

China: The End of Cheap Labour?

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As of Jan. 1, 2008, the new PRC, Labour Contract Law will be in force. The law aims at filling the loopholes left by the PRC Labour law of 1994. The new rules have been, a rare phenomenon in China, discussed widely in the Chinese public. Foreign commentators were not enthusiastic about the issue, fearing an over-regulation of labour relations, which in turn might imply a rise of labour cost and, in consequence, even a decline in foreign direct investment.

But does the new law really indicate the end of cheap Chinese labour, which many see as the driving force of China's industrial rise over the past two decades? On the other hand, can Chinese workers, often employed under conditions worthy of Europe's Manchester-Capitalism of the 19th century, finally hope for a fair share of the country's growing wealth?

No employment contract, double salary

According to unofficial estimates, 50 % of China's workforce do not have a regular contract and are therefore outside the protection of the current labour regulations. The new law will bring about a change: If an employee does not obtain a written contract within a month after the beginning of his new employment, the new rules supposes an unlimited employment relationship, forcing his employer to pay double of the salary originally agreed upon.

Primacy of unlimited employment

The new rules will help diminish the growing number of short term labour contracts. For example, after ten years of employment in one enterprise or after the repeated conclusion of a short term labour contract with the same employer, the respective employment shall be deemed unlimited.

Restriction of Penalty clauses

Penalty clauses in labour contracts shall inhibit employees from leaving their present engagement all too swiftly. The new rules restrict an employer's options in this field: In the future, such clauses shall only be allowed in order to enforce secrecy or non-competition agreements; furthermore, if an employee leaves before the contractual minimum period of

stay in his current enterprise has been reached. It has to be noted, however, that in the latter case, such penalty clause shall only be deemed valid and enforceable, if the employee receives special education or training benefits from his employer, and the penalty sum may furthermore not exceed the cost of such educational measure.

This legal restriction of penalty clauses may cause a serious problem for foreign investors in China, who in recent years have had to face a strong fluctuation of their workforce; especially highly-educated employees tend to leave their present employer swiftly if they detect a better, usually higher-paid working opportunity.

Probationary periods

Depending on the duration of the employment contract, probationary periods may be agreed upon, which in any case, however, shall not exceed a period of six months.

Mass dismissals

The new law enables enterprises to lay off more than twenty employees at a time, if an alteration of manufacturing procedures, a technical innovation or, more generally, a change of the economic conditions of the respective enterprise's business calls for such mass dismissal.

Mass dismissals shall furthermore be allowed if degradation of the general economic situation makes it impossible for the employer to fulfil his contractual obligations towards his employees.

Before such dismissal notices can be delivered, the trade union and the labour administrative authority have to be informed, which in practice sometimes might imply that the employer's decision could be vetoed by the aforementioned institutions, although no respective formal right is granted by law.

It is furthermore noteworthy that employers shall, in their selection of employees to be dismissed, follow certain social principles: E.g., workers with family members to be sustained or with a long-lasting labour relationship, shall, if possible, be exempt from mass dismissals.

Severance Payments

Even under the old labour law rules, employers in China had to make severance payments in case of a premature end of a labour contract. In addition, the new rules extend such legal obligation to labour contracts limited in time.

In order to avoid such redundancy pays, enterprises would have to offer their employees a new contract under the same or better conditions – another measure of the PRC's lawmakers to curb the tendency towards short term contracts. The amount of money due as compensation for the loss of labour shall depend on the length of the employee's stay within the enterprise and the actual salary he or she received before the employment ended. The calculation basis for the severance pay is one month's salary per year of employment within the company.

Growing Influence of trade unions?

The new law strengthens the position of trade unions. Any 'important entrepreneurial measures' now require the trade unions' prior consent. It has to be noted, however, that trade unions in the PRC cannot be compared with their counterparts in western countries, as their representatives are not voted freely and strikes remain illegal under the new rules.

Conclusions

The new PRC Labour Contract Law has to be regarded as an attempt of China's lawmakers to alleviate the conditions of the country's workforce. One should be aware, however, that the problem lies not so much in the inadequacy of the so far existing legal rules, but in their insufficient enforcement. It remains to be seen whether the new rules will close the gap between the country's socialist ideals and a social reality in which the gap between rich and poor keeps growing.

Remarks:

Opinions expressed in this contribution are those of the authors.

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