How the Legal Framework Has Been Revolved To Regulate the Chinese Labor Market?

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Since the reform, the employment system characterized by iron rice bowl in urban China has been shattered gradually through a series of reforms. However, the reforms have not been just to liberalize rigid system, but also under a legal framework so that workers can be protected during the transition. *1994 Labor Law* is a milestone of such regulations in China's labor market development. Since the late 1990s, more regulations and laws have been formulated to protect the lawful rights and interests of urban local and migrant laborers. The acceleration of the process of legislation and regulation is because of two changes in labor market. First, the Chinese labor market reforms have taken the form of informalization that creates more and more informal employment opportunities for migrants and the local laidoff. While such a job creation helps workers go through labor market shock in the restructuring, the informality provides little protection to workers in securities of job, pay, and social welfare. Secondly, as a result of employment expansion in both rural and urban areas, there has been a sign of transition from the era of unlimited labor supply to that of finite surplus. The changed labor market characteristics require more pro-worker regulations.

In this paper we will review the formation of legal framework in the Chinese labor market with emphasis on urban labor market. We summarize the main contents of laws and regulations relating to labor market, and explain their implementation and effectiveness in the context of labor market development stages.

1. *1994 Labor Law*: A Milestone of China's Labor Market Regulations

There were no labor markets in the urban areas during the pre-reform period. Through planning, the government evenly distributed jobs and posts among urban laborers. The firms did not have autonomy of hiring and firing workers and deciding wages. Once a worker was assigned to a post, he could neither have the chance to turnover nor fear of dismissal and unemployment (Cai, Du and Wang, 2003). In this sense, job seekers under the system did not face a competition in labor market, but needed only a local *hukou* identity in a certain city. In short, the full employment guarantee under the Chinese planned economy was exclusive in the sense that anyone without an urban *hukou* identity could never get hired outside the plan, regardless of his or her education, skill and other human capital endowments.

Lacking operative autonomy and responsibility, the enterprises had no rights to decide on wage rates, and they did not have incentives to do so (Lin, Cai and Li, 2001). As a consequence, the average wage level in urban China did not change much before the reform, neither did it reflect differences in individual characteristics and efforts of employees. In a word, the target of the employment policies under the planned system was to guarantee full employment with low and relatively equal wage rates. Every urbanite shares iron rice bowl under this system.

Since the reform, the system of iron rice bowl has been relaxed gradually. For example, several reforms on wage system have been carried out since 1982 and labor contract system has begun to be implemented in most of SOEs since 1986. Such reforms have made the rigid employment system more and more flexible. China has been transitioning from an administered labor system to a labor market. And the labor market has gradually developed. In order to regulate the labor market which is still in the process of formation, protect lawful rights and interests of employees, adjust employment relationships, build and maintain the employment system under marketized economy and promote economic development and social progress, *the Labor Law* was issued by the Standing Committee of the 8th National People's Congress on July 5, 1994.

This law includes the following contents: employment promotion, labor contract and collective contract, working hours and resting and leaving, labor compensation, working safety and hygiene, special protection for female employees and employees under working age, occupational training, social insurance and benefits, labor disputes, monitoring inspection and legal liability, etc. The most important regulation in *1994 Labor Law* is expressed by "Building employment relationships should conclude labor contract". This provides a legal basis for implementing labor contract system all over China thoroughly. Labor contract system, which synchronously serves to break the iron-rice-bowl and to regulate the liberalized employment relations, has become the basic employment system of China's enterprises since then.

The 1994 Labor Law defines the equal status between employees and employers. According to this law, the conclusion of employment contracts shall comply with the principles of lawfulness, equality, free will, negotiated consensus and good faith. Labor contract system is the basis of developing labor market under market economy. *The 1994 Labor Law* becomes the basis of the legal framework of China's labor market with its comprehensiveness. After that, in order to complement *1994 Labor Law*, the Chinese government serially issued seventeen labor regulations by the end of 1994. Together with the 1994 Labor Law, they provide regulations on almost all the fields related to employment. The presence and implementation of those regulations imply that a relatively complete legal framework of China's labor market were established by the mid of 1990s.

2. The Improvement of Legal Framework since the end of 1990s

Since the radical employment system reform of state-owned enterprises in 1998, massive urban workers have been laid off or unemployed (Meng, 2004; Cai and Wang,

2004)[1]. Most of these workers, at their 40th or 50th, are unskilled, low-skilled, or poorly educated. It is very hard for them to get reemployed in formal sectors. Even if they become reemployed, most of them were employed in informal sectors with unstable work and low wages (Knight and Song, 2005). Some of them even can't find jobs due to their low human capital, low skills or old age. As we all know, migrant workers who are from rural areas and working in cities have been increasing very rapidly. Most of them are also employed in informal sectors.

Many laborers can't get good wages and social security, especially for workers who are in informal sectors. Compared with formal sectors, the unregulated labor use and the disputes between employers and employees are much more in informal sectors. For example, the proportion of workers who conclude labor contracts with their employers is very low in informal sectors, especially for unskilled workers.

Furthermore, the labor demand and supply situation in China has changed much during recent years. With the sustainable and rapid economic development and population age structure changes, China has ended the era of unlimited labor supply and has been on the way to the era of finite surplus. Structural labor shortage have emerged in costal areas first and then spread to even inland provinces. All of these create good opportunities to protect lawful rights and interests of laborers.

Under this circumstance, in order to protect lawful rights and interests of laborers better, a series of regulations and laws on China's labor market have been issued since the end of 1990s, especially since the new century, which include Wage Guideline System, Minimum Wage Regulations, *Employment Contract Law*, *Employment Promotion Law and Labor Disputes Mediation and Arbitration Law*, etc. These regulations and laws can basically be seen as the more detailed and revised version of *1994 Labor Law*. The contents of *1994 Labor Law* is very comprehensive. However, the regulations of the law on many aspects are not that detailed. The newly issued regulations and laws since the end of 1990s have been much more detailed than *1994 Labor Law*. Furthermore, there have emerged many new situations, phenomena and problems with the development of China's labor market. These new regulations and laws are mainly used for resolving these new issues.

Wage guideline system

With the development of China's labor market, wage rates of workers are more and more determined by labor demand and labor supply. Ministry of Labor and Social Security builds Wage Guideline System on China's labor market, which is taken as an important content of labor market development and enterprises' wage system reform. In 1999, *An Notice on Building Wage Guideline System on Labor Market* was issued by Ministry of Labor and Social Security, which indicated the introduction of Wage Guideline System on China's labor market.

According to this notice, the labor administration authorities are responsible for

[1] Laid-off workers are those who lost their jobs from SOE, but are entitled to receive basic living subsidies and pay the premiums of unemployment insurance, basic pension insurance and medical care insurance for them for at most 3 years from the reemployment service centers of their enterprises.

surveying, collecting, processing and analyzing wage levels of different occupations (types of work) in different kinds of enterprises periodically, formulating wage levels of different occupations (types of work) and issuing them to the society according to the national unified criteria and requirements. Wage Guideline System is helpful for formulating justified wage levels on the labor market, providing external reference standard for the employers and employees to determine wage levels, reducing the blindness of the employers and employees and improving the success rate of applying for jobs for laborers and promoting overall efficiency of labor market operation.

According to *An Notice on Building Wage Guideline System on Labor Market*, wage guideline should be formulated based on collecting and analyzing the relevant wage data. Wage guideline usually includes a base line, a top line and a bottom line and the formulation method of wage guideline makes them comparable between different regions. Wage guideline should be issued before the end of June annually. It should be posted at the public occupation intermediary institutions.

After almost one decade's development, Wage Guideline System has made good progress in China. The system started from some big cities such as Beijing and Shanghai and then spread to medium-sized and small-sized cities. Up to now, more than 100 cities in China have established this system and the numbers of occupations and types of work which have wage guidelines have increased year by year. All this would be helpful for modeling other regions to construct this system. The establishment of this system has promoted labor market development and pushed enterprises' wage system reform. It is welcomed by both the employers and employees.

Minimum wage regulations

Regulation on Minimum Wages in Enterprises was issued in 1993, which was the earliest regulation on minimum wage in China. The chapter 5 of *1994 Labor Law* includes some regulations on minimum wage. However, the regulations on minimum wage in this chapter are very simple and not that detailed. In January of 2004, *Minimum Wage Regulations* have been issued by Ministry of Labor and Social Security, which was seen to indicate the overall implementation of the minimum wage system in China's labor market.

Minimum Wage Regulations of 2004 includes detailed, concrete and operable provisions on definition, categories, application, formation and adjustment of minimum wage standards. According to this regulation, minimum wage standards refer to the lowest remuneration paid to employees by employers on the premise that employees provide regular working in the official working hours or in the working hours agreed by their labor contract with employers. There are two categories of minimum wage standards: monthly minimum wage standard and hourly minimum wage standard. The former applies to full-time employees and the latter applies to part-time employees.

Many developed countries use national minimum wage standard and the local governments can improve their own standards based on the national standard

according to the local economic situation. However, there is no national minimum wage standard in China. *Minimum Wage Regulations of 2004* prescribes that each administration region within a province, autonomous region or municipality can set their own minimum wage standards. The minimum wage standards should be adjusted according to the changes of local social and economic situations at least once every two years.

People have different views on the effects of minimum wage standard on the number of employment and the real wage level. Actually, it is not reasonable to evaluate the effects of minimum wage standards generally. The analysis on the effects of minimum wage standards must take the situation of labor market and the real level of minimum wage into account.

In the past years, the minimum wage policy has been substantially improved in terms of both coverage and the level. All cities in China have introduced minimum wage standard system in this century. The level of minimum wage has been increasing steadily both at nominal price and in real term. As far as time is concerned, most of cities in China have strengthened the implementation in recent years, which could be evidenced by more absolute increase of minimum wage rates, high growth rate, and high adjustment frequency, etc. Not only did those facts imply that China began to emphasize a more regulated labor market but was an indication of changing labor market situations characterized by a coming *Lewisian* turning point.

When discussing the level of minimum wage, the ratio of minimum wage with respect to average wage is always an issue to be concerned. Our research shows that, the average wage increases quickly in the past decade. In 1995, the average wage of workers in 286 cities were 514 yuan per month while in 2006 the average wage increased up to 1750 yuan per month in nominal term and 1472 yuan per month in real term. The average annul growth rate of average wage is 11.8 percent in nominal term and 10 percent in real term. The ratio of minimum wage to average wage has been declining with a few years exception. In 1995 the ratio was 0.44 while dropped to 0.28 in 2006.

When the average wage grows so fast, it is not surprising that the ratio of minimum wage to average wage keeps declining because the increase of minimum wage can not, and is not necessarily to, catch up that of average wage. To understand the ratio correctly, one has to bear in mind that migration workers are not sufficiently included into the statistical system when estimating the average wage. To some large extent, the information on average wage is based on reporting system of unit employment instead of labor market survey. However, the reporting system was formed in the era of planning economy and is not able to reflect the dynamic changes of labor market. Therefore, it is good to believe that the average wage on the urban labor market was overestimated by excluding migration workers and informal employment. So, although the ratio of minimum wage to average wage has been declining, it is not good to say China has an inadequate level of minimum wage because the average wage does not include enough information on migration workers who are taken as disadvantageous group in urban labor market.

Employment Contract Law

Employment Contract Law was adopted by the Standing Committee of the 10th National People's Congress on June 29, 2007 and took into effect from January 1, 2008. This Law has been formulated to improve the employment contract system, specify the rights and obligations of the parties to employment contracts, protect the lawful rights and interests of employees, build and develop harmonious and stable employment relationships. *Employment Contract Law* was built on the basic framework of labor contract system established by *1994 Labor Law*, however, it has made a lot of revisions.

Chapter 3 of *1994 Labor Law* includes some regulations on labor contract and collective contract. Compared with regulations on other aspects such as promoting employment and wage, regulations on labor contract in *1994 Labor Law* are more detailed. For example, this law prescribes what matters a labor contract should specify, categories of labor contract term, when labor contract can be terminated and also some issues on collective contracts, etc. However, *Employment Contract Law of 2008* gives more detailed provisions on the conclusion, performance, amendment, termination and ending of employment contract, collective contract, placement of employees, part-time labor, monitoring inspection and legal liability, etc.

The improvement of *Employment Contract Law of 2008* is mainly reflected by the following aspects: Firstly, for contents prescribed by *1994 Labor Law*, *Employment Contract Law of 2008* gives more detailed and operable stipulations to resolve the main problems existing in the current employment contract system. The employers are prone to conclude short-term employment contract with their employees, which affects the harmony and stability of employment relationship. In order to maintain the stability of employment, *Employment Contract Law* gives more stipulations on the conclusion of open-ended employment contract between employers and employees.

By *1994 Labor Law*, the employer shall conclude an open-ended employment contract with the employee when the employee has been working for the employer for not less than 10 years and the employee and employer have reached a consensus to renew employment contract and the employee proposes to conclude an open-ended employment contract. However, according to *Employment Contract Law of 2008*, an employer and an employee can conclude a fixed-term employment contract if they reach a negotiated consensus. An open-ended employment contract shall be concluded if an employee proposes or agrees to renew or conclude his employment contract in the following circumstances, unless the employee requests concluding a fixed-term employment contract: (1)The employee has been working for the employer for not less than 10 years; (2)When the employer just begins to implement the employment contract system or state-owned enterprises re-concludes the employment contract with the employee due to restructuring, the employee has been working for the employer for not less than 10 years and is less than 10 years away from legal retirement age, etc. If an employer fails to conclude a written employment contract with an employee within one year from the date when the employee starts working for the employer, the employer will be deemed to have concluded an open-ended employment contract with

the employee.

Secondly, stipulations on placement of employees and part-time labor are the new contents of *Employment Contract Law* and are not mentioned in *1994 Labor Law*. Thirdly, *Employment Contract Law* prescribes some contents on protect lawful rights and interests of employers. For example, it includes provisions on confidentiality matters in order to maintain the confidentiality of the trade secrets of the employer and intellectual property. If an employee has a confidentiality obligation, the employer can agree with the employee on competition restriction provisions in the employment contract or confidentiality agreement. The employer has to pay financial compensation to the employee on a monthly basis during the term of the competition restriction after termination or ending of the employment contract. If the employee breaches the competition restriction provisions, he or she has to pay liquidated damages to the employer.

Employment Promotion Law

1994 Labor Law includes the following regulations on promoting employment: (1) The nation creates employment and increases employment opportunity; (2) The local governments at each level develop occupation intermediary institutions to provide employment service; (3) The laborers can not be discriminated due to their ethnicity, race, gender and religion; (4) Female workers have equal employment rights as male workers; (5) The employers are prohibited to hire employees under working age, etc. Apparently, these regulations are very general and not that detailed. Since the end of 1990s, with the mass laid-off and unemployed workers and rapid increase of urban unemployment rate, the governments have adopted a series of active employment policies, which include implementing active financial policies to adjust economic structure and improve the capacity of economic development to increase employment; building public and social employment service system; establishing three security lines[1]; enhancing employment and re-employment training; providing re-employment support and assistance, etc. These active employment policies have played important roles on promoting employment.

Employment Promotion Law was adopted by the Standing Committee of the 10th National People's Congress on August 30, 2007 and began to take into effect from January 1, 2008. It is a legal tool for implementing active employment policies. The law is formulated to promote employment, promote the coordination between economic development and employment increase and promote the harmony and stability of the society. *Employment Promotion Law* includes regulations on fair employment, employment service and supervision, occupational education and training, employment assistance, monitoring inspection and legal liability, etc. All active employment policies taken by government are all reflected in this law.

For example, the law prescribes active financial policies as follows: the nation shall implement active financial policies to promote employment, input more fund,

[1] Three security lines refers to "system of basic living subsidy for laid-off workers from state-owned enterprises", "unemployment insurance system" and "minimum living standard guarantee program".

improve employment environment and increase employment. The law also has provisions on building public and social employment service system policy. For the policy of three security lines, the law stipulates it like this: the nation should build unemployment insurance system, secure the basic living of unemployed workers and help them get re-employed[1]. The law also includes detailed provisions on occupational education and training which is related to enhancing employment and re-employment training policy and provisions on employment assistance which is related to re-employment support and assistance policy.

Besides the provisions on government's active employment policies, *Employment Contract Law* also includes provisions on fair employment. It stipulates this as the following: the governments at each level shall create a fair employment environment, eliminate employment discrimination and take measures to support and assist people who have difficulties to find jobs to get employed. According to this law, female workers, minority workers, disable workers, workers with infectious disease pathogeny and migrant workers in cities from rural areas can't be treated with discrimination. From all these provisions of *Employment Contract Law*, we can expect that the law will play important roles on promoting employment. However, we should also recognize that, the intervention of the government may also cause negative effects on labor market.

Labor Disputes Mediation and Arbitration Law

Labor disputes settlement system is an important lawful system to accept and settle labor disputes and is also an important lawful assistance way for labor disputes parties, especially for laborers, to protect for their lawful rights and interests. Since the renewal of labor disputes arbitration system in 1987, with the issue of *Regulations on Settlement of Labor Disputes in Enterprises*, China has formulated labor disputes settlement system which is centered by negotiation, mediation, arbitration and lawsuit. This system has played very important roles on protecting the lawful rights and interests of employers and employees, promoting harmonious employment relationships and maintaining social stability.

With the complicated changes of employment relationships, the contradiction between employers and employees and the number of labor disputes cases have been increasing. And the cases have been more complicated than before. There exist many problems with the current labor disputes settlement system. For example, it takes too long time to settle labor disputes and the time limit for application for arbitration is too short, etc. In order to improve the current labor disputes settlement system, *Labor Disputes Settlement Law* was adopted by the Standing Committee of 10th National People's Congress on Dec.29, 2007 and began to take into effect on May 1, 2008.

This law is formulated to resolve labor disputes fairly, protect lawful rights and

[1] Due to the transition from the system of basic living subsidy for laid-off workers from state-owned enterprises to unemployment insurance system has already been finished, the system of basic living subsidy for laid-off workers is not mentioned in this law. China has formulated regulations on minimum living standard guarantee program, so the minimum living standard guarantee program is not mentioned in this law, either.

interests of parties and promote harmonious and stable employment relationships. It stipulates on labor disputes mediation, arbitration, application and acceptance, hearing and award, etc. The law enhances the protection for lawful rights and interests of two parties of employment relationships from lawful procedure and guarantees the effective implementation of *Employment Contract Law*.

3. How Might the Laws Affect Labor Market Functioning?

Although the legal framework of China's labor market has been set up for a short time, there exist a lot of debates on how they will affect the labor market functioning. Up to now, *Employment Contract Law* is seen to be the law which affects China's labor market most. There are many concerns and debates on *Employment Contract Law* after its issue, especially on its provisions on open-ended employment contract. For example, Cheung (2007) believes that an open-ended employment contract would make laborers become lazier and bring iron rice bowl back. However, Cai (2007) pointed out that, the issue of *Employment Contract Law* is suitable and timely when China is on the transition from the era of unlimited labor supply to that of finite surplus.

The debates on *Employment Contract Law* mainly include the following aspects. Firstly, many people think that, *Employment Contract Law* is formulated to change the disadvantageous status of employees by improving laborers' wage. Then the inevitable effect of the law's implementation is labor cost increase. In order to judge whether the implementation of the law would cause labor cost increase or not, we must distinguish two kinds of labor cost increases which are caused by the implementation of the law. The first kind is caused by punishing illegal labor use and the second kind is purely caused by some provisions of the law.

The provisions on basic rights and interests of laborers which should be protected under any situation and at any economic development stage in *Employment Contract Law* include probation period, liquidated damages, minimum wage rates and working conditions, etc. These are formulated mainly to punish illegal labor use of some employers. The labor cost increase caused by them is needed and necessary.

Some other provisions in *Employment Contract Law* including termination of employment contract, social insurance, severance pay and placement are formulated to resolve the problems in informal sectors. During a long period, employees are on disadvantageous status in employment relationships. These provisions may cause labor cost increase to enterprises.

There exist differences on degree of labor intensity and degree of formalization of employment relationships between enterprises. Then the provisions included in *Employment Contract Law* mentioned above may cause different level of labor cost increase to different enterprises. According to our observation, we can reasonably presume that, labor cost of enterprises would increase by 5-15 percent in the legal employment relationships due to the implementation of *Employment Contract Law*.

We can evaluate level of labor cost increase by comparing it with the level of wage increase. Due to the segmentation of China's labor market, we divide workers

into two categories when investigating wage levels. One category is workers who are employed in urban formal sectors. Since 1999, wage of this group of workers has been increasing by more than 10 percent annually and it reached 12.7 percent in 2006. The other category is workers who are employed in informal sectors and non-agricultural industries, represented by migrant workers in cities. A survey shows that, during about 10 years before 2003, there was very little wage increase for this group of workers. From then, the rate of wage increase has been increasing. It was 0.7 percent in 2003, 2.8 percent in 2004, 6.5 percent in 2005, 11.5 percent in 2006 and reached even 20 percent in 2007.

We can easily find that, rate of labor cost increase caused by implementation of *Employment Contract Law* would not exceed that of average wage increase. Actually, wage increase caused by implementation of the law may substitute for the regular wage increase. The accelerating rates of wage increase during the recent years reflect the changes of relationship between labor demand and labor supply. *Employment Contract Law* stipulates on range, items and size of inevitable labor cost increase of enterprises. From this point, the labor cost increase caused by the law will not be added to regular wage increase entirely.

Some people may worry about the loss of comparative advantage of China's labor-intensive industries due to the labor cost increase caused by implementation of *Employment Contract Law*. By using data on hourly wage of manufacturing in some countries and regions before 2002 released by Labor Department of the United States and data on wage increase rate in China mentioned above, we compared hourly wage of manufacturing of formal and informal sectors in China with that in other countries and regions, taking RMB's exchange rate changes into account. It shows that, in 2007, hourly wage of manufacturing in formal sectors in China is 4.4 percent of that in USA, 10.9 percent of that in South Korea, 16.7 percent of that in Singapore, 17.1 percent of that in SAR of Hong Kong, 21.6 percent of that in Taiwan region, 32.6 percent of that in Mexico. If we take migrant workers in cities as the representatives of manufacturing workers in informal sectors, hourly wage of this group of workers in China is 2.3 percent of that in USA, 5.7 percent of that in South Korea, 8.8 percent of that in Singapore, 9.0 percent of that in Hong Kong, 11.4 percent of that in Taiwan, 17.2 percent of that in Mexico. From this, we can conclude that, wage level of manufacturing in China will keep at a relatively low level in long time.

The more important point is, the accelerating rate of China's wage increase in recent years has been accompanied with the rapid improvement of labor productivity. According to the estimation by International Labor Organization (ILO), from 1980 to 2005, the annual increase rate of China's labor productivity was 5.7 percent, and that of labor productivity of manufacturing was 7.9 percent. ILO admits that this rate is the fastest all over the world. However, due to the long time span of this research, it couldn't reflect the more rapid increasing rate of labor productivity of China's manufacturing in most recent years. By our own calculation, from 2000 to 2004, the annual increase rate of labor productivity of China's manufacturing was 24.1 percent and that of wage was only 7.8 percent.

According to economic theory, trend of wage increase should be consistent with

that of labor productivity increase. If the increasing rate of labor productivity is higher than that of wage increase, the comparative advantage will not lose. If the comparative advantage of China's manufacturing does not lose, wage of manufacturing will have big space to increase.

Secondly, lack of explicit judicial interpretation on articles of *Employment Contract Law* may cause people's misunderstanding on it. For example, provisions on open-ended employment contract are concerned most. Such provisions would be helpful for employment stability of laborers. However, some people worry that, these provisions may cause iron rice bowl back and make laborers lazier. Actually worries about this are not necessary because open-ended employment contract is not the contract that can't be terminated. Problems like this can be resolved by issuing relevant laws and documents. *Draft Implementation Regulations for Employment Contract Law* which was just issued on May 8, 2008 is formulated to resolve questions like this.

Thirdly, the long-term effects of *Employment Contract Law* on China's labor market and economy mainly include the following: whether the provisions in the law would restrict labor use of enterprises, reduce the flexibility of China's labor market, decrease enterprises' competitiveness and impede development of enterprises or not. From labor market reforms of other countries, security and flexibility are deemed to be policy choices in a dilemma. Different countries may have different preferences on security and flexibility. For example, labor market of USA is characterized by more employment opportunities, less stability and relatively low wage (more flexibility) and that of Europe is characterized by stable employment, less employment opportunities and relatively high wage (more security).

However, labor market is always being in the process of adjustment. Labor market with more flexibility will seek for more security and labor market with more security will seek for more flexibility. In western countries, people create a new word which is called "flexisecurity" and try to seek balance between flexibility and security on the labor market. That is, when increasing social protection for laborers, flexible employment should also be encouraged at the same time. The debates on *Employment Contract Law* also reflect the choice between security and flexibility.

4. How Are the Laws Implemented?

Debates on *Employment Contract Law* are the most, comparing with other laws and regulations issued since the end of 1990s. In this part, we will mainly discuss how *Employment Contract Law* can be implemented better. Firstly, Debates and worries about *Employment Contract Law* are in some degree correlated with lack of interpretation on articles of the law. Some debates are caused by the incorrect cognition on the relationships between labor market regulations and market mechanism. When interpreting *Employment Contract Law*, the labor administration authorities should emphasize that, this law is an important supplementary of labor market mechanism. With employment and wage determined by market mechanism, the law gives stipulations on market behavior and how to balance rights and interests

between employers and employees.

Some people from enterprises think that *Employment Contract Law* gives more preferences to employees rather than to employers. Actually, the law is formulated to build long-term, stable and regulated relationships between employers and employees. And the lawful rights and interests of employers are also reflected in the law. The governments have responsibilities to interpret the provisions people are most concerned such as open-ended employment contract, procedure of hiring, liquidated damages and provisions on placement, etc. Faced with such hot debates on *Employment Contract Law*, *Draft Implementation Regulations for Employment Contract Law* was issued on May 8, 2008, which is expected to be helpful for implementing the law better and eliminating unnecessary worries.

Secondly, the implementation of *Employment Contract Law* has made some existed problems and contradictions for some time emerge and brought debates on labor cost increase. We should look at this question through analyzing the essential factors which cause labor cost increase. The experiences of developed countries show that, the government protecting for the lawful rights and interests of laborers and trade union playing more roles in collective negotiation such as wage determination usually happen at the transition from the era of unlimited labor supply to that of finite surplus. With the increase of informal employment in China during recent years, the protection for laborers and the coverage of social security has been decreasing when employment in urban and rural areas has increased a lot. Furthermore, the increasing rate of wage is still much lower than that of labor productivity and laborers only share a small part of labor productivity increase.

Then we can conclude that, the issue and implementation of *Employment Contract Law* is very timely and suitable for China's labor market. The provisions of the law regulate the function of labor market effectively and would be helpful for protecting the lawful rights and interests that haven't been shared by laborers for long time. The rapid and healthy economic development can be sustained only if laborers share the fruits of economic development fully. This is also the target of constructing socialistic harmonious society.

Thirdly, before the implementation of *Employment Contract Law*, most of enterprises which do not conclude employment contracts with their employees or perform employment contracts badly are medium-sized and small-sized. It is obvious that the implementation of the law will cause larger effects on such enterprises than on others. When these enterprises play outstanding roles on creating employment, stabilize economy, promote innovation and maintain social harmony, most of them are labor-intensive with low profit and short lifecycle. For these enterprises, when implementing *Employment Contract Law*, some measures should be taken to assist them, for example, giving them subsidy for their labor cost increase and reducing or exempting their revenues. Then the implementation of the law would not put many medium-sized and small-sized enterprises in a difficult condition and bring shock to the economy.

Fourthly, the implementation of *Employment Contract Law* should be linked with that of other laws and institutions. For example, enterprises have heavy financial

burdens including revenue and social insurance expense. If enterprises follow polices and regulations strictly, social insurance expense will be about 30 percent of total labor cost. The way that enterprises evade social insurance expense is to make some new employees become temporary, short-term or informal workers. So it is necessary to link the implementation of *Employment Contract Law* with that of other laws and institutions.

Fifthly, implementation of *Employment Contract Law* should be coordinated with active employment policies and avoid possible over-regulation. For example, placement system is formed during the process of China's government implementing active employment policies. It has played very important roles on resolving serious laid-off and unemployment and promoting flexible employment since the end of 1990s.

There are many provisions on placement of employees in *Employment Contract Law*. For example, Article 58 of the law stipulates that during periods when there is no work for laborers to be placed, the staffing firm should pay them compensation on a monthly basis at the local minimum wage rate. Article 63 stipulates that placed laborers should have rights to get the same pay as that got by employees of the accepting unit. These provisions are helpful for protecting the lawful rights and interests of laborers. However, they may also bring staffing firms too heavy burden. Currently, frictional unemployment and structural unemployment are still the main components of China's unemployment and China may suffer labor market shock again in the future. It might be better not to intervene placement of employees too much when implementing *Employment Contract Law*.

In a word, *Employment Contract Law* should be implemented firmly to protect for lawful rights and interests of both employers and employees. At the same time, the government should interpret articles of the law more explicitly, revise some of the revisions when necessary and make it better and more operable to make the law play more important roles in constructing harmonious employment relationships.

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