

## The Research on Full Scale Operation of Labor Contract in Liaoning Province

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### Abstract

labor contract adjusts the relation of rights and obligations between labors and employing unit and promote harmonious labor relations. With the development and improvement of market economy in China, labor contract is attracting more attention and its contracting system has become lubricant to development of economy. There existing some problems in full scale operation of labor contract system, which block the development of economy and the progress of society. Hence, it is necessary to make a research and analysis to contract system and bring forward the solution.

**Key words:** Labor contract; Labor contract law; Labor contract system; Labor

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## 1. THE CURRENT SITUATION OF PROMOTING LABOR CONTRACT SYSTEM IN LIAONING PROVINCE

### 1.1 The Progress Achieved of Labor Contract System Implementing in Liaoning Province

#### 1.1.1 The Light Spot of Labor Contract in Liaoning Province — Implement “Labor Contract Law” Issued by China

“Labor contract law” has been launched on 29 June, 2007 and put into practice on 1 January, 2008. It is the mature and sound sign to labor contract law in Liaoning Province. It also fully guaranteed labors’ rights and interests.

#### 1.1.2 The System of Treatment of Disputes has Been Set Up In Liaoning Province, Preserve Labor Market Order

We have established the solving mechanism of “single judge, double trial” to labor disputes and put the arbitration to the pre-procedure. According to statistic, there are 10000 cases put on record by labor board of arbitration, among which has 92% closing case rate related 40000 people. It proved that a large number of disputes solved avoided intensity of labor relation and facilitated to stability and unity society.

### 1.2 Bottleneck in the Process of Implementing Labor Contract System in Liaoning Province

#### 1.2.1 Low Signing in Labor Contract in Liaoning Province

According to department of labor security in Liaoning Province, the signing rate of labor contract in labor relation area in Liaoning Province is 57.1%, lower than those in state-owned enterprises and private enterprises. It is 30.5% in private enterprises. There exists no signing contract fact in most labor intensive enterprises. The rate of signing contract with peasant-workers is lower than workers in cities. See table 1.

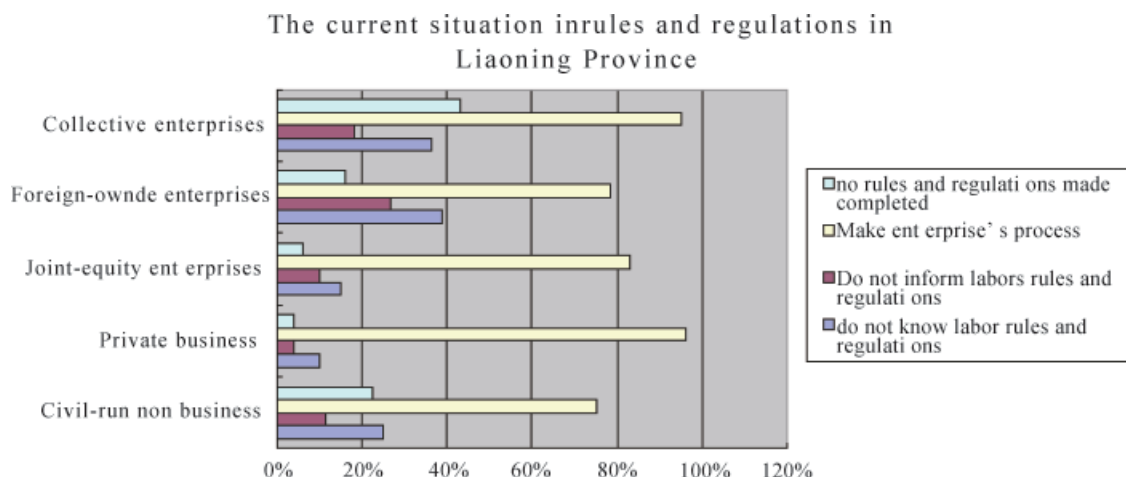
**Table 1**  
**Contract Signing Rate from 2007-2010**

| Contract sign rate \ Year | 2007 | 2008  | 2009 | 2010  |
|---------------------------|------|-------|------|-------|
| Collective enterprise     | 47%  | 52%   | 60%  | 63%   |
| Foreign-owned enterprise  | 43%  | 50%   | 59%  | 60%   |
| Joint-equity enterprise   | 20%  | 37%   | 44%  | 58%   |
| Private enterprise        | 27%  | 28.5% | 30%  | 30.5% |

### 1.2.2 No Complete Regulations in Enterprises in Liaoning Province

According to labor union in Liaoning Province exposing, rates for no complete regulations in enterprises are 22.7%, 4%, 6.3%, 16.3%, 43.2%, and 18.2%, including collective enterprises, private enterprises, foreign capital enterprises, joint-equity enterprises, private enterprises, individual economic organization and civilian-run units respectively. 75%, 96%, 82.8%, 78.3%, 95%, and 36.4% made enterprises' regulations, including collective enterprises, foreign capital enterprises, joint-equity enterprises, private enterprises, individual enterprises and civilian-run units.

In Liaoning Province, 7.3% enterprises have never issue regulations and 38.9% issued regulations on public board, 21.6% distributed manual to labor, 32.2% informed regulation in meeting. 11.4%, 3.9%, 10.1%, 26.8%, and 18.2% enterprises did not informed regulations to labors, including collective enterprises, foreign capital enterprises, joint-equity enterprises, private enterprises, individual economic organization and civilian-run units. In addition, 25%, 5%, 10.2%, 15%, 39%, and 36.4% of labors have never known regulations. From the research result, labors' wage, break time, holiday and insurance can not be guaranteed due to unfamiliar with regulations.

**Figure 1**  
**The Current Situation in Rules and Regulations in Liaoning Province**

## 2. PROBLEMS IN PROCESS OF LABOR CONTRACTING IN FULL SCALE OPERATION IN LIAONING PROVINCE

### 2.1 Problem to Labor Contract System

#### 2.1.1 Narrow Scope of Application Put Part of Labor Relation Outside of Law

In China, "Labor Law" and its labor relation regulated are applicable to the scope of all kinds of enterprises, individual economic organization and labor (including labor within labor relation without signing contract), state organs, public institution, social group, labors in relation

and other units and employees. With the development of market economy, adjustment of economic structure, deepening reform in enterprises, multi element labor relation and complexity, however, the original law and regulations has already lag behind current economy and exposed its limitations. Some employees and labors have been excluded from law range, such as the relation among peasant-workers, retirees and reemployed staff to units, relation between illegal labors and employers and other contracts. There are no clear regulations made to these related cases that only applicable to civil law. For this part of labors, their wage, holiday, compensates, resolving for disputes and compensates to industrial injury can not be

protected by law, which causes their rights and interests unprotected and negative impact on developing labor relation.

### **2.1.2 Embarrassment During Signing Labor Contract to Units**

As indicated in code 16, 19 in Labor Law, labor contract shall be signed in join labor relation and shall be set in writing form, as indicated in code 98, employing unit shall be amend and bear compensation to labor in the case that the unit violate contract law and delay to sign contract to labors. Based on above illustration, writing form contract is required while the reality in Liaoning Province is at cross purpose to original intention of legislation, most of employing units did not sign contract to labors in writing form.

### **2.1.3 Set up Labor Disputes Resolving Mechanism**

The procedure of “single judge and double trial” played important role to resolve dispute. With the diversity of labor relations, increasing conflicting between labor and units however, it can not adapt the current situation. Adjustment in advance causes few cases were really resolved. The process of mediating is nothing like in name only. Board of arbitration of labor disputes in weakening its function, the problem of blocking joining between labor arbitration and judicial action need to be addressed, and labor dispute resolving mechanism is demanding improvement.

## **2.2 Lack of Standardization to Regulation and Policy in Enterprise**

Regulation is the guidance and critical to the successful management. There exists a serial of problems of regulation system.

### **2.2.1 Unsound Regulation System**

Lack of related managing system and even with related system, the system can not fully play its managing role with incomplete contents covered. According to result from medium-sized and small enterprises done by researchers in May, 2011, there are only regulations on system of checking work attendance, system of rewards and penalties and financial regulations, while no sufficient regulations in recruitment system, wage, working hours, training, welfare, holiday and overtime wage etc..

### **2.2.2 Enterprise's Policy Can Not Satisfy Labor Contract Law**

The fourth code of Labor Contract Law indicates: employing unit shall set up and improve labor regulation and ensure labors' rights and perform its obligations. With the result, however, 81.3% enterprises in Liaoning province issued regulations themselves, part of them are clauses forced to meet. They made labor regulation without taking suggestions in union and coordination with staff representatives.

- (1) Enterprise force labor to work overtime without adding overtime wage paid. Through researching,

only 13% enterprises extended working hours through negotiating to labor union and labors.

- (2) Wage paid is lower than minimum pay scale in local. 6.1% enterprises paid wage lower than minimum pay scale. Rarely but existing.
- (3) Equal amount of work with different pay. 25.5% enterprises can not realize equal pay for equal work.
- (4) No collective contract signed. 74.3% enterprises did not signed collective contract to labors in Liaoning Province. Although not mandatory provision to sign collective contract, wage and working hour's etc collective contract are guarantee of fairness to labors, it also embodies adaptability principal.

### **2.3 Enterprise Can Not Bear Social Responsibility from Lay off**

“Labor Contract Law” indicates that enterprises shall bear social responsibility form lay off. The following personnel shall be remains in employment: employees with long time labor contract relation; with unfix labor contract; only employing member in family, with aged family fostered and under age children. 33.2% enterprises release labor contract at will or lay off labors in Liaoning Province. Only 12% enterprise would inform labor union first followed by releasing labor contract. It is thus clear that cases of releasing labor contract at will and lay off labors are existing in large and need to be addressed.

## **3. PROBLEM SOLVING MEASURES RELATED TO FULL SCALE OPERATION OF LABOR CONTRACT SYSTEM IN LIAONING PROVINCE**

### **3.1 Labor Contract Law Taken as Turning Point to Improve Labor Contract System**

#### **3.1.1 Improve Labor Contract Law System, Expand Law Scope of Application, Strengthen Publicity**

Long-acting mechanism shall be set up to improve labor law system. First, take note to the operability of law, law in writing form is weakness. Second, making related policies to guarantee the practicality of labor union, fully play to its strength and protect labors' rights and interests. In addition, supervising right of administration organ shall be enhanced to impose punitive measure on employing unit with violating law action, some criminal punishment can be considered to cases that bought serious threaten to personal safety.

Expand law scope of application especially the content to labor relation. Such as: peasant-worker, retiree and their relation to employing unit. Launch judicial interpretation of Labor Contract Law as early as possible. While viewing writing form contract, indicates the party in tacit declaration with its form belonging to labor contract. This is helpful to the protection of labor relation.

Put Labor Contract Law into publicity through various form to show its significance, legislation principal and all regulations related both labors and enterprises. Eliminate misunderstanding and learn Labor Contract Law. Government shall take the lead to organize training to managers so that they could know very well Labor Contract Law. So as to labor safeguard department to lead training to let employees learn law, know law and protect them by law.

### 3.1.2 Setting Unified Labor Contract Signing Rule

The related rules need to be improved to dealing with cases of no labor contract signing in writing form. Employing unit shall build labor relation to labors since the first day of employing. Labor contract shall indicate contract period, job duties, work place, working hours and holiday, wage, social insurance, labor protection, working condition and occupational hazard protection. Labor contract includes the form of fixed term contract, unfixed term contract and deadline based on the completion of project. Labors who have worked in employing unit with more than ten years shall sign unfixed term labor contract.

### 3.1.3 Reform Labor Treatment of Disputes Mechanism

Call off conciliation proceedings appropriately and execute adjudication or trial in better reason. Parties in dispute can choose arbitration or go directly to legal proceedings for convenient and fast resolving. It is suggestive to set specific labor court or law court, in which judging officers shall have both trial profession and legal knowledge. For matching this end, the specific labor dispute legal process can be added into civil action.

## 3.2 Efforts Shall Be Put in Full Scale Operation of Labor Contract System

### 3.2.1 Fully Cover Labor Rule System and Implement Labor Contract Law

Integrating scale of production and operational characteristics, medium-sized and small enterprises shall make regulations inclusive of the following: 1 labor contract managing system; 2 wage distributing system; 3 check on work attendance and holiday system; 4 quota management or working hour meter system; 5 labor discipline and safety in production system; 6 trade secret and technology secret system; 7 check-up system; 8 welfare system; 9 training system; 10 rewards and punishments system; 11 recruitment and exiting system. Considering reality in enterprises, employing unit shall study the related policies and rules drafting away managing and business risk prevention. Lay stress on the leading to Labor Contract Law and clear and definite main targets and difficult targets. Set up labor monitoring facility within enterprises and strength monitoring practice, so as to protect rights and interests and maintain social stability.

### 3.2.2 Popularize Labor Contract Law and Improve Matching Laws and Regulations and Guarantee System

Popularize Labor Contract Law working. Through promoting specific training, subject discuss and distributing publicity material, popularize Labor Contract Law among labors, so as to understand the spirit of law, grasp law knowledge and abide rules and regulations. Second, complete matching law system. Put related contract system rules, regulations and other document in order entirely before Labor Contract Law lunched. Third, establish labor safeguard electron net to realize identical social insurance with different place. At the same time, all social security shall be on the developing process directed to lifelong security. In this way, the social security can close to participant's willingness. The establishment of industry insurance bank can bear insurance expenses and other transaction.

### 3.2.3 Laying off Based on Laws and Regulations to Enterprise

Enterprises shall explain the cases to all staff 30 days ahead in the case of laying off over 20 employees or over 10% of staff with less than 20 employees. Listen to staff's advices before report laying off scheme to local administrative department. There is relatively sound law system related to staff reduction, in most cases, employees' rights and interests can be protected by executing this law system. The crucial point, however, is to strengthen legal consciousness, abide law, provide compensation to staff being removed without abiding legal process and those who got no pay with overtime working, dispatching works etc.

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