99 million from 2007. The number of people receiving insurance is 2.61 million, down 250 thousand from 2007. The revenue and expenses of the unemployment insurance are 58.5 billion yuan and 25.4 billion yuan, increased 24% and 16.5% respectively. The coverage of the insurance extended from 103.73 million in 2003 to 124 million in 2008, an increase of 19.54% over the five years.

CONTEXTUAL FOCUS: CHINA'S URBAN-RURAL DISTINCTION AND MIGRANT WORKERS³⁰

Overview

By 2008, approximately 225 million migrant workers had moved from China's rural regions to urban centers in search of work.³¹ China's rapid economic development in the past decades has been fueled in part by these under-educated, low-wage migrant workers who have flocked to the cities for manufacturing jobs. Unfortunately, China's long-standing urban-rural distinction, as a result of the country's household registration system, has made life difficult for rural-to-urban migrant workers in several respects.

Urban-Rural Distinction

China's household registration system (*hukou*), initiated in 1958, is a governmental program aimed to help the government control the movement of citizens within the country and to distribute most of its limited resources to urban residents.³² Until 2003, without proper documentation and/or employment certificates, rural people could not reside in cities, and in some cases, those who were caught illegally living in the cities were detained and sent back to the countryside.³³ Correspondingly, China's pre-reform (pre-1989) social system reflected the *hukou's* rural-urban distinction. In order to help build the nation's infrastructure and industrial development, urban non-agricultural *hukou* holders had been enjoying greater employment opportunities, along with subsidized housing, free education, medical care, and old-age pensions. *Hukou* regulations prevented rural residents from obtaining many public services and benefits. For rural residents, there was only a cooperative healthcare system, which was funded by rural collective economic organizations. It covered limited basic healthcare. In the absence of a pension system and comprehensive healthcare coverage, families remained the main source for services such as elder care and childcare.^{34,35}

In essence, over the 50-year history of the household registration system, a discriminatory social system was maintained, dividing the population into multiple categories: state vs. collective, rural vs. urban residents, agricultural vs. industrial workers, and the traditional vs.

the modernized. These classifications translated into a broad distinction in opportunities including employment, education, and healthcare, among others; and the distinction still continues today. Urban families have greater access to university education, medical care at modern urban hospitals and higher paying jobs, while rural youth attend under-funded schools, have few chances for university education, and few options for lucrative jobs. This limits migrant workers' opportunity for upward mobility and economic security.³⁶

Migrant Workers

The surge of rural-to-urban migration that started in the early 1980s was prompted primarily by the infusion of foreign investment into China, due mainly to its cheap labor and China's decision to open its doors to foreign investment. This in turn stimulated an enormous growth in and transformation of its urban economy, greatly expanding the manufacturing sector and increasing the need for cheap labor. At the same time, the "push" factors that brought people from rural areas into China's cities included the increasing surplus of agricultural labor and the growing income gap between urban factory workers and rural farm workers.^{37,38} Even though factory workers are paid low wages by Western standards, their wages far surpass China's agricultural workers' wages. To address China's need for factory workers and other laborers in its urban regions, in 1985, China's central government issued the Ten Policies for Rural Economic Development, which encouraged population movement for economic reasons. Since that time, rural-to-urban migrant workers have been permitted to work in China's growing towns and cities with "temporary residence permits" and without an urban *hukou*. The permits clearly caught on. In 1978, about 28.27 million migrants found work in the cities; three decades later, in 2008, the number had grown nearly eightfold, to 225 million.³¹

However, the urban-rural distinction has made migrant workers' life in cities challenging.³⁹ Compared to rural

and urban residents, migrant workers worked significantly longer hours and earned considerably less pay (see Table 3).³⁰ Their monthly income was higher than rural residents, but significantly less than urban residents, even though both migrant workers and urban residents are in the same local labor market. The majority of migrant workers (75.2%) surveyed had only nine years or less of education, the standard education level offered by China's public education system. Consequently, more than half (53%) worked at jobs with no skill requirements, in the low-paid service industry (35.4%), and in construction and manufacturing industries (19%).³⁰

Table 3: Monthly income and working hours: Migrant workers, rural residents and urban residents

	Income/Month (mean/SD)	Work Hour/Month (mean/SD)
Migrant Workers	658.77 (180.0)	64.79 (17.76)
Rural Residents	348.62 (564.8)	54.45 (18.03)
Urban Residents	1009.09 (1537.44)	49.59 (13.09)

Source : Xu, Q. (forthcoming)³⁰

In the context of China's economic, political and cultural transitions, the migration and transitional stresses faced by rural-to-urban migrant workers makes them extremely vulnerable to various threats such as economic insecurity, health and mental health problems, and family separation. Unfortunately, migrant workers generally lack the capacity, including the level of education and strong support networks, to cope with or prevent these threats. While China has extended welfare and labor protection to migration workers over the last decade, it is noted that China's urban-rural distinction must be erased so that these migrant workers and their families, along with their rural counterparts, can receive equal treatment in the economic, social, and political realms. Only in this way can China make solid, steady, and secure progress.

IMPLICATIONS FOR QUALITY OF EMPLOYMENT

In general, China has never lacked laws, policies, aggressive policy making, and window dressing regarding the quality of employment. There is a deeply rooted tradition of government intervention and involvement in almost every aspect of economic activities. The challenge in China, however, is policy implementation. The huge economic and social disparity across China's provinces and cities give local policy makers power to have discrepancy in implementation. Local interests in attracting investors may overshadow the importance of protecting workers, and strictly following laws and policies of labor protection in some areas or industries may be viewed as unrealistic. Thus, China still has a long way to go.

Meanwhile, if employers in China, particularly domestic employers or employers in manufacturing industries, do not see the value and necessity of quality jobs and lack the motivation to adopt new policies, laws and regulations cannot truly improve the worker-employer relationship. A constructive labor relationship relies on an appreciation by employers and an increased awareness of quality employment, a strategy that would contribute to the employers' financial success.

In the context of China's economic and social development, quality employment still focuses on workers' protection, at relatively basic levels. Only four dimensions of quality employment have been covered in China, out of the eight dimensions adopted in many other economically developed countries. This could be due to a surplus of labor or due to a different labor history, culture of work, or the economic climate in China.

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