Understanding Labor and Employment Law in China

Continued economic prosperity in China and its international competitive advantage have been due in large part to the labor of workers in China, who for many years toiled in underregulated workplaces. Now, there are new labor law reforms raising the rights and standards of workers throughout China. These new laws have been praised for their progressive measures and, at the same time, blamed for placing too many economic burdens on companies, especially those operating on the margins, which in some cases have caused business failures. This, combined with the recent global downturn and the millions of displaced and unemployed Chinese migrant laborers, has created ongoing debate about the new labor laws. Meanwhile, the Chinese Union has organized Wal-Mart and many of the Global Fortune 500 companies, and a form of collective bargaining is occurring. Workers are pursuing their legal labor rights in increasing numbers.

This book provides a clear overview of the current labor and employment law environment in China and its legal requirements, as well as current practices under these laws used to deal with growing labor issues. Never has there been a time when understanding China’s labor and employment laws was more important.

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Professor Brown currently serves as an active labor arbitrator. His teaching specialties include labor and employment law, employment discrimination law, arbitration, Chinese law, Asian International and Comparative Labor and Employment Law, and U.S.-China Labor and Employment Law. He has authored numerous articles and published a book, Understanding Chinese Courts and Legal Process: Law with Chinese Characteristics.
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Preface

China now has its legal system in place, and in recent years it has assembled substantive laws and regulations that govern the workplace, the employment relationship, and the contractual and statutory rights and benefits of its workers. As China moves ahead to raise the legal standards and levels of coverage and enforcement in these areas and its social security safety net, it also seeks to balance its very successful economic growth and competitive advantages especially as these relate to labor. Employers face increasing obligations and technical legal requirements, which in earlier years did not exist or at least were not consistently enforced. The current global economic downturn now puts added pressures on China to maintain advancement in labor and employment laws.

Although the Labor Law was issued in 1994 with its broad outlines and promises of regulation, the more substantive labor and employment laws were not issued and put into operation until the mid-2000s.

Suddenly, in the mid-2000s, Wal-Mart was unionized and the Chinese trade union, the All China Federation of Trade Unions (ACFTU), launched organization drives aimed especially at the Global Fortune 500 companies doing business in China. Early draft provisions of the new Labor Contract Law sent the American Chambers of Commerce reeling and arguing that the new labor laws and added regulations and costs would drive American companies out of the country. The discussion was so intense that the Chinese government raised issues about foreign interference in China’s affairs.

By 2008, this law was operating and many related labor laws, the subject of this book, were dealt with by employers throughout China. Employees took their labor disputes to the government-provided labor arbitration in record numbers. Employers, as well as employees, became hungry for guidance on how to handle their labor and employment rights and obligations. Understanding human resource management and the laws regulating it became
necessary, as the stakes for noncompliant employers became significant. Even the government-organized ACFTU began more aggressive efforts to organize and obtain contract protections for workers as they slowly, but perceptively, began increased separation from the employer in their daily functions.

This book is written for readers seeking to understand the current labor-related legal environment in China’s workplaces. What laws and regulations exist? What is required? And how are the rights and benefits they bestow enforced? It is not written in such detail that legal practitioners will know where and how to file their legal documents, but those who are interested in business, human resource management, or worker rights, or just in knowing more about China’s recent developments will have a well-based introduction to the laws and regulations in China’s workplaces. Some readers will notice the areas of law still needing reform, and others will be surprised how well-developed and sophisticated many of the Chinese labor and employment laws are.

It is with the hope of adding insight and understanding into the area of Chinese labor and employment law and providing a benchmark of comprehensive examination of the area for future research and publications that this book is written.
Acknowledgments

The content of this book comes from off-and-on years of living and teaching in China, mostly in Beijing at Peking University Law School, but also at Tsinghua University Law School, both as a Distinguished Fulbright Scholar and also conducting training and exchange programs over the past two decades with Chinese government officials, including with the now Ministry of Human Resources and Social Security (MOHRSS).

One of my early mentors in the area of Chinese labor laws was Professor Jia Junling, labor law professor at Peking University Law School, who first allowed me to teach her students, continued to be my friend and teacher over several decades, and who has been intimately involved from the beginning in the creation of the labor laws now regulating China’s workplaces. Her colleague at People’s University Law School, Professor Guan Huai, whose credentials in labor law are unparalleled, also provided me counsel and insight over the years. Both were present, as was I, at the unveiling and implementation of the new Labor Law in 1994; and each continues to advise on and review new labor laws.

In more recent years, Professor Ye Jingyi at Peking University Law School assisted me in understanding Chinese labor laws and continues to provide opportunities to meet with and learn from the current leaders in the field. Jiang Junlu, now a lawyer at King and Wood, a leading law firm in Beijing, who also serves as Chair of the All China Lawyers Association Labor Law Committee, gives regular support to me in my ongoing understanding of the intricacies and practicalities of the current labor laws. Also, Earnest Zhou, Professor of Labor Law at Nanjing University Law School, has been helpful to me in understanding Chinese labor law. Both Professors Ye and Zhou were students of Professor Jia, as was attorney Jiang. My years as Director of Chinese Studies at the University of Hawaii and my stints as a consultant with
the World Bank working with China’s Ministry of Labor also contributed to my understanding of the Chinese and the Chinese legal system.

I also want to acknowledge the very significant technical assistance provided to me on this project by my research assistants at the University of Hawaii Law School, Wu Jing and Lan Na. Wu Jing ferreted out, collected, and analyzed untold tomes of laws and articles of possible relevance to my teaching a course on Chinese labor law here and in China and also used for this book. Lan Na, a third-year law student, more recently has assisted greatly in putting this book in proper form and providing the depth of her Chinese understanding to guide me in the appropriate contents of relevant legal comment. Wu Jing has now graduated and is working in China as a labor lawyer with the law firm of King and Wood.

Lastly, I wish to acknowledge my lovely wife, Mangmang, who has assisted and supported me in so many ways on this and all projects in life. Her keen mind, legal background, inherent understanding of “Chinese characteristics,” and her endless encouragement are always assets to me as I move forward.
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