

# Globethics Repository

The logo for Globethics, featuring the word "Globethics" in white, sans-serif font centered within a solid blue rectangular background.

## The controversy and ethical significance of new labor contract law in China

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see <https://www.globethics.net>. Data and content policy of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Preprint
Authors	Huizhu, Gao
Rights	With permission of the license/copyright holder
Download date	2026-07-04 13:52:45
Link to Item	<a href="http://hdl.handle.net/20.500.12424/173875">http://hdl.handle.net/20.500.12424/173875</a>

# **The Controversy and Ethical Significance Of New Labor Contract Law in China**

(The Deputy Director of Economic Ethics Research Center of Shanghai Normal University)

Gao Huizhu

100# Guilin Road,  
College of law and politics  
Shanghai Normal University  
Shanghai, 200234  
P.R.China  
Tel: 08621-64782883  
Email: [huizhu@shnu.edu.cn](mailto:huizhu@shnu.edu.cn)

**Abstract:** The article is on the labor dispute about Chinese New “Labor Contract Law” in 2007. Through this case, the article expounds the important significance of ethics, that is, ethical responsibility of government, enterprises and unions. As for the government, the important responsibility is to protect legitimate rights of free administration of enterprises and to guarantee labor rights. However, in present legal system for economy, employees are still in a weak position, compared with the employers. Therefore, it is a moral responsibility that the law promulgated by governments should show more advantages for vulnerable groups. If not regarded as the carrier of the rights, man can't get respect, which is the true reason why labor rights must get guarantee by law. The concept of fundamental rights enables us to evaluate the enterprise's activities in the moral sense. As for ethical responsibilities of enterprises, It's wrong to get it by improper ways. We can accept the interests which meet justice, but must refuse that which violate justice. The priority of contemporary Chinese enterprises operators is to support their own inner world with the healthy moral spirit, get a reasonable ethics motivation for their own business activities of gaining profits, and establish a holy guiding principle of value which

should be the unity of justice and interest. The controversy of new labor contract law makes the Chinese entrepreneurs clear about their own moral responsibility once again. As for the ethical responsibilities of labor unions, safeguarding rights is its primary task. Therefore, undoubtedly, the controversy on the new "Labor Contract Law" will promote China's business and labor class to raise ethical awareness of the economic ethics and keep moral rights. It will be part of those Chinese employers and employees throw themselves into economic globalization in the spirit.

**Key Words** Labor Contract Law, ethical significance

Since 1978, China has implemented the policy of reform and opening up, China's economy has made great progress. At present, a range of products made in China have been exported to the rest of the world. But in the process of economic growth, labor conflicts are increasingly becoming prominent. In addition to the dispute over the distribution of the system, labor dispute also has become increasingly fierce. In China's planned economy, the labor contract system is not implemented. The socialist market economy, China promulgated the first labor contract law in 1996. However, as economic development, the original labor contract law flaws exposed daily. After three years of repeated controversy, the labor contract law passed by section 10 of the National People's Congress Standing Committee of the 28th meeting on June 29, 2007, and begun to be implemented on January 1, 2008. But on January 1, 2008, before the implementation of China's new "Labor Contract Law", "Huawei" company which is located in China set off an upsurge of first resign and then access to job through competition, which attracted media warm reviews. Then the incident that Wal-Mart fired a large number of staff has triggered a discussion on the behavior of avoiding the "Labor Contract Law". Up to March this year, a proposal to amend the new "Labor Contract Law", put forward by ZhangYin, the CPPCC National Committee members, in the "two sessions" of China, pushed this discussion to a climax. The debate has great significance on the ethics of China's enterprises. The paper makes a special

assessment on this issue.

### **The First Part : Incident**

Before the publication of the law there is a heated debate among Chinese entrepreneurs. From December 24, 2005, the first consideration about the "Labor Contract Law (Draft) ", to the following year March 20, seeking public views on the draft, just one month, the number of comments received are 91,849. In the legislative history of New China, the figure is after the data of the first constitution named "May 4th constitution," and far more than the number of 10,000 pieces of feedback on the "Property Rights Law" draft. American Chamber of Commerce and EU Chamber of Commerce on behalf of the European and American companies have respectively submitted their recommendations on the draft. The opinions and suggestions proposed by European Union Chamber of Commerce were up to 11 entries and by the American Chamber of Commerce in Shanghai were as many as 42 pages, almost involving all chapters and articles of the labor contract law. October 13, 2006, The New York Times published in the front page article entitled "China's draft law will increase the power of trade unions, end the labor violations". The author wrote: "The United States Chamber of Commerce, whose members include Dell, Ford, Nike, and many other major American companies, is actively lobbying to persuade the Chinese Government to amend or even abandon the new law under consideration, in order to avoid the new rights given by unions and workers". Soon, the Newsweek also published an article, "The American companies in China interfere the China's new labor law—profit is more important than human rights". The article said: "These arrogant companies are lobbying Chinese government be lenient on employers in the formulation of a draft labor law provisions. Such practices of American companies are called hypocrites by labor rights organizations." Some Europe and America trade union organizations also changed the usual criticism attitude to the Chinese Government, and expressed support views for the Chinese Government to promulgate laws to improve labor treatment. In the second half of 2006, the Netherlands Workers Federation testified on China's "Labor Contract Law" in the European Parliament, demanding the European

enterprises stop the intervention to Chinese legislation, and appealed the Chinese Government respect labor rights and improve labor standards. In October, Lynn Woolsey, members of the Democratic Party of the United States House of Representatives, and other 25 members jointly wrote to President Bush, said that “the protest against that the American companies damage the most basic human rights of Chinese workers and prevent China from giving workers new rights and the protection of labor standards in the proposed new labor contract law”. In this context, in March 2007, my colleagues Liu Cheng, who is Shanghai Normal University Professor, could stand on the rostrum of the United States Congress and testify on the issue of multinational corporations obstructing Chinese labor contracts legislation. Since then, the representatives of the United States and EU Chamber of Commerce in China began to change their tune and rapidly clarified corporation’s social position in the form of press conference. EU Chamber of Commerce in Shanghai received interview with reporters said that they endorsed and supported the law to be implemented. “We very much agree with the law’s proposes of improving working conditions, creating harmonious relationship between employers and employees.” On June 29, 2007, after three deliberations, in the 28th meeting of the 10th National People's Congress Standing Committee, the "Labor Contract Law" was ratified by 145 votes in favors and one abstained.

This one and a half years in the course of deliberation, the multi-start this game is regarded as unusually fierce. The bone of contention focuses on "unlimited duration of the contract" clause. After the new "Work Law of contract" promulgated, controversy has not stilled.

In 2008 China “two sessions”, Zhuyin, who is the richest one in the 2006 China rich list HU Run 100 mainland women, the chairman of Guangzhou Sichuan Jiulong Paper Co. Ltd, and Representative of the CPPCC National Committee proposed to the General Assembly, calling for revising the “Labor Law”. She bluntly said: "I am on behalf of my class to speech". She held that the “unlimited duration of the contract” is an equivalent of the iron bowl in the planned economy era, the iron rice bowl and

proposed changes to sign a 3-5 year period of the labor contract. Her reason: it is injustice to the employers, and an increase of labor costs. In her view, to allow employers more than workers is beneficial to the country.<sup>1</sup> Zhang Yan trigger on the topic that whether to amend the "labor contract law", which has become the media and the community focus once again.

March 9, 2008, and the first meeting of the 11th National People's Congress held a press conference. China's labor and social security minister Tian Chengping, and deputy minister Sunbaoshu accepted an interview with Chinese and foreign media, and some doubts were further detailed, then, the controversy was to be calm.

### **The Second Part: The Ethical Significance of Controversy**

As for the controversy on the new labor contract, the surface is the law of the dispute, but actually it is a dispute of ethical thinking and concepts.

China's economic development of 30 years of reform and opening up, primarily based on low labor costs, or expense of some interests of workers. This kind of sacrifice in a certain period of time may be a last resort option, but we can not continue this long-term. In "strong capital, weak labor" pattern, labor conflicts has become a main problem that impacts on China's economic and social development. The aim of promulgation of the "Labor Contract Law" is to solve this problem. The controversy on the new "Labor Contract Law", which is a process to clarify respective ethical responsibility, has an important ethical significance to China's society which is at the initial stage of socialist. In this debate, the government, enterprises and trade unions should be further clarified the role of their own ethical responsibility.

#### 1, Clarity of the government ethical responsibility

As for the government, the important responsibility is to protect legitimate rights of free administration of enterprises and to guarantee labor rights. However, in present legal system for economy, employees are still in a weak position, compared with the

---

<sup>1</sup> Nan Fang Daily on March 13, 2008  
China Youth Daily on March 6, 2008  
Yangtze River Journal on March 7, 2008

employers. Therefore, it is a moral responsibility that the law promulgated by governments should show more advantages for vulnerable groups. Because of the essence of labor, it becomes the basic human rights. Labor: “is the human’s condition for survival, which never changes in all social forms.”<sup>2</sup> Labor is the most general expression of existence of human. In order to protect the basic human rights, government should provide opportunity of employment and vocational training, and protect the laborer interests (including remuneration, leisure, safety and hygiene conditions, welfare, insurance, and so on.) In this, the most basic is to guarantee the opportunity of employment. The clauses of new “Labor Contract Law” show the certain advantages for the laborers by insisting on the clause of “unlimited duration of the contract”. In the Labor Contract Law, “unlimited duration of the contract” has been defined clearly, which refers to “the labor contract based on the agreement to terminate without determinate time between employing unity and laborers.”<sup>3</sup> That is to say, the terminate time of labor contract is not determinate, and it can be lifted according to the consensus made by the employing units and the workers, or in some circumstances permitted by law. If not regarded as the carrier of the rights, man can’t get respect, which is the true reason why labor rights must get guarantee by law. The concept of fundamental rights enables us to evaluate the enterprise’s activities in the moral sense.

The fierce reaction of the employer to the new Labor Contract Law has close relationship with the old Contract Law which does not focus on the protection of the disadvantaged employees. In the past ten years since 1996, it is the year that all-personnel labor contract law comes into being, Chinese labor contract system has

---

<sup>2</sup> Selected Works of Marx and Engles (Vol. I) . Beijing: Central compiler Press . 1995 Edition . Page 56

<sup>3</sup> PRC Labor Contract Law (adopted by June 29, in the 28th meeting of the 10th National People's Congress Standing Committee in 1997)

great development, but also many problems. GuoJun, the Minister of the Democratic Management of ACFTU, thinks that the following five methods usually taken by the management field and employers to avoid regulations in original Contract Law, “first is nihilism, no labor contract; second is formalization, many enterprises take the statutory minimum standards for normal labor standards; third is unilateralism, employers’ refusal not only to consult with employees, but much more extra compulsory obligation imposed on staff; fourth is short-term, contract with staff once a year, or even shorter, so the labor relationship as short as possible, thus constant pressure on staff; fifth is emptiness, the employed without labor relations, while unacceptation of the laborer with labor relationship. So it is very important to maintain moral rights of employees.

## 2, Clarity of the enterprises ethical responsibility

As for ethical responsibilities of enterprises, the business efficiency is established close contact with the profit for the entrepreneurs after carrying out the Chinese socialist market economy system. Whether the management echelon of state-owned enterprises or that of the private enterprises all welcomes the ethics of enterprise, but they generally regard this as rational managerial means which involved the utilities of them. In the pursuit of profit, many entrepreneurs’ moral qualities merely remain in the stage of the heteronomy. They comply with the code of ethics just because of the fear of being punished. In view of this, the new labor law insists on principles of ethics rules, and the ethical responsibilities of enterprises are passed down in the form of law to cultivate the entrepreneurs’ moral sense of responsibilities in the operating norms of complying with economic activities. Meanwhile, the new labor law also brings the enterprises the legitimate employment rights. All these are reflected in the 13 kinds of provisions of the new law which can lift statutory employment relationship.

China's Confucian culture advocated the values of the unity of justice and interest. The so-called interest refers to interests and utility. And the justice refers to people's thinking and behaviors meet certain ethical standards. Interests are the basis of

people's value evaluation and value choice. As a representative of the Confucian Confucius who have the tendency of paying more attention to the interests than justice, he proposed seeing justice, and that fortune and power are people's desire; It's wrong to get it by improper ways. We can accept the interests which meet justice, but must refuse that which violate justice. The priority of contemporary Chinese enterprises operators is to support their own inner world with the healthy moral spirit, get a reasonable ethics motivation for their own business activities of gaining profits, and establish a holy guiding principle of value which should be the unity of justice and interest. The controversy of new labor contract law makes the Chinese entrepreneurs clear about their own moral responsibility once again.

### 3, Clarity of the labor unions ethical responsibility

As for the ethical responsibilities of labor unions, safeguarding rights is its primary task. In labor relations, the managers representing enterprises and employees should be free and equal in the form, but not in fact. The former owns much production and more employment initiative, belongs to the "strong" side, while the labor is usually oversupply, employees are in a "vulnerable" side, and more are chosen by the enterprise. Therefore, labor ethical relations are supposed to pay more attention to adjusting the moral obligations of the former and the latter's rights.

In the new "Labor Contract Law", the original "arbitrary labor principles" has been replaced by "the Principle of Legitimate dismiss". The law has pointed that employees will be dismissed only with legitimate reasons and the proceedings. The new law provides for the lifting of the 13 kinds of statutory cases, Article 39 workers are under one of the following situations, employing units can make dissolution of the labor contract:

- (A) In the trial period, proved to be inconsistent with the conditions of employment;
- (B) Serious violations of the rules and regulations of the employing units;
- (C) A serious dereliction of duty, jobbery to cause significant damage to the employing units;

(D) At the same time workers with other employers to establish labor relations and the serious damage to the completion of the work and tasks of the unit, or by the employing units, refuse to correct it;

(E) The situation in the first paragraph of Article 26 of this Act first requirement making the labor contract null and void;

(F) Shall be held criminally liable.

Article 40 when there is one of the following cases, employing units should write to inform workers ahead of 30 or pay an additional month's salary of workers, before terminating labor contracts:

(A) Be sick or non-Yingongfushang workers not be able to do their original work, but also can not engage in employing units separately from the work of the organization after providing health care;

(B) Not competent workers, after adjusting work or training, are not qualified;

(C) A major change of objective circumstances of entering labor contracts, which makes the labor contract not be fulfilled; and after consultations between the Employers and workers, failing to change labor contract agreement.

Article 41 there is one of the following circumstances: the need for staff reductions over 20 or less than 20 but the reduction of the total number of enterprise workers over 10 per cent of employing units, explaining the situation to trade unions or the workers ahead of 30, after listening to trade unions or the employees, reporting the cuts programmed to the executive branch, giving staff reductions:

(A) In accordance with the enterprise bankruptcy law provides for the reconstitution;

(B) Serious difficulties in production and operation;

(C) Enterprises accepting a major technical innovation or adjustment operations, after the change in the labor contract, still need staff reductions;

(D) Other major change of objective economic situation of entering labor contracts which makes the labor contract not be performed.

Therefore the new "Labor Contract Law" is trying to guarantee the rights of

people who are employed or dismissed. The people who are employed arbitrarily used to be lack of awareness of rights of responsibility. But now the change of "arbitrary employment principles" implies recognition of their rights of responsibility. Without the rights, the employee would lose the minimum conditions for the self-esteem. The true reason why the change is very important based on the following two points. First, employing or dismissing workers arbitrarily means that the employees are regard as "objects", such as capital, land, machinery and material resources, rather than "people" in considering whether the factory is closed or constructed, It is immoral that the employees obtain no respect at all. Second, it is immoral that the employees are regarded as "objects", because the employees would lose consultation rights and not be respected.

### **The Third Part: The Short Conclusion**

Therefore, undoubtedly, the controversy on the new "Labor Contract Law" will promote China's business and labor class to raise ethical awareness of the economic ethics and keep moral rights. It will be part of those Chinese employers and employees throw themselves into economic globalization in the spirit.

### **References:**

- 1, Selected Works of Marx and Engels (Vol. I) .Beijing: Central compiler Press .1995 Edition
- 2,Gan Shaoping . Research on the forefront of Applied Ethics . Nanchang: Jiangxi People's Publishing House. October 2002 Edition
- 3,Yuyong . Moral rights research . Beijing: Central compiler Press . October 2002 Edition
- 4,linYa Compiler . Globalization and Social Development Theory Study . Beijing: Beijing University Publishing House. 2007 No.5 Series.
- 5,Zhou Zhongzhi . Gao Huizhu . Economic Ethics . Shanghai: East China Normal University Press. May 2002 edition
- 6,Lu Xiaohe Editor-in-Chief . Paradox and management ethics controversy . Beijing:

Morality and civilization . 2007 No. 5 Series

Including the articles of following professors: Lul . Bouckaert, the professor of Belgium Lu University ethics professor; Henk van Luijk, the head of working group belonged to Global Enterprise ethical principles; Bonald Bereinbein , the professor of the New York University Stern School of Business; G. J. Rossouw , Professor of economics and ethics of South University of Pretoria and ISBE Chairman; Rober Allinson , professor of Soka University of the United States and the Chinese University of Hong Kong.

7, PRC Labor Contract Law (adopted by June 29, in the 28th meeting of the 10th National People's Congress Standing Committee in 1997)

#### biographical information

Gao Huizhu, female, awarded master degree of philosophy in 1982, is the professor at the college of Law and politics of Shanghai Normal University, The Deputy Director of Economic Ethics Research Center of Shanghai Normal University), Standing director of Philosophy Society of Shanghai ,She has authored and edited nearly 12 books on Philosophy and Economic Ethics, and nearly 55 articles on moral education and Economic Ethics.