

WRC Comparison Chart: Key Elements of Proposed Labor Contract Law

EXISTING LAW	PROPOSED LABOR CONTRACT LAW: DRAFT 1	EXPLANATION	DRAFT 2	SIGNIFICANCE OF REVISIONS
<i>Provision of Employment Contracts</i>				
<p>Requires that employment contracts be extended to many workers, but enforcement is weak and substantial numbers of workers do not have the right to a contract.</p> <p>Allows employers to deny rights and benefits to employees by maintaining them on probationary status for excessive periods, hiring them through agencies as temporary workers, or hiring them on multiple short-term contracts.</p>	<p>Requires that all industrial workers have employment contracts from their date of hire and strengthens enforcement of this requirement. Restricts the use of probationary status, short-term contracts and temporary employment, so that more employees will enjoy the rights and benefits that come with permanent employment.</p> <p>Specifics:</p> <ol style="list-style-type: none"> 1) States that if an employer fails to provide a contract to an employee, one containing all of the protections of the law will be imposed. 2) Streamlines enforcement and increases sanctions for violations. 3) Regulates the relationship between employers and those employees that are hired through employment agencies; converts temporary employees to permanent employment status after one year. 4) Limits length of probationary period, with limits varying depending on circumstances. 	<p>Given the lax enforcement of labor rights protections in China, one of the few tools workers have at their disposal to defend their rights is their employment contract. Contracts cover such basic rights and benefits as minimum wage, the right to be paid on time, and protection from forced overtime and arbitrary dismissal. Workers who are denied an employment contract – which occurs frequently due to lax enforcement and exemptions for some categories of workers – usually have no legal recourse. By making contracts mandatory for a broader range of workers and strengthening enforcement, the new law would result in more workers being able to defend their basic rights and, as a result, would lead to a higher overall level of labor rights compliance.</p> <p>Short-term employees hired through employment agencies, probationary employees, and employees on short-term contracts currently have fewer rights and protections than permanent employees and less ability to defend the rights they do have. By restricting the use of these statuses, the new law would extend important rights to more workers and make these rights easier to defend.</p> <p>Even though employment contracts are technically required under current law, employers frequently fail to provide them. The courts often penalize the worker for this by refusing to acknowledge the worker’s rights as an employee because the</p>	<p>Allows an employer a one-month grace period after employment has started to provide employees with a contract.</p> <p>Removes the requirement that courts and labor arbitrators grant deference to the employee’s understanding/ interpretation of the contract in cases where the employer cannot provide hard evidence in support of its position.</p> <p>In cases of dispute or arbitration over the content of a contract, the status quo/ “market” standards prevail instead of the full protection of the law standard in the original draft.</p> <p>Reduces some sanctions for violations.</p>	<p>The one-month grace period before a contract is required will weaken protections for workers during their initial month of employment and may provide employers with a loophole that can be used more broadly.</p> <p>Eliminating the requirement that the employee’s claim be credited by the courts in cases where the employer cannot meet the burden of proof would perpetuate the existing imbalance of power in Chinese legal practice. At present, employers can often win cases based solely on unsubstantiated verbal claims; workers, who have minimal resources and very limited access to legal representation, are rarely in a position to challenge an employer’s claims with documentary evidence. The result is that the court has only the verbal representations of the two parties to consider and it is the habit of the courts to favor the employer in this circumstance. The original draft of the proposed law would have corrected this imbalance by requiring employers, who have the resources to do so, to document their claims.</p>

	<p>5) Promotes permanent as opposed to short-term employment by granting severance rights to employees on short-term contracts.</p> <p>6) Requires the courts and labor arbitrators to place the burden of proof on the employer where there is a dispute over the terms of a contract or where a written contract has not been provided. Also requires the courts to afford the employee that is party to the dispute the full protection of the law, as due to any permanent employee.</p>	<p>worker cannot show the court an employment contract. The new law would direct the courts and labor arbitrators to hold employers accountable for providing contracts, by effectively assuming there is a contract where one is not in evidence.</p> <p>The new law would also level the playing field in employer-employee contract disputes by placing the burden of concrete proof on the employer, as opposed to current practice, where courts routinely defer to the employer based solely on the employer's verbal say-so.</p>		
Collective Bargaining				
Employers are not required to negotiate and reach agreement with unions or other employee representatives over such matters as work rules, health and safety procedures and layoffs. Worker representatives are not protected from dismissal during a negotiation.	<p>Requires employers to negotiate with a union or with employee representatives, where such representation exists, over work rules and procedures, health and safety, layoffs, and the dismissal of individual workers.</p> <p>Prevents employers from dismissing a worker who is acting as a worker representative during a negotiation.</p>	<p>Given the prohibitions in Chinese law on the formation of independent unions, any improvements in the area of associational rights are particularly important. By requiring employers to negotiate over some important matters, the new law would increase opportunities for meaningful worker representation. While in many cases the government controlled union will be doing the negotiating, the law does allow space for other, more independent forms of worker representation.</p> <p>The law would also increase the ability of workers to exercise their associational rights by preventing employers from dismissing worker representatives during a negotiation. This protection would be particularly important for workers who are leaders of representative bodies that are not part of the government-controlled union.</p>	<p>Employers are no longer required to negotiate with worker representatives over mass layoffs.</p> <p>The provision protecting worker representatives from dismissal has been removed.</p>	<p>The elimination of the requirement that layoffs be negotiated with worker representatives, and the elimination of the provision protecting worker representatives from dismissal, removes aspects of the law which represented significant advances for associational rights.</p>

<i>Payment for Training</i>				
Employers can force workers who choose, for whatever reason, not to continue their employment, to pay the employer back for the cost of training – even if the training was routine, on-the-job instruction.	Employers can only require repayment in the case of full-time, off-the-job technical or professional training lasting longer than six months.	The ability of employers to force employees to pay for any and all forms of training if they leave the factory can place many workers in substantial debt or in effective bond to their former employer. This practice is particularly unreasonable given the extremely low wages paid to most industrial workers. The new law would eliminate the practice, except in cases where the employee and the employer have agreed to a special, long-term extensive training program.	Employers may require repayment for such training lasting one month or more (reduced from the six months originally required).	The reduction in the length of a training period for which employees can be required to repay their employers if they leave the job will make it easier for employers to require such repayment from former employees. However, because the second draft maintains the provision that such training be full-time, off-the-job, and of a professional or technical nature, it is unlikely that employers could subject production workers to repayment requirements.
<i>Layoffs</i>				
When an employer’s economic circumstances necessitate mass layoffs, the selection of workers for termination is at the discretion of the employer. Employers are not required to lay off workers on the basis of seniority or any other stated criteria.	Requires employers laying off more than 50 workers to carry out these layoffs on the basis of seniority.	“Last hired, first fired” is generally considered to be the fairest way to conduct layoffs, as it eliminates the possibility of discrimination. This protection is of particular value to workers who may have stirred management’s ire by seeking to defend their rights in the workplace.	Seniority-based layoff requirement now applies to layoffs of twenty or more employees.	Expanding the scope of this provision to include all layoffs of twenty or more workers is a positive change. However, as noted above, the removal of the requirement that the terms of such layoffs be negotiated with worker representatives weakens the protections in this area.