

LATEST CHANGES OF LABOR POLICIES AND LEGESLATION IN CHINA AND ITS IMPACT ON LABOR RELATIONS

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Both of authors will attend the conference, and Jing Ren plans to make a speech.

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From year 2008, labor policies and legislation of china have opened a new chapter of their history. China enacted series of new labor policies and legislation, including the Labor Contract Law, the Employment Promotion Law and the Law on Mediation and Arbitration of Labor Disputes, which profoundly influence the development of Chinese labor relations. In 2007, Chinese arbitration institutions at all levels dealt with 500,000 labor dispute cases. However, in the year of 2008 when the Labor Contract Law was put into operation, as many as 964,000 labor dispute cases was dealt with, increasing by 98%. The data suggest that the new labor law is useful to raise worker's right awareness. Since 2009, people have had a deeper understanding of the new labor policies and legislation, and labor dispute cases have decreased sharply, as shown in Figure 1.¹

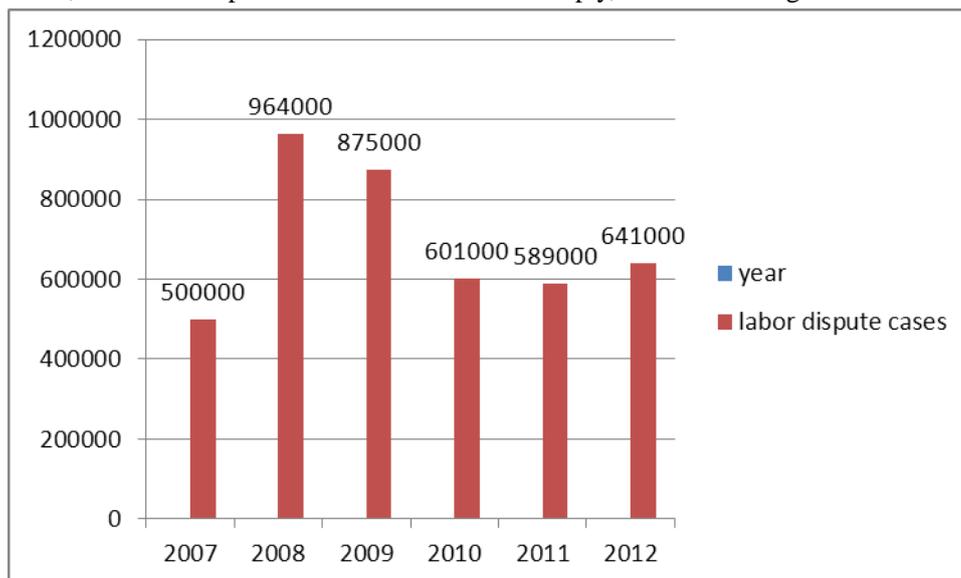


Figure1. The Change of Labor Dispute Cases from 2007 to 2012

¹ We have read Human Resources and Social Security Undertakings Development Statistics Bulletin (2013), but don't find out the data about labor dispute cases in 2013.

Source: Labor and Social Security Undertakings Development Statistics Bulletin(2007), and Human Resources and Social Security Undertakings Development Statistics Bulletin(2008-2012).

In recent years, China has frequently introduced new labor policies and legislation, whose main reasons include 3 aspects. First, from 1990s to the early 2000, short-term and unstable labor relations damaged labor rights and interests. Second, the increase of labor dispute cases needs perfection of labor policies and legislation, which are expected to regulate labor relations effectively. Third, the rapid development of economy and the upgrading of industrial structure lay a foundation for increasing worker rights. The major changes of Chinese labor policies and legislation include 5 aspects.

I . The Major Changes of Chinese Labor Policies and Legislation

1. The Changes of the Term of the Labor Contract Law

In transforming planned economy to socialist market economy, private enterprises emerged in large quantities, and state-owned enterprises were in need of reform, especially breaking the mess. From 1990s to the early 2000, the reform of state owned enterprises ushered in an upsurge, establishing a vitalized and competitive mechanism. Through that reform, the employees can in or out, and the cadres can move up or down. But, from a certain angle, the reform went too far. A lot of enterprises established the competitive selection system; the staff even needed compete for jobs every year. The labor relations trended to be short-termed. Unstable labor relations damaged interests of employees, and increased problems and conflicts in labor relations as well. To correct “going too far”, article 14 of the new Labor Contract Law make some rules by which an employer and a employee may conclude an open-ended employment contract. For instance, “The employee has been working for the employer for a consecutive period of not less than 10 years”, “when his employer introduces the employment contract system or the state owned enterprise that employs him re-concludes its employment contracts as a result of restructuring, the employee has been working for the employer for a consecutive period of not less than 10 years and is less than 10 years away from his legal retirement age”, “prior to the renewal, a fixed-term employment contract was concluded on two consecutive occasions and the employee is not characterized by any of the circumstances set forth in article 39 and items (1) and (2) of article 40 hereof”.

²The regulations toward an open-ended employment contract have triggered fierce debate.

Someone argues that open-ended employment contracts are good to maintain harmonious and stable labor relations. Meanwhile, opponents emphasize that open-ended employment contracts damage administration authority of enterprises and the competitiveness of enterprises.

2. The Changes of Labor Dispatch System

Recently, along with the constant deepening of reformation and opening in our country, perfecting of social labor security system and changing of employee's employment concept, labor dispatching begins to develop in different labor markets and talent markets. When economy falters caused by financial crisis or production cycle, the structural contradiction in labor market will appear. On the one hand is the labor shortage; on the other hand is a large number of the unemployed. Manufacturing enterprises employers want to hire and fire staff freely because of non-equilibrium of production. In other word, they like to hire more workers to maintain

² Cited from the Labor Contract Law.

production during the peak season, and hold fewer people to save the cost of human resource during the slack season. It is the labor dispatching system that can help employers' dream come true. However, in business, a lot of labor dispatch employees are treated like second-class citizens. The new labor policies and legislation strengthen the protection of dispatched employees, including fighting for equal pay for equal work. The perfection of labor dispatch system is good for the healthy development of labor intermediary agencies, and helps human resources allocated effectively in the whole society, and promotes the balance of workforce's supply and demand as well.

3. The Changes of the Adjustment Range of Labor Laws

Since the reform and opening up, employment has tends to diversity with the rapid economic growth, and even irregular employment has appeared. For example, according to the Labor Law which has been in effect since 1995, the teachers of private kindergartens are not workers due to the commonwealth nature of education. So, the Labor Law cannot protect those teachers. However, to adapt and serve social economic development, the Labor Contract Law, which has been implemented since 2008, expands the adjustment range of labor laws. The article 2 of the Labor Contract Law indicates that "the establishment of employment relationships between, and the conclusion, performance, amendment, termination and ending of employment contracts by, organizations such as enterprises, individual economic organizations and private non-enterprise units in the People's Republic of China ("Employers") on the one hand and Employees in the People's Republic of China on the other hand". So, according to this article, the teachers of private kindergartens are workers, protected by the Labor Contract Laws. In addition, due to the intervention of administrative power, the relation between a part of the institution staff and their organization is not labor relations but organizational affiliation, which is not adjusted by labor laws but by relevant department regulations. But the institution staff provides labor-use right to employers for labor remuneration, so, the relation between the institution staff and their organization is essentially one kind of labor relations. Because of the separation of administrative power, the identity of the workers from the same organization sharing the same profession is different. Therefore, those workers of different identities get different organizational rewards. That is obviously not reasonable. The new labor policies and legislation try to break the restriction of system, administer labor relations with the same standard, and establish equal labor relations in which people get the same pay for the same job.

4. The Changes of the Dismissal Regulations

To establish harmonious and stable labor relations, the new labor policies and legislation try to make the labor relations tend to long-termed on the one hand, yet change the reality that the employers fire workers arbitrarily on the other hand. For instance, according to the new Labor Contract Law, it may be very difficult for the employers to dismiss workers. If you plan to fire a worker, firstly, you need provide the evidence that the worker is incompetent. Secondly, even if the worker proved to be incompetent, you must provide training opportunities or adjust his position before firing him. Through training or adjustment of the position, if the worker is still incompetent, you must assess whether the reasons that you cannot dismissed the worker exist. The new regulations are stricter than the old, and ensure the full employment in a very humanity way. However, whether those strict regulations violate the sovereignty of the employer's employment is

disputed.

5. The Changes of Economic Compensation

The applicable scope of economic compensation is now expanded by the new policies and legislation. Therefore, it is more possible for workers to get economic compensation when they are fired. That is good news for employees. In most cases, as long as the labor contract is terminated or dissolved, the unit must provide economic compensation for staff and worker according to the length of their service.

As a series of labor laws and regulations with the Labor Contract Law as representative were drafted, enacted, promulgated and implemented, a fierce debate has been triggered in the whole society. There are different voices from the government, labor unions, the law circle, the circle of economics, to the business world and workers. On the one hand, supporters believe that the new labor policies and legislation are powerful weapons for the protection of workers' rights and interests, and are good to make labor relations more harmonious, while on the other hand, opponents say that the new labor laws and legislation are going too far and may not conform the Chinese practice because the implementation of those laws and legislation may increase corporate labor costs and make the labor rules more rigid. Some people even think the Labor Contract Law is a kind of "evil law". No matter how much controversy exists, there is no doubt that the promulgation and implementation of the new labor policies and legislation is powerful.

II. The Positive Effects of New Labor Policies and Legislation

1. Urging the Labor Relations Normalization

Before 2008, the workers signing the collective labor contract have low rates. However, since 2008, audit record of effective collective contracts kept by the human resources and social security department of all levels has been increasing (Figure 2).³

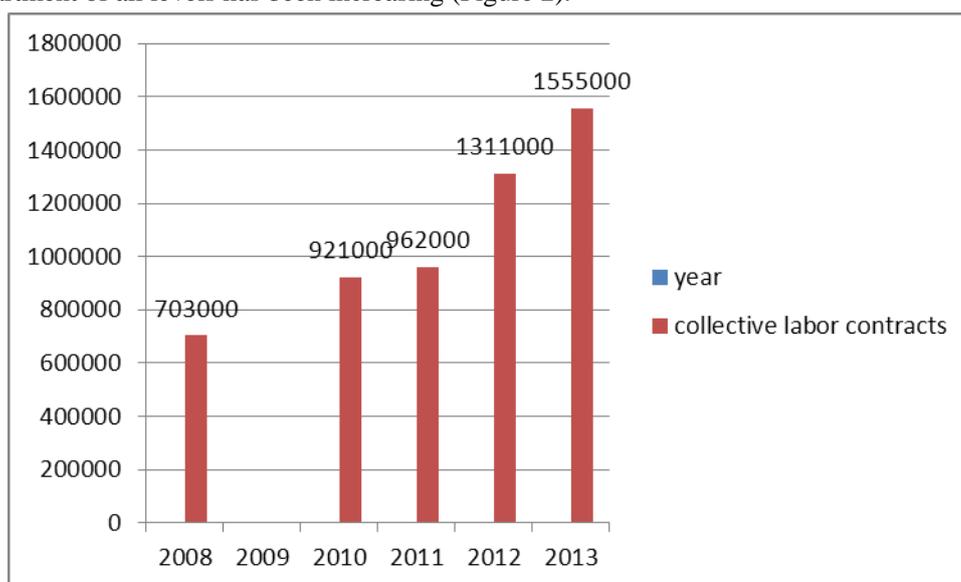


Figure2. The Number of the Collective Contract from 2008 to 2013

³ The 2009 data of audit record of effective collective contracts cannot be found out in the Human Resources and Social Security Undertakings Development Statistics Bulletin (2009).

Source: Human Resources and Social Security Undertakings Development Statistics Bulletin (2008-2013).

In the meantime, the number of the staff signing collective labor contracts rises each year (Figure 3).⁴

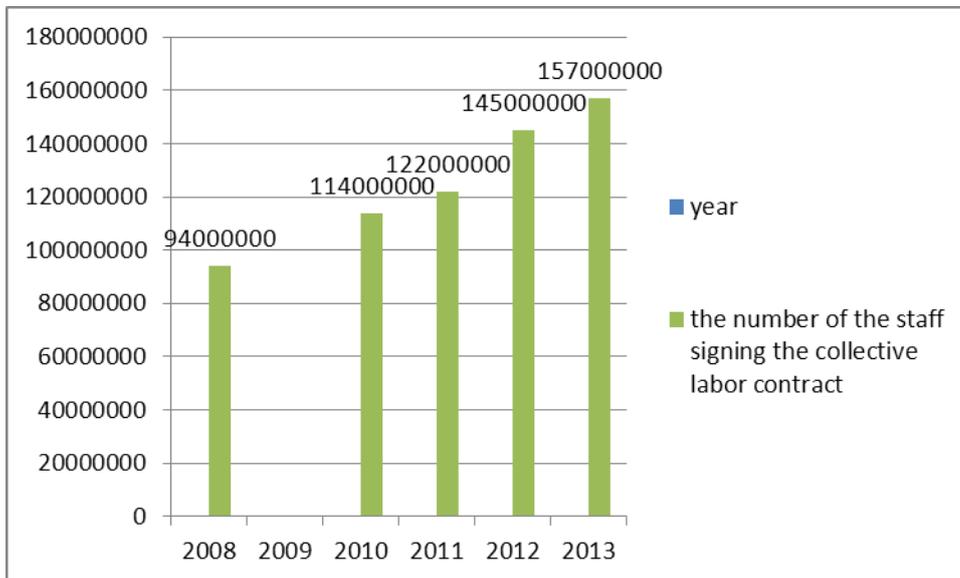


Figure3. The Number of the Staff Signing the Collective Labor Contract from 2008 to 2013

Source: Human Resources and Social Security Undertakings Development Statistics Bulletin (2008-2013).

In addition, statistics show that the rate of the workers signing labor contract nationwide rises steadily, and above 85% from 2011 to 2013, as shown in Figure 4.

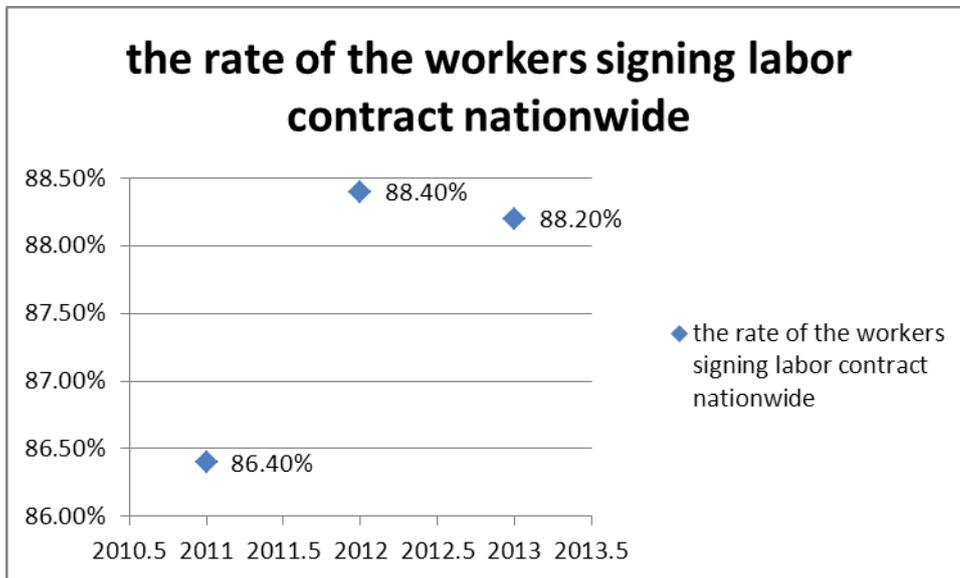


Figure4. The Rate of the Workers Signing Labor Contract Nationwide from 2011 to 2013

Source: Human Resources and Social Security Undertakings Development Statistics Bulletin (2011-2013).

2. Enhancing the Competitive Ability of Big Enterprises

⁴ The 2009 data of the staff signing the collective labor contract cannot be found out in the Human Resources and Social Security Undertakings Development Statistics Bulletin (2009).

Before and after the Labor Contract Law was implemented, whether the new rules about labor relations without a fixed period damage the competitiveness of enterprises has been a contentious issue. For employment freedom, some benchmarks firms took "extreme behavior" before the Labor Contract Law was put into effect, for example, buying out length of service. Nonetheless, under the legal constraints and the news supervision by public opinion, those big enterprises standardize labor practices further and strengthen labor and employment management. From practice, the new rules about open-ended employment contract don't sacrifice enterprises' competitiveness. The famous manufacturer of communication equipment, Huawei, spent about 10,000,000,000 RMB to buy out length of service before the Labor Contract Law was implemented, and became the focus of media attention. But, after the new labor law was implemented, the competitiveness of Huawei is not harmed even if it adjusts labor relations under the framework of the law and actively escalate employee remuneration. Since 2014, Huawei has overtaken Ericsson and become the world's top-selling telecoms equipment maker. Although the labor policies and legislation become stricter, they don't go negative on competitive power of enterprise. Moreover, stable labor relations and the increase in labor input improve production efficiency, and improve the performance of enterprises as well.

3. Protecting the Full- Scale Labor Rights of Employees

After series of labor laws and regulations were enacted, labor dispute cases appear the trend of type diversity and the more labor rights of employees are protected. Now, although unpaid salaries and workplace injuries in architecture field still have the highest rate of the labor dispute cases, the rate begins to fall and those cases don't have the absolute majority of legal aid cases. In addition, the labor dispute cases of migrant workers develop more types, such as overtime disputes, the disputes of the cancellation of labor relationship, social insurance disputes, etc.

4. Strengthening the Government's Responsibility in the Establishment of Harmonious Labor Relations

There are 4 leads in the establishment of labor relations, called "four-in-one". The leads not only include employers, employees and labor unions, but also governments whose role and influence is very important. The implementation of Labor Contract Law and the Law on Mediation and Arbitration of Labor Disputes has been spurring the department of labor security to tighten the law. For instance, in 2008, the department of labor security nationally organized to implement special administrative inspection on the payment of wages for migrant workers, cleaning up and rectifying the human resources market order, the rectification of illegal employment, combating crimes and complying with the "labor contract law", etc. Still, the department of labor security actively checked 1,808,000 employing units, adopted the way of written examination to handle 1,712,000 employing units, investigated and handled of 481,000 complaints, and dealt with all 483,000 cases of violations of labor security. Through the labor security supervision and law enforcement, 15,617,000 employees signed labor contract with their employees, 6,980,000 workers got supplement salary of a total of 8,330,000,000 RMB, 164,000 employing units made up social insurance premiums of 4,900,000,000 RMB, 126,000 employing units applied for the social insurance registration, 7,192 illegal job intermediary agencies were banned, and the employing units returned risk mortgage payment of 89,000,000 RMB to workers. From 2008 to 2013, the department of labor security launched special inspections or improvement activities every year. At

the end of 2013, China had a total of 3,291 labor security supervision mechanism, and all levels of human resources and social security department were equipped with full-time 25,000 labor security supervisors.

5. Strengthening the Rights of Labor Unions

After the Labor Contract Law was promulgated and implemented, the labor unions are entitled more rights, and their role is more important. For example, article 1 of the Labor Contract Law indicates “A labor union shall assist and guide employees in the conclusion of employment contracts with their employer and the performance thereof in accordance with the law, and establish a collective bargaining mechanism with the employer in order to safeguard the lawful rights and interests of employees”. So, that clearly defined the labor unions have the rights to assist, support and guide employees. Article 32, article 41, article 51, etc, further clarify that the unions enjoy more rights of participation in the whole process of the labor contract relationship, the regulation and supervision of collective labor relations. It is the promulgation and implementation of the Labor Contract Law that provides the better environment for the functioning of the labor unions.

III. The deficiencies of the new labor policies and legislations

First, the standard of some articles of law is too high to contact with reality. The new Labor Law expands a number of new regulations, such as open-ended employment contract, payment order and compensation regulations. The original intention of these articles of law that Chinese government enacted is to regulate the illegal employment practices in some organizations, to help the organizations establish a scientific employment practice, and to ease the conflict between employers and employees as well. By this means, China’s current industries status depending on low labor cost could be improved gradually and the industrial structure could be optimized and upgrading as well. But the industrial structure adjustment is a long-term process, there are a large number of labor-intensive enterprises in China, such as food and beverage industry, textile industry, construction and some other industries, of which development depend on the demographic dividend constituted by low labor costs and flexible working hours. In a sense, these kinds of non-standard labor relations promote the rapid development of China’s industry. The standard of some articles of the Labor Contract Law of China are high even in developed countries, which beyond the China's current economic and social development stage. As a developing country, China needs time to achieve this standard. That’s why Chinese local government takes an indifference attitude toward the newly enacted labor law for the sake of attracting more businesses and investment. As the famous economist Steven Cheung said, perhaps there is no impact that new labor laws could exert on China's economy, because China's local governments is "flexible", and they can make the related laws remain in name only.

Second, the legal protection of grassroots laborer rights is limited. One of the original intentions of the labor law is to strengthen the labor and social security of the grass-root employees, but based on the investigation of these employees in manufacturing, retailing and hairdressing industry, we find that generally they are lack of understanding in labor law policy, let alone the illegal and

unreasonable phenomenon such as excess overtime, labor protection, as well as unreasonable wage garnishment. Moreover, they haven't realized that their legal rights and interests were violated, and they have no aware of using laws to protect their legal rights. Therefore, there is an interesting phenomenon in practice that , the new labor policy really seems to function well in big enterprise with the function of safeguard of upper level employees, because these employees' legal sense is stronger, and easier to get access to the relevant legal training, and know how to protect their rights as well.

Third, the efficiency of China's economy is likely to be damaged. Fairness and efficiency are the two sides of a coin, and it's hard to tell which one is more prior when making decisions. There is undeniable that the strict implementation of new labor law will greatly promote social justice, but it's also likely to cause a large scale of capital outflow as the price. Since the reform and opening-up policy is performed, China has become the world factory depending on the global manufacturing transformation and achieved rapid economic growth. Needless to say the total amount of 1.3 billion low-cost labors particularly appeals to labor-intensive industries. Is there no need of lots of labor-intensive enterprises with China's industry upgrading and economic structure adjustment? Whether the economy really arrives at Lewis turning point? Will the capital flow to cheaper labor cost countries such as Vietnam, India if labor costs continue increase in China? Fairness and efficiency is exactly what we need to consider with. And this problem may be further transformed into the problem of quantity and degree.

Finally, it might cause an ignorance of traditional forces. The change of some labor policies may cause the conflict with traditional culture. On the afternoon of October 8, 2014, about 1000 employees who came from Chongqing branch factory of Foxconn gathered together and stroke for demanding overtime work and wage improvement. It sounds astonishing those workers required working overtime in the form of going on strike. From year 2007 to 2010, there were 13 consecutive employee suicide accidents in Foxconn factory in mainland China, which caused a strong focus on public opinion. At that time, it was generally believed that the extra labor intensity, often working overtime, and the lack of social entertainment, are the main reasons that employees' psychology broke down and jumped off buildings. Under the strong pressure of public opinion, on the one hand, Foxconn introduced millions of robot instead of workers engaged in heavy work; on the other hand, the employee's salary had been raised instead of working overtime. The suicide accidents decreased but the labor conflict still existed. Someone thought that reducing the overtime leads to a decrease in income, thus led to a strike. But it is important to note that Foxconn has raised wage for many times, which has greatly improved the employee's salary. Even if Foxconn workers do not work overtime frequently, according to current compensations and not high price level in Chongqing region, their salary is enough to feed their families. Why there would be the part of the media reports? Weber in "the protestant ethic and the spirit of capitalism" described the influence of the traditional power, which can partly explain this problem. Chinese people accustomed to work overtime and get a higher production, and it has already formed the traditional culture which produces a kind of inertia on Chinese people. The new labor laws and regulations provide easier work environment, but it may also not a good way to provide a better living for the one who wants to earn more money to support a family.

IV.Regulation Suggestions

Firstly, the practice of the new policy should meet the essence of law regulations. Law provides a framework under which we should behave. It means that the law is the bottom line of the rule, not the highest standards. Currently, some of the new terms, for good intention, setting with high standards of legal provisions learning from German or some other developed countries, are beyond the current stage of economic development and become a mere formality. This is not a statement denying the laws and its intention, but changing some legal terms impractical by facing up to and respecting the truth. All of the labor policies and legislation constitute a system, while the related labor laws just constitute a subsystem and seem to be relatively rigid. The social fairness problem in the labor relations, temporarily unsolved in labor laws, can be discussed and solved by more practical and operational local regulations based on the investigation and study on the current economic development state. We can even change a train of thought to solve the problem, with the aid of elastic and stronger administrative or economic measures.

The second is to strengthen the legal education, to create a good social and public opinion atmosphere for the implementation of the new labor policies and legislation. Government and labor union should further increase the propaganda of Labor Contract Law and other regulations, and guide the media to a wide range of positive propaganda of new labor laws and regulations as well. The publicity should be continued by a variety of effective measures, and especially some typical cases should be reported to the public as well. Enterprises which carry out the new labor laws seriously deserve full recognition, whilst the illegal employers should get exposure in the process of propaganda. By this means, more and more enterprises could get a better sense of legal employment in accordance with the law. At the same time, combined with the actual regional and organizational conditions, propaganda of the related policies and regulations should be conducted among the masses comprehensively and objectively, such as the Labor Contract Law, the Employment Promotion Law, and Labor Dispute Mediation and Arbitration Law as well. Meanwhile, effort should be put into the elimination of the misunderstanding of the new labor policies and legislation, from which the whole society could be fully aware and get a better understanding of the legal system's connotation. The focus of the publicity is to strengthen the education and training of the laborer, by mean of making them fully aware of their legal rights and obligations, and exercising their rights and obligations in accordance with the law. In a word, the publicity must be in place in the process of implementation of the Labor Contract Law, as well as the way that laborers express their wishes and aspirations must be unblocked. Further implementation of the new labor laws could become easier by completely changing the unbalanced status and situation of asymmetric information between employers and employees.

Last but not least suggestion is to strengthen the role of labor union in building harmonious labor relationship. First of all, abiding by the relevant provisions of Labor Contract Law and Labor Union Law, labor unions should perform their duties positively, help and guide the employees and employers to sign a fair and legal labor contract under the condition that all the laborers are clear of their legal rights through equal consultations. Secondly, in term of labor relations, labor unions should protect the legal rights and interests of laborers as much as possible. Thirdly, in the process of improvement and implementation of the labor contract system, labor unions should balance the

advantaged the position of employers, and prevent them from abusing legal rights. Finally, labor union should positively assist the administrative department of labor and social security to fulfill their duties in the process of regulation of labor relations.

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