

Workers, disunited

# China's labour law is no use to those who need it most

*But very helpful to crooked white-collar workers*



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WHETHER in the breathless years of double-digit economic growth or today's more languid era, one constant in China has been the poor state of workers' rights and the frequent outbreaks of labour unrest. From coalminers in the snowy north-east to factory staff in the steamy Pearl River Delta, workers have agitated against low pay, wage arrears, unsafe conditions and job losses. A law on labour contracts that took effect in 2008 aimed to keep Chinese hard-hats happier, and on paper it

should have succeeded. Indeed, the worldwide ranking of employment-protection laws by the Organisation for Economic Co-operation and Development, a rich-country think-tank, puts China near the very top of the tables on several indicators.

In practice, however, the law has only helped a bit. The lack of independent unions or genuine collective bargaining leaves China's blue-collar workers vulnerable and grumpy. Incidents of labour unrest remain widespread. Around 600 strikes or protests have been reported this year, according to researchers at China Labour Bulletin, a Hong Kong-based watchdog, who reckon this tally of known incidents may represent only 10-15% of the actual number. The government is trying to keep unrest in check by lowering the threshold at which the police intervene. In Beijing protests used to be broken up if 50 workers showed up; now ten will suffice.

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But even though the law has left blue-collar workers in the lurch, it has brought considerable, unintended benefits for white-collar ones. Managers in all sorts of companies—Chinese, foreign, state-owned and private—complain that the law makes it difficult to fire office staff, even in cases of egregious malfeasance. “When the law was written, we didn’t anticipate this,” says Wang Kan of the China Institute of

Industrial Relations.

He describes a case involving a senior executive at a big technology company who was caught subcontracting work at grossly inflated prices to a firm that he had established using a relative's name. His employer was unable to meet the extensive documentary and procedural requirements laid out in the law, so could not dismiss him. The executive's departure instead came on terms he dictated: he got a huge payout and the firm he was leaving even waived non-compete restrictions it would normally have imposed.

Blue-collar workers may have even less job security than before, partly because of

slowing growth and the closure of some state-owned firms. Yet they are often unable to use the labour law to protect themselves. Many of them, especially the tens of millions of migrant workers who roam from job to job in construction and other lowly roles, are taken on without formal contracts, says Aaron Halegua of New York University, even though that contravenes the law in itself. If an employer denies any relationship with a worker and there are no documents to prove one, he says, the worker's case will seldom reach a court or arbitration panel.

Professionals have also been better able to use the labour law because they are paid enough to hire legal help. Lawyers are not allowed to take on cases in exchange for a share of any settlement. Theoretically the All-China Federation of Trade Unions, an umbrella for all Chinese unions, offers legal aid to blue-collar workers as part of its mandate. Since it is completely controlled by the Communist Party, however, it typically prizes the government's desire for stability over workers' calls for fairness.

China does have a handful of campaigning lawyers and NGOs that seek to offer legal help to abused blue-collar workers, but they are routinely met with professional censure or worse forms of intimidation. Communist Party officials instinctively respond more fiercely to aggrieved blue-collar workers than to white-collar ones. When they lie awake at night worrying about labour unrest, they picture mobs of manual labourers with pickaxes, not swarms of pen-wielding office drones.

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