

# China enacts new labour law amid rising discontent

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6 February 2008

China's new Labour Contract Law came into effect at the beginning of the year. The government and state-run media has hailed the legislation as a milestone in the protection of the rights of Chinese workers. In reality, it formally guarantees only the most minimal working conditions, which in many sweatshops will simply be ignored.

The key provision is that all workers in China must be employed on the basis of a written contract that stipulates their wage rates and under what conditions they can be fired. Previously, at least 40 percent of employees of private companies had no contract at all. Employers must also contribute to a social insurance or unemployment fund for each worker.

Employees who have worked for over 10 years for the same firm or had a fixed-term contract renewed twice are entitled to an "open-ended" contract. The only right that such a status provides is that if they are laid off for reasons other than disciplinary ones, their employer is obligated to make a redundancy payout.

Dong Baohua, a labour law expert at East China University, told the *Shanghai Daily*: "The new law will only enhance the job security of employees at the upper and middle levels, but not at the lower level, who actually make up the majority of all workers."

Nevertheless, there was a scramble by companies to circumvent the contract requirement before the law came into effect. The most publicised case was Huawei Technologies—China's largest telecommunication equipment manufacturer and a former state-owned firm. The company asked 7,000 employees with more than eight years of service to resign and accept re-employment as "new" staff.

Other provisions in the Labour Contract Law include a requirement that workplaces in which China's state-run trade unions do not have a presence will have to seek the union's "guidance" in formulating employee contracts. As the unions are nothing more than an arm of government, the stipulation poses little threat to employers imposing harsh working conditions and low wages. The legislation actually eliminated an initial clause that would have allowed workers to independently negotiate with management.

The actual implications of the law are in sharp contrast to the propaganda claims of the Chinese government. On February 2, the official *People's Daily* cited Mark Wells, an Australian lawyer for a Beijing-based law firm, praising the legislation. "He believes that China's labour laws are better than those in many other countries," the newspaper declared, "and that China's workers

will end up better off than many Western workers, 'given the Chinese government's sentiment towards the working class.'"

The notion that the Stalinist Chinese Communist Party (CCP) regime represents the interests of the working class is absurd. Under the new law, independent trade unions remain illegal and the right to strike—which was formally removed from the Chinese constitution in 1982—has not been reinstated.

Amid fears that the Solidarity movement that erupted against the Polish Stalinist regime in 1981 could be replicated in China, the CCP abolished the right to strike as it initiated capitalist market reforms. In 1989, Beijing used military force to crush mass protests by workers and students for democratic rights and improved living standards. Over the following years, transnational investment flooded into the country to take advantage of cheap labour.

Brutal working conditions exist across China despite the introduction of a "Labour Law" in 1995 that ostensibly provided workers with guaranteed minimum wages and working hours. The legislation was rarely enforced and contained numerous loopholes that allowed employers to hire labour without offering a contract or even paying wages on time.

The suppression of any opposition by workers was the foundation of China's transformation into the cheap labour manufacturing centre of the world. According to official statistics, the wages share of Gross Domestic Product (GDP) declined by 12 percent from 1990 to 2005, even as the economy grew four times larger. By contrast, corporate profit increased from 21.9 percent to 29.6 percent of GDP.

At the same time, social relations have been transformed. Only a generation ago, China was a predominantly peasant country, with the majority of the population engaged in subsistence farming. In 1978, 170 million people, or about 20 percent of the population, lived in the country's cities. In 2006, the proportion had doubled to 44 percent, or 577 million people.

In recent years there has been a wave of protests demanding higher living standards. Chronic low wages in some coastal regions have led to high turnover rates of rural migrant labourers. Even many skilled workers do not earn enough to purchase the essentials for modern urban life. A gradual rise in wages in response to labour shortages is partly responsible for rising inflation, which further compounds workers' demands for higher pay.

It is in this context that the latest labour laws have been

formulated. When an initial draft was posted for comment on the Internet in March 2006, the authorities were shocked when it became the subject of intense public debate and generated more than 190,000 responses in one month.

The government moved to finalise the legislation following the public furore in June 2007 over slave labour conditions in the brick industry in the province of Shanxi. An online campaign revealed that rural migrant workers, many of them teenagers, were being kidnapped, sold to brick factories and forced to work up to 18 hours a day for no pay. Belated investigations revealed that more than 2,000 brick kilns were operating without licenses and “illegally” employing 53,000 workers. The case was viewed as a symbol of the broader lack of workers’ rights. Within weeks, January 1, 2008 was set as the date for the implementation of the laws.

The Chinese regime is in effect attempting to stave off independent action by workers for better conditions by claiming that they can find protection through the mechanism of the state. At the same time, the law will enable the state-run trade unions to play greater scope to monitor, stifle and suppress any industrial action by workers.

Significantly, Han Dongfang, the exiled leader of the Beijing Workers Autonomous Federation, has welcomed the legislation. Han played an important role in the mass protests in Tiananmen Square during 1989 and is now director of *China Labour Bulletin*. He wrote recently for the Jamestown Foundation: “It is a propitious time because both those in the central government in Beijing and ordinary workers across China now agree that—after three decades of accumulated tension between labour and management—something has to be done.”

Han, who has converted into Christianity and opposes class struggle, is well aware that social discontent in China is once again reaching boiling point. “If the situation continues in which management routinely exploits labour and violates workers’ rights with impunity,” he warned, “workers, as in the past, will increasingly resort to protest and even violence in order to seek redress, and this will benefit no-one.” He is advocating an even greater role for the official All China Federation of Trade Unions (ACFTU), proposing a “collective bargaining” system as a means of controlling labour unrest.

Foreign investors, however, are worried that the new labour law, combined with wages pressures, will undermine their profitability. Reflecting the concerns of Hong Kong-based manufacturers in China, Hong Kong University economist professor N.S. Cheung wrote in his blog that the new law “would protect the lazy people and ultimately cripple economic growth.”

Economists have warned that labour-intensive industries will raise prices or move to even lower cost countries if Chinese workers’ wages continue to rise. Monthly wages increased 18.8 percent in the first nine months of 2007, according to the National Bureau of Statistics. Although this is still only an average of about \$US1 per hour, it is three times as much as workers in Vietnam, Cambodia or Bangladesh. Olympus, the world’s fourth largest digital camera corporation, and Yue Yuen Industrial, the world’s biggest shoemaker for brands such as Nike, are already moving part of their production to Vietnam.

A comment *Forbes* the *Jamagazine* 11 Straszheim, vice chairman of Los Angeles-based Roth Capital Partners and former chief economist of Merrill Lynch, revealed the contempt of global capital for the plight of Chinese workers.

“Working conditions in China are just awful for literally tens of millions of workers, as they are in the most emerging economies,” Straszheim wrote. “But I believe the new law goes too far, giving more protection than is healthy for an economy as dynamic and fast-changing as China. The ability for businesses to adjust to changes is crucial. While there are many pluses in the new law, hiring and firing flexibility is sharply curtailed, hiking labour costs and potentially becoming a drag on innovation and productivity. The law dramatically shifts the employer-employee balance of power to the employee.”

Straszheim, however, was relieved that “creative” employers in China had already worked out ways to get around the minimal restrictions contained in the new legislation: “We are seeing new labour contracts, two half-time shifts, the use of outside ‘staffing companies’, the creation of ‘new companies’ to do the same work, so-called voluntary resignations before year-end 2007 only to be rehired on Jan. 1, 2008. Talk about creativity. Not surprisingly, employers have more power than workers—even in China... China is still attractive to foreign companies even under the new law, with few countries having the combination of abundant labour, and improving infrastructure and a government committed to growth. I foresee an abundance of creativity in how to frustrate the law.”

Not only private companies, but state-owned firms and local governments, which are competing against each other for investment projects, are also trying to circumvent the legislation. All of this can only add to the growing anger over exploitive working conditions.



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