

The Impact of “Employment Contracts Act” on Employment in China

Libin Zhang¹

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Abstract:

First of all, this paper will explore the nature of the ECA, proposing the main impact of the ECA is on employment. The second part will analyze employment situation in China, as a foundation for studying ECA's impacts on employment. The third part will analyze the impacts on employment of the implement of the ECA from 5 ways which include the overall and long-term impacts of ECA; the impact of the application scope of ECA, the types of employment contracts and specific provisions stipulated in ECA on employment; the impact of ECA on enterprises; the impact of ECA on macroeconomic economy; the impact of ECA on all kinds of employments. Finally, the paper will summarize the conclusion of the study and put forward policy recommendations.

Key words:

THE EMPLOYMENT CONTRACTS ACT OF PEOPLE'S REPUBLIC
OF CHINA
EMPLOYMENT EFFECTS

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Summary

“Employment Contracts Act of People’s Republic of China” (hereafter referred as ECA) was implemented on January 1st, 2008. It’s in accordance with the principles of “Labor Act”, safeguard labourers’ basic rights and interests through procedural provisions of conclusion, performance, amendment, termination and ending of employment contracts, and punitive provisions to relevant actions of breaking law.

The protections on the rights and interests of labourers which are stipulated by ECA are materialized as the following aspects:

1. The articles 11, 18, 20, 28, 85, 31, 49, 50 of ECA provide the employment contract, remuneration for labour, taking rest, holidays and leaves, enjoying social insurance and welfare, and other basic rights and interests of labourers respectively;

2. The articles 11, 18, 20, 28, 85, 31, 49, 50 of ECA are all items about the rights for stable employment. It ensure the rights for stable employment through priscribing employment contracts, normative rule on probation period, the termination and ending of employment contract, and economy punitive provisions.

3. ECA has special chapter to regulate the rights and interests of informal employee in the form of Dispatching Labor, Part-Time Labor and so on, reflecting the equal employment principles.

The status quo of employment in China has six characteristics as follows:

1. A large pool of labor force. Up to the end of the year 2006, China's population arrived at 1.314 billion, in which the number of labor above 16-year-old, the economically active population, the employed are 1.035 billion, 782 million and 764 million², respectively. The labor force participation rate is 76%. China's population size will keep growing in two decades, and the peak margin of the population will appear between 2025 and 2030. By 2030 the population will reach about 1.4 billion. But the proportion of working-age group in total population and the absolute value of it will peak in 2010 and then begin to decline. By 2030 the working-age population will be around 852 million, accounting for 61% of the total.

2. A large employment size while a lagging employment structure. National employment at year-end stood at 769.90 million persons. Of the total, the employment in primary industry, secondary industry, tertiary industry reached 314.44, 206.29 and 249.17 million persons respectively, accounted for 40.8, 26.8 and 32.4 percent of national employment respectively. The employment at year-end in urban areas valued at 293.50 million persons. The employment structure is seriously unbalanced. The labor in primary industry still had a high surplus; the employment rate of tertiary industry was relatively low; and the employment structure of secondary industry was improving. To develop secondary industry vigorously, to promote the transfer of labor from primary industry to nonagricultural industries, and to facilitate the employment of tertiary industry is the only way to advance employment.

3. Limited formal job opportunities and a high ratio of informal employment in urban areas. Of the employment in urban areas, the employment at year-end 2007 in urban units, individual economic

² China Labor Statistical Yearbook 2007.

organization and private enterprises accounted for 120.24 million and 78.91 million persons, respectively. The other employment group, 94.35 million persons, it can be regarded as informal employment. However, among the employed persons in urban units, individual economic organization and private enterprises, there was a high ratio of people who are not protected by labor legislation. It is estimated that the informal employment in urban areas accounted for about 40 percent of urban employment. The informal employment in secondary industry and tertiary industry in China is about 100 million persons, accounted for 25 percent in the total employment in the two industries. Informal employment is mainly in tertiary industry, which occupied 85 percent. The informal employment rate in secondary industry and tertiary industry is nearly 9 and 35 percent, respectively. To make a decent employment is as much arduous as job creation.

4. The employers are mostly small organizations and have a big regional disparity. By the end of the year 2004, there were altogether 5.169 million impersonal entities engaged in secondary industry and tertiary industry(of which, there were 3.25 million business entities). The number of industrial activity organizations and individual economic organization are 6.824 million and 39.216 million, respectively. The average number of employees in units and individual economic organization are 18 and 2.4, respectively. So it means that most labors work in small businesses. The market economy in eastern areas is more vigorous than that of central and western areas. More than half of the entities engaged in secondary industry and tertiary industry are centered on eastern areas. The quantity of organizations has a decreasing tendency from the east to the west.

5. Industrialization is under way and a plenty of surplus-labor in

rural areas need to be transferred. The employment at year-end 2007 in rural areas valued at 473.40 million persons, Of which, the employment in agriculture accounting for 314.44 million persons, occupied 66 percent. The employment in nonagricultural industries accounting for 158.96 million persons, occupied 34 percent. It is still too early to say China's Lewis Turning Point's arrival. China is now an economically backward country and will be at the stage of industrialization in a quite long period of time, the migration of surplus-labor in rural areas will be a long process.

6. Unemployment issues are complex and situation is serious. The quantity of the unemployed keeps large and the unemployed rate remains high. In 2006, the urban estimated unemployed persons totaled 18.44 million, and estimated urban unemployment rate was 6.1 percent. The urban registered unemployed persons totaled 8.47 million, and registered urban unemployment rate was 4.1 percent.

Analysis on Impacts of the ECA on Employment

As a preliminary study, under the instruction of legislative aims of ECA, following the principle of path dependence and classification, and insisting on the combination of long-term and short-term influence, this paper mainly focus on the short-term effects of the ECA on employment, attempts to analyze the whole and long-term effects of the ECA and its application scope, types of employment contracts and the influence of its specific articles on employment. The paper also attempts to construe the employment effects of ECA on the enterprises, macro-economy, and each kind of employment.

1. The Overall and Long-term Employment Effects of ECA. The

formulation and enforcement of ECA will push through the labor relationship legislation process in China, create surroundings and atmosphere for people to develop the law consciousness gradually. ECA is only to strengthen the existing law's execution and do some fine tuning, so it can never push the labor market towards rigidity. With the long-term sight, the ECA definitely is a good law, and it can bring positive effects on the employment by all means.

2. Employment effects of the application scope of ECA. The ECA prescribes the scope of application as follows: the organizations such as enterprises, individual economic organizations and private non-enterprise units and laborers who form a labor relationship there with. State organs, institutional organizations and societies as well as laborers who form a labor contract relationship there with shall follow this Law.

When identifying the coverage of ECA, it's not according to the existing types of labor relationships, but to the organization types used in the time of planned economy. That brings the problem of improper protection as being protected insufficiently or excessively. The rights and interests of employees under fuzzy or disguised employment relationship are still out of the law protection. It will also make some employment forms not being enumerated clearly lose protection. Besides, the law neither subdivides labor relationships according to the application scope, nor specify the application scopes of every article, every articles are nearly the same applying to all kinds of labor relationships. All of the mentioned above will result in over-protection to some relations. **The possible result from improper protection is, either the employers violating the law or the employers closing their undertakings and bringing some new unemployment since being not afford to the high level labor standards.**

3. Employment effects of different types of employment contracts. Article 12 in ECA prescribes that: Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts to expire upon completion of a certain job. Based on the history and realistic context, the ECA ingeminates three kinds of employment contracts prescribed by the Labor Act, then stresses the transformation from fixed-term employment contracts to open-ended employment contracts, and prescribes paying the employee severance pay when ending an employment contract to avoid the short-terming trends of employment contracts. At the same time, emphatically specifies regulations on the termination of employment contract, so as to ensure the employee more job security as well as to give the enterprise reasonable flexibility on employment.

The attempts of ECA bring problems below: Firstly, there is no term regulation on both the fixed-term contract and the employment contract to expire upon completion of a certain job. Both them could be as long as the open-ended employment contract or much shorter. Secondly, the three type contracts are almost the same when performance, amendment, termination and ending of employment contracts happen. What's the significance to distinguish and regulate three types of contracts?

The provisions on application scope and the employment contract term are propitious to employer employing according to his own actual demanding, but goes against the employment stability of employees and the enlargement of employment as a whole. **It will lead to two consequences: at first, all the enterprises will cautiously recruit laborers and reduce the amount of staff as possible as they can.** Because once they have employed someone, they should undertake the cost of ending labor relationship and the excessively high non-wage labor

cost; **secondly, there may be more and more illegal employment or civil relations employment. Either consequence is unfavorable for employment. The incremental formal employment become more scarce, the informal employment will increase illegally or legally day by day, the employee who need protection still are not able to be protected.**

4. Employment effects of the Articles of termination and ending contracts in the ECA. The most influential and controvertible part in ECA is chapter 4, termination and ending of employment contracts, including the termination and ending of both individual labor relationship and collective labor relationship.

On one side, the employer are still be endowed with great discretion on termination and ending of employment contracts. The individual employee in atomic state has no power to contend with the employer. The employer can easily terminate the contracts and the employer still has great employing flexibility. On the other side, the ECA also gives the employee great freedom of quit a job, which will lower the staff stability in the enterprises. Especially ECA stipulates the severance pay should be given in more cases, which might incur more labor disputes. **The malicious illegal behavior from both the employee and employer will rise, which might incur more labor disputes and do harm to the social stability.**

The government's responsibility to promote employment will become heavier. Firstly, the disadvantaged group in employment will enlarge. The article 40 in the ECA prescribes that an employer may terminate an employment contract as the employee is incompetent because of illness, age, technical ability and so on, which will make some disadvantaged person be dismissed and turn to be unemployed. The

reemployment opportunity and possibility for them is very low. In addition, the article 41 regulates on collective dismissals. The effects on unemployment are very clear if large scale business dismissal happens. **The two aspects will certainly aggravate government burden to help the disadvantaged workers re-employed, and to lower down the un-employment rate and to maintain social stability.**

Comparing to the employment effects incurred by the rising employment contract conclusion rate, the effects on employment produced by the prescribing on termination and ending of employment contracts is limited. The individual dismissal is not a large probability event. The employer can minimize the effects of individual dismissal by internal management measures. On the contrary, concluding an employment contract means the relatively stable employment and stable social security for employees and the cumbersome employing and termination cost for employer, finally it will cast greatly influence on the social employment.

5. Employment Effects of the ECA on Enterprises. The most important argument on the effects of the ECA is the effects of labor costs increase. Labor cost rise is the core and key point through which the ECA affects the economy. The costs increase is partially caused by the regulations on the open-ended employment contracts, severance pay, the probation period costs, the higher incompliance costs than before, and partially be the loss of income coming from illegal employment practice before, and the latter is more important than the former.

The removal of illegal employment profit will have vital effects on labor intensive manufacturing enterprises. It directly results in bankruptcy of a number of low level labor intensive manufacturing enterprises, leads employees to become unemployment or move to other employers. The

rural migrant worker labor market is affected seriously. Entrepreneurial activities will be affected. Entrepreneur enterprise should be regular in the beginning, and compete with mature enterprises in the same circumstances. The innovation and entrepreneurship activities will be restrained. At last, the dynamics of employment creation will be impacted.

Labor costs increase resulted from ECA also challenges HRM of enterprises. The core of HRM strategy change is to replace labor by capital and to substitute among different kind of staff in order to reduce labor cost, which will have important effects on employment. Employers may have and continue to take following measures for HRM: Reduce the staff in advance, and decrease the workforce scale whole hog; Sort out labor relationship, check the costs in different employment forms, and determine to take what kind of employment contract combinations; Reduce formal staff, then satisfy labor demands through HR outsourcing, dispatched labors, part-time labors and so on; Improve compensation management.

The above HRM strategy changes will have effects on employment as follows: Firstly, employers clean up labor relationships, which will boost a revolution of contract employment and will reshuffle employment forms in China. Secondly, employers are more cautious to employ freshmen, and rely on external labor markets much more, which is not good for college students' employment. Thirdly, it may aggravate unemployment situation.

6. Employment Effects of the ECA on the Macro Economy.

Although the implementation of the ECA increases labor costs, based on the large national market, most employers can find way to

absorb increasing costs and continue to operate. On one side, they can use internal control measures, such as HRM, to absorb costs; on the other side, they can absorb added costs by transferring costs.

The ECA may not bring obvious inflation pressure in short term besides affecting enterprises' profits and employment. However, the pressure on prices should not be ignored in medium and long term. If the big pressure of inflation today could not be effectively controlled, the economy growth trends reversed, enterprises' demands for labor would decrease while they can not employ workers neatly according to the practical demands, which would affect firm's competitiveness and damage employment in long term. If financial crises broke out, it would bring serious unemployment, the implementation of the ECA would become more difficult, even go by the board.

In the global industry chain, China is seated on the low-level processing tache, which is the bottom end of the industry chain. The profit margin is so low. The enterprises with low additional value are meeting survival difficulties. Since the implementation of the ECA, though some labor intensive and low profit margin manufacture enterprises have closed and moved out, there is good commercial investment environment in these areas after 30-year development, which attracted more high quality enterprises to settle there. Therefore, the effects of closes and moves of firms on the local economy are limited, which are helpful to the east area to develop new industries on the existent basis and upgrade industries. The unemployed workers because of enterprises closing and moving can find jobs in the new enterprises.

Of course, it is possible that there are mass relocations of enterprises as well as no continuous industries come in some areas. In this case, local economy would be stroken, and the employment would be affected.

7. Effects of the ECA on Different Kinds of Employment. At the end of 2006, among the urban employment, the number of employees in public sectors is 64.3 million, 23% of total employees of urban, 17% for non-public units, 25% for private enterprises and self-employment, 35% for others.

Effects of the ECA on the employment of public sectors. The employees in public sectors enjoy the highest labor interests security, and all systems are designed taking them as targets. The downsizing for efficiency of state-owned units in 1990s was to transfer a number of employees of state-owned enterprises under planned economy system into employees under market economy system. The internal management of SOEs changed a little. One of the main reasons for enterprises' efficiency increase is the costs reduction caused by informal employment substituting formal employment. The ECA is implemented after more than ten years since SOEs' reform. The informal employment will be formalized, and some efficiency gained through the former reforms will be lost. If SOEs could not improve and do well in HRM, the rigid labor system like before would come out, which would damage the efficiency and competitiveness of the enterprises and be not helpful for employment increase. The ECA is a great challenge to the HRM of public sectors.

The effects on employment in private sector of the ECA. Private sector is the main carrier of market mechanism in China and one of the main adjusting object of the ECA. Most private businesses have employment not normative or even illegal at different extent. One of the profit sources of these enterprises is to depress the labor costs. The ECA will lower firms' profit due to the abusing labors and have a great impact on the employment of private sectors. But the established market

mechanism in the enterprises will not be affected. In the long run, as long as the established market mechanism continue to play a role, the private sector would further develop and promote the employment more effectively.

Effects on the informal employment of ECA. There are two consequences from the employment protection improvement resulted from the ECA: one is the profit come from the illegal employment has been eliminated, the employments will decrease as the enterprises don't survive the process; the other is there still is illegal employment behavior, the laborers' rights still can not be fully protected. ECA may results in consequences below: about 1/5 informal employment will transfer into disguised employments. The employment contract concluding rate will rise and mainly happen in the formal sector, and mainly in the form of fixed-term contracts like the labor dispatching contracts. The participant rate of the social insurance will rise too. The rural migrant workers are the main group of informal employment, the ECA will be beneficial to transform the rural migrant workers into a permanent urban workers.

Effects on unemployment of the ECA. The implementation of the ECA will be beneficial to the youth employment in a long term. The provisions of probation period will be greatly beneficial to the employment rights of the youth, it will stimulate the youth to participate in economical activities actively and enhance the employment stability of the youth. While in short term, implementing the ECA raises the employment threshold, which will lead to the decrease of the opportunity of odd job and make it more difficulty for the unemployed to be reemployed.

The conclusion

The ECA will play an active role in following five aspects: Firstly, ECA would contribute to the coordinate and steady development of the society. Secondly, the formulation and enforcement of ECA will promote the improvement of the labor laws in china. Thirdly, ECA will boost a revolution of contract employment. Fourthly, carrying out ECA won't lead to rigid labor market. Fifthly, with the long-term sight, it definitely is a good law, and it can bring positive effects on the employment by all means. As long as the established market mechanism continues to play a role, the private sector would further develop and promote the employment more effectively.

There are following six conclusions about the concrete employment effects of ECA:

First, Comparing to the employment effects incurred by the rising employment contract conclusion rate caused by the ECA , the effects on employment produced by the prescribing on termination and ending of employment contracts in the ECA is limited.

Second, the employment contract concluding rate will rise and mainly happen in the formal sector, and mainly in the form of fixed-term contracts like the labor dispatching contracts.

Third, labor disputes will increase.

Fourth, in the short-term, ECA will have certain influence on the employment quantity. It will aggravate the friction unemployment and the structural unemployment. The unemployment rate will possibly rise a little. The disadvantaged will increase. The employment will become more difficult, especially for the new growth labor force, the university student. It will be propitious to the rural migrant workers to shift as

permanent urban workers.

Fifth, in the medium and long-term, ECA will cause the price rise. If the inflation could not be effectively controlled and the economy growth trends reversed, which would affect firm's competitiveness and damage employment in long term. If financial crises broke out, it would bring serious unemployment and the implementation of the ECA would become more difficult, even go by the board. The undertaking activity can undertake a certain influence negatively. The result will be that the scale of the employment will down inevitably.

Sixth, ECA is helpful to the east area to develop new industries on the existent basis and upgrade industries. As long as these areas find the new subsequent industries, the unemployed workers can find jobs in the new enterprises, the local economy will be re-back the normal development and reforming rail, the employment will not under the excessively negative influence. Of course, it is possible that there are mass relocations of enterprises as well as no continuous industries come in some areas. In this case, the local economy would be stricken, and the employment would be affected.

What needs to be stressed is that the effects of ECA shouldn't be exaggerated. After all , the fundamental determinant on the employment is the macroeconomic status. ECA is only one factor do influence on the enterprise and the macro economy. So, we shouldn't exaggerate effects of ECA.

Policy Recommendations.

Based on the above analysis and the conclusion, we can propose the following two aspects suggestions:

1. The suggestions that further consummate ECA. Strengthen the revision of ECA at the right moment; Gradually make the stipulation suitable to other employment relationships; To exclude the non-profit undertakings funded by government and probation position and so on out of the applicable scope of ECA; To pay great attention to the public opinions in the execution and the revision of ECA; Further consummate the legal framework construction of the collective labor contracts; To enhance the legal punishment of the illegal behaviors.

2. To consummate the related policy and measures. To perfect social insurance policies; To consummate the positive employment policy system; To consummate macroeconomic policies.

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“Employment Contracts Act of People’s Republic of China” (hereafter referred as ECA) was implemented on January 1st, 2008. With implement of ECA, all kinds of arguments spread wildly. Legislators, government, experts and scholars, employers, workers and even the general public are involved as different stakeholders. From different position, they set forth their own views about the impacts of ECA on the economic and social and give different advices. The core of the arguments is whether the ECA adds business costs and has a negative impact on enterprise and economic development. In other words, if the ECA, which aims at protecting the employee’s legal benefits and providing stable labor relationships, can protect the employee appropriately and promote enterprise and economy development to Complete its mission. The answer which can not be found out by partial perceptual knowledge at present needs analyzing rationally and thinking deeply.

First of all, this paper will explore the nature of the ECA, proposing the main impact of the ECA is on employment. The second part will analyze employment situation in China, as a foundation for studying ECA’s impacts on employment. The third part will analyze the impacts on employment of the implement of the ECA from 5 ways which include the overall and long-term impacts of ECA; the impact of the application scope of ECA, the types of employment contracts and specific provisions stipulated in ECA on employment; the impact of ECA on enterprises; the impact of ECA on macroeconomic economy; the impact of ECA on all kinds of employments. Finally, the paper will summarize the conclusion of the study and put forward policy recommendations.

1. The main Impact of ECA is on Employment

1.1 The purpose of ECA is to protect employees' basic rights and interests of labourers.

Since the Socialism Market Economy has been established in China, the working-class has always been in a weaker position in the labor relationships up to the present day. The purposes of labor relationships legislation are to balance labor relationships through biasing toward the protection on workers' rights and interests, to realize the coordinated development of the economy and society at length. Though protecting at what level and to what scope depends on the level of economic development and the features of social relations, the basic rights and interests of labourers need be protected are definite.

The article 23 of "The Declaration On World Human Rights" stipulates that everyone has right to work, has free to select profession, enjoys just and favorable work conditions and protections against unemployment. "People's Republic of China Constitution" provides that the State respects and safeguards human rights. Citizens of the People's Republic of China have the right as well as the duty to work. According to the People's Republic of China Labor Act, Labourers shall have the right to be employed on an equal basis, choose occupations, obtain remuneration for their labour, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive training in vocational skills, enjoy social insurance and welfare, and submit applications for settlement of labour disputes, and other rights relating to labour as stipulated by law. ECA which improve the labor relationship contents of "Labor Act" further, must be in accordance with the principles

of “Labor Act”, should safeguard labourers’ above basic rights and interests through procedural provisions of conclusion, performance, amendment, termination and ending of employment contracts, and punitive provisions to relevant actions of breaking law. The protections on the rights and interests of labourers which are stipulated by ECA are materialized as the following aspects:

1.1.1 Basic rights and interests of labourers

The articles 11, 18, 20, 28, 85, 31, 49, 50 of ECA provide the employment contract, remuneration for labour, taking rest, holidays and leaves, enjoying social insurance and welfare, and other basic rights and interests of labourers respectively.

(1) Rights for Remuneration. The articles 11, 18, 20, 28, 85 of ECA all provide the remuneration rights for labor: the remuneration for labor is not influenced by employment contract being not written, ineffective or the remuneration for labor being not explicit agreed. Employee has the right to get remuneration not less than the minimum wage rate in the place where the Employer is located on time, equal pay shall be given for equal work.

(2) Rights for Rest, Holidays and Leaves. Article 31 of ECA provides: Employers shall strictly implement the work quota standards and may not compel or in a disguised manner compel Employees to work overtime. If an Employer arranges for a Employee to work overtime, it shall pay him overtime pay in accordance with the relevant state regulations.

(3) Rights for Social Insurance. The articles 49 and 50 of ECA provide the rights of enjoying social insurance: The state will take measures to establish a comprehensive system that enables Employees’

social insurance accounts to be transferred from one region to another and to be continued in such other region. At the time of termination or ending of an employment contract, the Employer shall issue a proof of termination or ending of the employment contract and, within 15 days, carry out the procedures for the transfer of the Employee's file and social insurance account.

1.1.2 Rights of Enjoying Stable Employment

The articles 11, 18, 20, 28, 85, 31, 49, 50 of ECA are all items about the rights for stable employment. The contents reflect as three aspects as follows:

(1) Ensure the rights for stable employment through employment contracts. Concluding an open-ended employment contract is the employee's right. The Employee has been working for the Employer for a consecutive period of not less than 10 years, or has concluded fixed-term employment contract on two consecutive occasions, should conclude open-ended employment contract, if the Employee proposes or agrees to renew his employment contract or to conclude an employment contract. If an Employer fails to conclude a written employment contract with a Employee within one year from the date on which it starts using the Employee, the Employer and the Employee shall be deemed to have concluded an open-ended employment contract.

(2) Ensure the rights for stable employment by normative rule on probation period. An Employer may stipulate only one probation period with any given Employee. No probation period may be specified in an employment contract with a term to expire upon completion of a certain job or an employment contract with a term of less than three months. The probation period may not exceed six months. The probation period shall

be included in the term of the employment contract. If an employment contract provides for a probation period only, then there is no probation period and the term concerned shall be the term of the employment contract.

(3) Ensure the rights for stable employment by specifying the termination and ending of employment contract. Employers should pay severance pay if the employment contract is terminate because of employer's fault or employer's wish, including the Employee take an illness or non-work-related injury, can not engage in his work; A major change in the objective circumstances; The Employer is declared bankrupt; The Employer has its business license revoked, is ordered to close or is closed down, or the Employer decides on early liquidation; law's term expires or another circumstance specified in laws or administrative statutes arises.

An Employer may not terminate an employment contract if the Employee has been confirmed as having lost or partially lost his capacity to work due to an occupational disease contracted or a work-related injury sustained with the Employer; has contracted an illness or sustained a non-work-related injury, and the set period of medical care therefore has not expired; is a female employee in her pregnancy, confinement or nursing period; Has been working for the Employer continuously for not less than 15 years and is less than 5 years away from his legal retirement age. If an employment contract expires and any of the circumstances above applies, the term of the employment contract shall be extended until the relevant circumstance ceases to exist, at which point the contract shall end.

(4) Ensure the rights for stable employment through economy punitive provisions. If an Employer terminates or ends an employment

contract in violation of this Act, it shall pay damages to the Employee at twice the rate of the severance pay. If an Employer fails to conclude a written employment contract with a Employee more than one month but less than one year after the date on which it started using him, it shall each month pay to the Employee twice his wage. If an Employer fails, in violation of this Law, to conclude an open-ended employment contract with a Employee, it shall each month pay to the Employee twice his wage, starting from the date on which an open-ended employment contract should have been concluded. If the illegally stipulated probation has been performed, the Employer shall pay compensation to the Employee according to the time worked on probation beyond the statutory probation period, at the rate of the Employee's monthly wage following the completion of his probation.

1.1.3 Rights to be Employed on an Equal Basis

ECA has special chapter to regulate the rights and interests of informal employee in the form of Dispatching Labor, Part-Time Labor and so on, reflecting the equal employment principles.

The employment contracts between staffing firms and the Employees to be placed shall be fixed term employment contracts with a term of not less than two years. Staffing firms shall pay labor compensation on a monthly basis. During periods when there is no work for Employees to be placed, the staffing firm shall pay such Employees compensation on a monthly basis at the minimum wage rate. Placed Employees shall have the right to receive the same pay as that received by Employees of the Accepting Unit for the same work.

The hourly remuneration rate for part-time labor may not be lower than the minimum hourly wage rate prescribed by the Government of the

place where the Employer is located. The labor remuneration settlement and payment cycle for part-time labor may not exceed 15 days.

Anyway, ECA keep the labourers in the employment contracts as much as possible and as long as possible to safeguard rights and interests of all kinds of employees under the labor relationships law system, considering the employers' rights at the same time. The direct purpose of ECA is to protect rights and interests of employees.

1.2 The main impact of ECA is on employment

First of all, from the perspective of the purpose of ECA, we should mainly pay attention to the impact of the ECA on employment. Among all the rights and interests of labourers, employment is the most basic rights and interests. Achieving full employment is one of the capital aims of the macroeconomic objectives which national governments pursue. Realizing employment is the first needs of labourers. As an important labor law aiming at guarding employees' legal rights and interests, ECA should be conducive to promote full employment. The impact of ECA on employment is more direct comparing with the impact on business operations and macro-economic operation which ultimately impacts employment vice versa. So, within various impacts of the ECA, the impact on employment should be mainly considered.

Secondly, considering the background of promulgating ECA, we should mainly focus on its impact on employment. ECA is promulgated and implemented in the time of three decades since the Reform and Opening-up. After 30 years' Reform and Opening-up, the principal contradiction in China economy has begun to change: rapid development of economy has accumulated a great of wealth, which endows the Government with power to gradually establish legal economy, to protect

human rights and interests according to law. At the same time, a lot of contradictions have been accumulated along with the economic development: shortages of resources, huge environmental pressures, laggard productive relation including labor relationships. Changing the mode of economic growth, coordinating social conflicts becomes the necessity of sustainable development of economy and society in China. ECA is one of such kind of important means, it is designed to deal with the labor relationships contradictions legally and contribute to the coordinate and steady development of the society.

Nowadays, the main employment issue at macro level is that labourers could not share the fruits of economic development, which was reflected as slow employment growth and slow wage growth (lagging behind the growth of labor productivity and economy), leading to inadequate domestic consumption demands. The problem at enterprise level is that the formal employment opportunities are extremely limited, small and middle sized enterprises have difficulty in recruiting workers. In labourers aspect, because of the increasing employment flexibility and diversification, the imperfect legislation and enforcement of employment protection laws and so on, the phenomenon of worker lacking protection is becoming increasingly widespread, employment instability increased.

In short, the most direct impact of the formulation and enforcement of the ECA is on employment. The impact on the enterprise and the macro economy is also conducted through the impact on employment, and eventually has an impact on employment. Against the basic condition of the State, as an important measure to promote the harmonious development of economy and society, we should follow the impact of ECA on economic and social development through concerning its impact on employment which is the most basic people's livelihood. Therefore,

when we concerned about ECA's impacts, the impact of ECA on employment should be firstly examined.

2. Basic Information on Current Employment Situation in China

Before we analyze the influence of Law on Employment Contracts on employment, let's first look at the status quo of employment in China, which has six characteristics as follows:

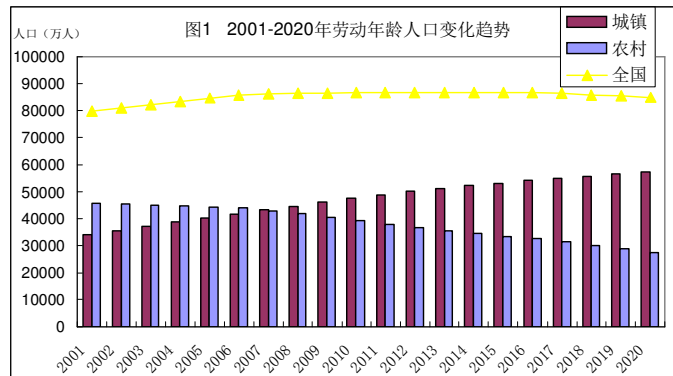
2.1 A large pool of labor force

China is rich in labor force. Up to the end of the year 2006, China's population arrived at 1.314 billion, in which the number of labor above 16-year-old, the economically active population, the employed are 1.035 billion, 782 million and 764 million², respectively. The labor force participation rate is 76%. According to the estimation³, China's population size will keep growing in two decades, and the peak margin of the population will appear between 2025 and 2030. By 2030 the population will reach about 1.4 billion. But the proportion of working-age group in total population and the absolute value of it will peak in 2010 and then begin to decline. By 2030 the working-age population will be around 852 million, accounting for 61% of the total. Before 2010, the working-age population will increase by 2 million annually, of which the number in urban area will increase by 13 million, while the number in rural areas will decrease by 11 million. After 2010, the total working-age

² China Labor Statistical Yearbook 2007.

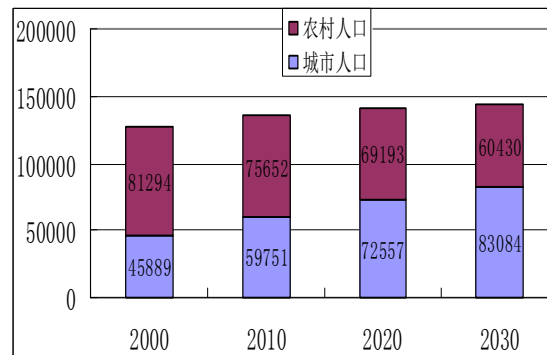
³ There are several estimations about China's prospective labor supply, but the conclusions are basically the same. The estimations include: Future Population and Human Capital in China by ZHENG Xiaoying; The Current Situation of Employment in China and Prediction of Employment Pressure in Two Decades by The Institute for Labor Studies of Ministry of Human Resource and Social Security; the prediction by Stephen Green of Chartered Bank, etc..

population of China will start to go down, but the number in urban area will increase by 8 million yearly. In a long term, the constant job creation for nonfarm payroll employment will be one of the foremost problem of economic and social development all the time.



Note: The purple bars represent the population of urban areas;
the blue bars represent that of rural areas;
the yellow points represent the population of the whole country;
each unit on the vertical axis represents ten thousand persons.

Diagram 2: The population trend of China in the future 20 years



2.2 A large employment size while a lagging employment structure

According to the Statistical Bulletin on Labor and Social Security Development in 2007, National employment at year-end stood at 769.90 million persons. Of the total, the employment in primary industry, secondary industry, tertiary industry reached 314.44, 206.29 and 249.17

million persons respectively, accounted for 40.8, 26.8 and 32.4 percent of national employment respectively. The employment at year-end in urban areas valued at 293.50 million persons.

The deviation of employment structure is defined as the ratio of the percentage of industry composition of GDP to that of industrial employment structure minus 1. The three deviation of employment structure was -0.72, 0.94, 0.22, which indicated that the employment structure is seriously unbalanced. The labor in primary industry still had a high surplus; the employment rate of tertiary industry was relatively low; and the employment structure of secondary industry was improving. To develop secondary industry vigorously, to promote the transfer of labor from primary industry to nonagricultural industries, and to facilitate the employment of tertiary industry is the only way to advance employment.

Table 1 Distribution of population and employment in urban and rural areas (ten thousand,%)

	Total	Urban areas		Rural areas	
		total	proportion	Total	proportion
Population at the end of 2006	131448	57706	44%	73742	56%
Employment by the end of 2007	76990	29350	38%	47340	62%

Table 2 Distribution of GDP and employment among the three industries

	Total	Total (ten thousand)			Proportion (%)		
		primary industry	secondary industry	tertiary industry	primary industry	secondary industry	tertiary industry
Employment in 2007	76990	31444	20629	24917	40.8	26.8	32.4
Employment in 2006	76400	32561	19225	24614	42.6	25.2	32.2
GDP of 2006(ten thousand RMB yuan)	210871	24737	103162	82972	11.7	48.9	39.4
GDP per labor in 2006	27601	7597	53660	33709	-0.72	0.94	0.22

Note: The column of proportion parallel to GDP per labor is the coefficient of deviation of employment structure.

2.3 Limited formal job opportunities and a high ratio of informal employment in urban areas

According to the Statistical Bulletin on Labor and Social Security Development in 2007, the employment in urban areas valued at 293.50 million persons. Of which, the employment at year-end in urban units, individual economic organization and private enterprises accounted for 120.24 million and 78.91 million persons, respectively. The other employment group, 94.35 million persons, could not be obtained by routine administrative statistical reports, so it can be regarded as informal employment. However, among the employed persons in urban units, individual economic organization and private enterprises, there was a high ratio of people who are not protected by labor legislation. It is estimated that the informal employment in urban areas accounted for about 40 percent of urban employment.

Table 3 Categories of urban employment in 2007 (ten thousand persons)

Total	Employment in urban units	Employment in individual economic organization and private enterprises	Others
29350	12024	7891	9435
100%	41%	27%	32%

In addition, based on the first national economic census, by the end of the year 2004, the employment in secondary industry and tertiary industry reached 154.638 million and 154.19 million persons, respectively, and aggregated 308.828 millions, which was 90.482 million less than the data in China labor statistical yearbook in 2005. Of which, the number decreased in secondary industry and tertiary industry were 14.562 million and 75.92 million persons, respectively. The disparities of the data in the two reports can be used to estimate the scale of informal

employment in secondary industry and tertiary industry. Based on the data, the informal employment in secondary industry and tertiary industry in China is about 100 million persons, accounted for 25 percent in the total employment in the two industries. Informal employment is mainly in tertiary industry, which occupied 85 percent. The informal employment rate in secondary industry and tertiary industry is nearly 9 and 35 percent, respectively.

A large scale of informal employment is the necessary outcome of China developing market economy under a relatively low production level. Because the economic development can not create enough decent formal job opportunities, plenty of labors have to make a living through informal employment. The proportion of people who enters into employment contracts in informal employed people is low. They lack job stability; the working hours are quite long while the income is meager. Many of them are not covered by the social insurance, let alone other welfare. Economic development not only must create enough job opportunities, but more decent job opportunities. Full employment does not only mean that labors in want of a job can be employed, it also means that all the employed labors can work creditably. Therefore, to make a decent employment is as much arduous as job creation.

2.4 The employers are mostly small organizations and have a big regional disparity

According to the first national economic census, by the end of the year 2004, there were altogether 5.169 million impersonal entities engaged in secondary industry and tertiary industry(of which, there were 3.25 million business entities). The number of industrial activity organizations and individual economic organization are 6.824 million and

39.216 million, respectively. Based on the data of the census, the average number of employees in units and individual economic organization are 18 and 2.4, respectively. So it means that most labors work in small businesses.

The market economy in eastern areas is more vigorous than that of central and western areas. More than half of the entities engaged in secondary industry and tertiary industry are centered on eastern areas. The quantity of organizations has a decreasing tendency from the east to the west. The impersonal entities in eastern, central and western areas occupy 56.3, 23.1 and 20.6 percent, respectively. The industrial activity organizations in eastern, central and western areas occupy 52.5, 25.1 and 22.4 percent, respectively. The top 10 provinces that possess the most secondary industry and tertiary industry entities are: Guangdong, Jiangsu, Zhejiang, Shandong, Shanghai, Henan, Sichuan, Beijing, Liaoning and Hebei. The top 5 provinces that possess the most individual economic organization are: Shandong, Henan, Zhejiang, Guangdong and Hebei. The 5 industries which have a relatively high density of individual economic organization are: Wholesale & retail (46.7 percent of the total number of individual economic organization), Transport, 15.9 percent; Manufacturing, 13.6 percent; neighborhood service industry and other service trade, 10.6 percent; lodging and catering industry, 7.5 percent.

Table 4 The average employment in impersonal entities and individual economic organization among industries (person)

	impersonal entities	individual economic organization
Manufacturing	66	4.8
Construction	218	8.2
housing and civil engineering	413	
installing	105	
architectural decoration	33	
others	75	

Transport, warehousing and mail business	104	1.5
Real estate business	31	2.4
real estate development and management	27	
estate management	45	
intermediary services	12	
others	39	
Wholesale and retailing	16	
wholesale		2.3
retailing		1.7
Lodging and catering industry		
lodging		2.8
catering		3.3
Financing	161	
Information transmission, computer service and software industry	37	
Leasing and business service	19	
Scientific research, technical service and geological exploration	24	
Hydraulic project, environment and public accommodation management	32	
Neighborhood services and other services	17	
Education	22	
Health care, social security and welfare	19	
Culture, sports and entertainment industry	25	

2.5 Industrialization is under way and a plenty of surplus-labor in rural areas need to be transferred

The employment at year-end 2007 in rural areas valued at 473.40 million persons, Of which, the employment in agriculture accounting for 314.44 million persons, occupied 66 percent. The employment in nonagricultural industries accounting for 158.96 million persons, occupied 34 percent, including employment in public sectors, private sectors, individual economic organization and township enterprises.

Table 5 The form of employment in rural areas （ten thousand persons）

Total	Agriculture	Others
47340	31444	15896
100%	66%	34%

As for the question whether there is surplus-labor in rural areas which can be transferred, we have various ways of estimation. The first method is in light of binary labor market⁵. The Institute of Population and Labor Economics in Chinese Academy of Social Sciences believes that the growth of total labor force is slowing down, the fast aging population, and the decreasing growth of quantity of young labor. And the wage of rural migrant labor is increasing. All these facts demonstrate that the problem of insufficient labor is worsening. The second method is based on the quantity of labor in rural areas. Stephen Green⁶ thinks that considering the new-grown labor and the furthering industrialization, there are a 40 million of labor-surplus in rural areas, and the surplus would be disappear in 10 years or even longer. The real wage in urban areas will keep growing. The real wage of manufacturing sector will increase by 5-10 percent, year-on-year. The third method is an estimation based on urbanization⁷. The joint sub-committee of Chinese Academy of Science and IIASA predict that by the end of the year 2030, China's level of urbanization will become 60 percent, with an average increase rate of 0.75 percent, year-on-year. There will be 10 million net migrants from rural areas to urban areas annually. On the basis of this estimation, the urbanization of China will be a long process. The forth method is based on migrant labor⁸. According to the Institute for Labor Studies of MHRSS,P.R.C., from 2001 to 2010, migrants from rural areas to urban areas can be 160-180 million persons, with an average of 14.93-16.62 million persons every year. After 2010, migrants from rural areas to urban areas can be 130-140 million persons in 10 years, with an average of

⁵ Stephen Green, Rural China: Is there anybody out there...? (VII). OTG in Asia, 26th October 2007.

⁶ Stephen Green, China's Lewis Turning Point: Postponed (VIII). OTG in Asia, 30th October 2007.

⁷ ZHENG Xiaoying, Future Population and Human Capita in China. MARKET & DEMOGRAPHIC ANALYSIS. Vol. 13 No. 1, 2007.

⁸ The Institute for Labor Studies of MHRSS, The Current Situation of Employment in China and Prediction of Employment Pressure in Two Decades. 2003. Working paper.

12-13 million persons every year. From 2001 to 2020, migrants from rural areas to urban areas will be 320 million, of which, people above 16 years old will reach 280 million, accounting for 87 percent of the total. The last method is based on field survey and research⁹⁹. In 2006, Development Research Center of the State Council surveyed 2749 villages. The result showed that 27 percent of the labor stayed away; 21 percent of them were engaged in nonagricultural business; 52 percent of them were engaged in agricultural industry. But only 25 percent of the village masters thought that there was surplus-labor in their villages. Maybe they just ignored people above 35. The survey also illustrated that 50 percent of the young people aged between 21 and 25 had transferred to the urban areas; but only 10 percent of the people above 40 had transferred, and many of them would like to go back to their villages before they reached middle age.

In conclusion, in my opinion, it is still too early to say China's Lewis Turning Point's arrival. FAO estimated that in developed countries only 6 percent of the labors are engaged in agriculture. Based on the proportion of 6 percent, China only needs 50 million persons to be engaged in farming. If the proportion is 10 percent, then the people engaged in farming will become 80-90 million persons. According to the Statistical Bulletin on Labor and Social Security Development in 2007, at year-end the employment in primary industry reached 314.44 million persons. After subtracting 130 million's migrants from rural areas, there are still about 100 million persons to be transferred to nonagricultural industry. If the transferable persons occupy 50 percent, it will take ten years to finish the migration. Considering the raising labor productivity due to mechanization and land consolidation and grain import, and the

⁹ Stephen Green, China's Lewis Turning Point: Postponed (VIII). OTG in Asia, 30th October 2007.

increasing new grown labor in rural areas, there will be more agricultural labor flowing into modern sectors which have higher production efficiency. In a word, China is now an economically backward country and will be at the stage of industrialization in a quite long period of time, so the migration of surplus-labor in rural areas will be a long process.

2.6 Unemployment issues are complex and situation is serious

The quantity of the unemployed keeps large and the unemployed rate remains high. In 2006, the urban estimated unemployed persons totaled 18.44 million, and estimated urban unemployment rate was 6.1 percent¹⁰. The urban registered unemployed persons totaled 8.47 million, and registered urban unemployment rate was 4.1 percent¹¹. Moreover, plenty of new-added labors need to find a job. In 2006 additional urban labor supply are 16.68 million persons, of which, senior and junior middle school graduates who fail to enter a higher school, secondary vocational school graduates, colleges and universities graduates and people from rural residents becoming urban residents cover the percentage of 29, 27, 23, 18, respectively. But the additional employment of the year were 15.64 million persons, only 94 percent of the additional labor supply. If we only take the additional labor supply into consideration, there would be at least 6 percent of the people who could not find a job in the same year, which worsened the unemployment situation in urban areas and exerted a lot of pressure on job creation.

Table 6 The additional labor supply in urban areas in 2006 (person)

Additional supply	
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¹⁰ The results are sorted through the data in China labor statistical yearbook 2007

¹¹ Statistical Bulletin on Labor and Social Security Development in 2007 from Net. <http://www.molss.gov.cn/>, May 21st, 2008.

Total	Colleges and universities graduates	Ex-servicemen	Secondary vocational school graduates	Middle school graduates who fail to enter a higher school	People from rural residents becoming urban residents	Additional employment
16682387	3766816	543463	4480473	4842172	3049463	15639000
100%	23%	3%	27%	29%	18%	

Note: The results are sorted through the data in *China labor statistical yearbook 2007*.

The problem of unemployment in China is complicated, including quantitative unemployment, systematic unemployment, structural unemployment and frictional unemployment. Among the unemployed of 2006, 1/3 of them were out of work due to the organizations they worked for; more than 1/5 of them did not get a job after graduation; 14 percent of them lost their job out of personal reasons. Of the unemployed, 80 percent were under the age of 45. The most outstanding two groups were young people aged from 20 to 24, and people aged from 35 to 45. They were generally unemployed for quite a long time, that is, many of them were out of work for more than six months.

Table 7 Composition of the unemployed (ten thousand persons, %)

	Total	Retired	Keep house	Unemployed after graduation	Lost the job out of the units	Lost the job out of personal reasons	The contracted land is requisitioned	Others
Proportion	100.0	2.4	11.9	21.4	33.4	13.6	2.2	15.3
The absolute quantity	1844	44	219	395	616	251	41	282

Note: The results are sorted through the data in *China labor statistical yearbook 2007*.

Table 8 The age structure of the unemployed (ten thousand persons, %)

Age	16-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65+
Proportion	8.3	18.3	12.6	12.5	13.8	13.8	9.5	6.8	3.2	0.7	0.3
absolute quantity	153	337	232	231	254	254	175	125	59	13	6

Note: The results are sorted through the data in *China labor statistical yearbook 2007*.

The unemployed stay jobless for a long time, one reason is that

economic development does not create enough decent job opportunities and people dislike doing disgraceful jobs; the other reason is that their low educational level can not meet the needs of the market. Though young people are energetic, they lack working experience and skills. If their educational level is low, then it will be very hard for them to find a stable job. As for the elder people, their educational level are low and working skills are out of date. And as they grow older, the ability to learn new skill decreases. Thus they can not meet the need of new mode of production and it is difficult for them to be re-employed. Finally they become groups who have difficulty in employment, even retreat from the labor market.

3. Analysis on Impacts of the ECA on Employment

3.1 Analytical Principles

3.1.1 Taking ECA's legislative aims as the instruction

In essence, the employment rights and interests include both the quantity and quality of employment as a whole. Under the present employment condition, the ECA protecting the rights and interests of employee means we should not only enlarge the quantity of employment as possible as we can but also improve the quality of employment. If the quantity of employment has increased, employee's income has been improved and the employment gap between different groups has narrowed, then the ECA fulfills its legislation aim, and have a positive effect on employment. Otherwise, once the quantity of employment has decreased, even if the quality of employment has been improved, the law does not fulfill its legislative aim, vice versa.

3.1.2 Following the principle of path dependence and classification

Employment is in multi-dimensions and can be sorted into different status as the employment in different areas and sectors or the employment of different groups. The situation of each status may be completely varied from one to another. For instance, the condition of formal employment is different from the informal employment and the unemployment; so is the employment in large enterprises and small enterprises, etc. The ECA impacts on each employment status through different conduction routes, which will engender different effects. So when we analyze the impacts of the ECA on employment, the principle of classification and path dependence should be followed.

3.1.3 Insisting on the combination of long-term and short-term influence

Law is a kind of long-term institution, that means once a law has been established, its influence will be in a long run. The legislative aim of the ECA is a long-term protection of the rights and interests of every employee, so we can't just keep our eye on its short-term effects. If ECA is propitious to the macro-economic situation by improving someone's employment condition so as to enhance the employment in a long time, or if it promote the employment level by impeling the enterprises to increase productivity, then ECA has the positive influence on employment. On the condition of the general effect is positive, there might be someone whose interests have been damaged. In this case, some other measures should be taken to deal with it. We should analyze the direct influence of ECA when concerntrating on a short-term. But when keeping the eye on the long-term effects, we need a comprehensive evaluation from the gross of employment, the employment stability, the employment structure and

social effects and so on. While analyzing the long –term effects of the ECA on employment, it is necessary to establish a all-around analysis index system of employment situation and build a model through the method of comparative groups and control groups. As a preliminary study, this paper mainly focus on the short-term effects of the ECA on employment. It is attempted to analyze the whole and long-term effects of the ECA and its application scope, types of employment contracts and the influence of its specific articles on employment. The paper is also attempted to construe the employment effects of ECA on the enterprises, macro-economy, and each kind of employment.

3.2 The Overall and Long-term Employment Effects of ECA

On a long view, ECA has a positive significance and will surely have a positive effect on the employment.

At first, the formulation and enforcement of ECA promote the improvement of the labor laws in China. Market economy in essence is legal economy. As market economy has been established for only a short time, the law system is imperfect. On one side, employer don't have the continence to observe labor laws in employment and the employee's legal consciousness is weak too, government must strengthen legislation to cultivate their legal consciousness. On the other side, the adjustment mechanism of labor relationships in china is imperfect. In the nations who have traditions of industrial relations, the labor relationships are mainly adjusted by collective industrial relations but not the individual labor relationship. Employees in China are in 'the atomic state', they don't have power to contend against employers sucessfully, so the intervention of public right is needed. Therefore, drawing and actualizing the ECA

which is aiming to balance the Labor-Capital relations through adjusting the individual labor relationship is quite necessary. Drawing and actualizing the ECA with no doubt will push through the labor relationship legislation process in china.

Secondly, carrying out ECA won't lead to rigid labor market. Nowadays the world is in a trend of the neo-liberalism. The industrial relations are placed above the government law. The governments all over the world are drawing back in order to leave the space for the Labor and Capital to decide labor issues by themselves. At the same time, in lots of the developed countries especially in the european countries , overprotection of the employee has lead to severe problems just like rigid labor market, much more unemployment, lower labor force participation rate, decreased economic competitiveness, etc. To reform the labor market has been a essential strategic choice to rejuvenate economy for these countries. Such reforms are just like the Lisbon Strategy of EU and the Harz Reform Act of Germany.

Differing from the bottom-top marketization process in developed market economy countries, before establishing market economy, China was in planned economy system for 30 years. The laborers in non-agricultural sectors enjoyed extremely high employment protection, and the highly centralized workforce allocation plan didn't have any flexibility. Along with the deepening of economic system reform, the lifelong employment system which we called the 'iron rice bowl' has been broken, the mechanism of market allocating labor resources has been introduced into and then become the fundamental employment mechanism. Labor market become more and more flexible, informal employment kept rising fastly in many forms, the rights and interests of

employees are getting more and more lack of protection due to the laws being evaded. That is to say, the current situation in China through 30 years development is similar to that of the developed market economy countries in many years ago, Labor protection need to be strengthened instead of deregulated. The reform orientation in China is to enhance the job security on the premise of keeping labor market flexible, which means applying the basic protection to the employees. This protection level could not as high as the one in the market economy countries because of the low productivity level in China. To a certain extent, this protection is only to strengthen the existing law's execution and do some fine tuning, so it can never push the labor market towards rigidity.

Of course, because the labor market reform is not thorough in China, some groups haven't had any employment protection while some others are over-protected. Because of its own shortcomings of the law, the effects it has produced in fact are not totally satisfactory. However, ECA in essence won't bring on a rigid labor market.

Thirdly, the ECA would bring significant social effects. Taking a wide view of the legislation process in other countries, the laws can be divided into three sorts: the ones which had not been issued at the end; the ones which are 'buried' as soon as being issued; the ones which are issued and implemented. Wherein, the third ones should be good ones. Judging the effects which a law has brought is not only by the economy effects but also the political and social effects as well as the effects on the legislation itself. In 1956, Korea issued Labor Standards Act which couldn't be really implemented resulting from the too high standards. Nevertheless, the employment do not be hampered by the high standard law but rise continuously. On the opposite, the formulating and implementation of the law has created surroundings and atmosphere for

people to develop the law consciousness gradually .When the economy has developed to a properly level ,the law should be carried out and implemented timely and properly. The issued laws also lay a foundation for continuous improvement of the law system. In this sense, a law is not in the least ahead of its time. With the long-term sight, the ECA is not advanced, it definitely is a good law, and it can bring positive effects on the employment by all means.

In a word, the ECA is a important legislation to formalize labor relationships. On the Premise of specifying the rights and obligations of the parties to employment contracts, it stresses on protecting the lawful rights and interests of employees. With profound significance, this law provides a legal safeguard for building and developing harmonious and stable employment relationships.

3.3 Analysis of the Employment Effects of the Application Scope, Contract Types and Other Articals of ECA

3.3.1 Employment effects of the application scope of ECA

The ECA prescribes the scope of application as follows: This Law applies to the organizations such as enterprises, individual economic organizations and private non-enterprise units in the People's Republic of China and laborers who form a labor relationship there with. State organs, institutional organizations and societies as well as laborers who form a labor contract relationship there with shall follow this Law. Considering the employment status qua in China, the application scope stipulation of the ECA brings the problem of improper protection as being protected insufficiently or excessively.

When identifying which kind of labor relationships should be

covered by the ECA, it's not according to the existing types of labor relationships, but to the organization types used in the time of planned economy. It uses a method of enumeration and summarization, bringing every known organization types into the application scope, then bringing into the laborers who form a labor contract relationship there with.

Firstly, the method of enumeration and summarization has some shortcomings. Some employment relationships may under the guise of non-employment relationship through different modes, which will make the rights and interests of employees under fuzzy or disguised employment relationship out of the law protection. It will also make some employment forms not being enumerated clearly lose protection. Besides, the law neither subdivides labor relationships according to the application scope, nor specify the application scopes of every article, every articles are nearly the same applying to all kinds of labor relationships. All of the mentioned above will result in over-protection to some relations.

The possible result from improper protection is, either the employers violating the law or the employers closing their undertakings and bringing some new unemployment since being not afford to the high level labor standards. Although the ECA is not the Labor Standards Act, but the employers covered by ECA must execute the labor standards. So we should consider and prescribe the application scope of law cautiously to avoid the negative effects on employment. In this aspect, we can learn from Japan and Korea.

Issued on December 5th, 2007, and executed on March 1st, 2008, the Labor Contract Act in Japan is very concise. It had 5 chapters 19 articles including the general provisions (article 1-5), the conclusion and amendment of employment contracts (article 6-13, the renewing and

ending of employment contracts (article 14-16) , the fixed-term employment contracts (article 17) , the miscellaneous provisions (article 18-19) and the supplementary provisions. There are two sentences about the applicable object: the ‘employee’ means the one who is employed and paid by the employer; the ‘employer’ means the one who employ and pay the employee¹². The concise provision involves all kinds of labor relationships, which means that the law provides a more comprehensive protection.

In Korea, the individual labor relationship would be adjusted by the Labor Standards Act, mainly according to the Labor Standards Act, the Dispatched Labor Protection Act, and the Fixed-Term and Part-Time Employees Protection Act. The application scope of Labor Standards Act distinguishes the situation according to employee number or employment form, etc. All the enterprises whose employee number equals to or above 5 persons is applied to, and some articles are applied to the enterprises whose employee number below 5 persons. There is no difference from temporary labor, part-time labor and permanent employee. But it had different standards to the daily worker and the employee whose contract term is below 3 months or 6 months and the one who is in probation period¹³. Besides, the execution of the law is not one-step to the position but in a step by step processing. Issued on December 21st, 2006 and executed on July 1st, 2007, the Fixed-Term and Part-Time Employees Protection Act prescribes that some articles’ effective date vary from different enterprise scale: enterprise with more than 300 people should execute on July 1st 2007; enterprise with 100 to 300 people execute on July 1st 2008; enterprise with less than 100 people execute on July 1st

¹² *Japanese Labor Contract Act*, Act No. 128, Dec. 5th, 2007

¹³ KOREA LABOR STANDARDS ACT. Act No. 5309, Mar. 13, 1997.

2009¹⁴. The method of differential treatment and having escape clauses surely reinforce the efficiency and practicality of the law. We can bring all kinds of employment relationships and employment forms into the application scope of the law, but we should make appropriate adjustment correspondently.

3.3.2 Employment effects of different types of employment contracts

Article 12 in ECA prescribes that: Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts to expire upon completion of a certain job. A ‘fixed-term employment contract’ is an employment contract whose ending date is agreed upon by the Employer and the Employee. An ‘open-ended employment contract’ is an employment contract for which the Employer and the Employee have agreed not to stipulate a definite ending date. An ‘employment contract with a term to expire upon completion of a certain job’ is an employment contract in which the Employer and the Employee have agreed that the completion of a certain job is the term of the contract.

Korea and Japan has had a lifelong employment system, so the open-ended employment contract is established by usage. Hereby, neither the ECA in Japan nor the Korea Labor Standards Act prescribes the types of the contract by term. Most of the regulation on labor standards and contracts is aiming at the long-term employee with an open-ended employment contract. The fixed-term employment contracts and employment contracts to expire upon completion of a certain job are considered to be informal employment which should be adjusted by some special laws. The United States is in the free employment system, the

¹⁴ KOREA ACT ON THE PROTECTION, ETC. OF FIXED-TERM AND PART-TIME EMPLOYEES. Act No. 8074, Dec. 21, 2006.

employment relationships generally without a term, either part of the labor relationship could end the relation without undue legal liability in any time or even without any reason.

The case is contrary in china. In 1986 labor contract system came into power, which illustrated not only the ending of the lifelong-employment system under planned economy but also the beginning of economic system reform in china. Thereafter, the increasing of new employment was mainly in private sector. Private sector became the main body both in the stock and increment of employment especially after the large scale laid off in state-owned enterprise at the middle of 90's. The Labor Act of PRC in 1995 prescribes that when to establish the employment relationship, a written employment contract shall be concluded, but this is not obligatory; Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts to expire upon completion of a certain job; When an employer is to terminate an employment contract, the employer shall pay the employee severance pay. But the employer can end an employment contract without the severance pay; If the employee has been working for the employer continuously for not less than 10 years, the extended employment contract shall be open-ended employment contracts. Under this background, lots of employers don't conclude employment contracts with the employees or they only conclude fixed-term employment contracts, which makes the fixed-term employment contracts the main form of the employment contracts, and results in serious problems like Short-terming of employment contracts or without contracts. Based on the history and realistic context, the ECA ingeminates three kinds of employment contracts prescribed by the Labor Act, then stresses the transformation from fixed-term employment

contracts to open-ended employment contracts, and prescribes paying the employee severance pay when ending an employment contract to avoid the short-terming trends of employment contracts. At the same time, the law emphatically specifies regulations on the termination of employment contract, so as to ensure the employee more job security as well as to give the enterprise reasonable flexibility on employment.

The attempts above bring problems below: Firstly, there is no term regulation on both the fixed-term contract and the employment contract to expire upon completion of a certain job. Both them could be as long as the open-ended employment contract or much shorter. Secondly, the three type contracts are almost the same when performance, amendment, termination and ending of employment contracts happen. What's the significance to distinguish and regulate three types of contracts?

The provisions on application scope and the employment contract term are propitious to employer employing according to his own actual demanding. The employer can conclude a longer-term contract if the employee is good enough, if not, the employer can conclude a shorter-term contract. But this situation goes against the employment stability of employees and the enlargement of employment as a whole. it will lead to two consequences: at first, all the enterprises will cautiously recruit laborers and reduce the amount of staff as possible as they can. Because once they have employed someone, they should undertake the cost of ending labor relationship and the excessively high non-wage labor cost; secondly, there may be more and more illegal employment or civil relations employment. Either consequence is unfavorable for employment. Even the proportion of contract conclusion is predictably rising in short time, thereafter, the incremental formal employment become more scarce, the informal employment will increase illegally or legally day by day,

the employee who need protection still are not able to be protected.

Japan and Korea have special provisions about the fixed-term employment contract and employment contract to expire upon completion of a certain job. In Japan Labor Contract Act, the chapter 4 is set for fixed-term employment contract. According to article 17, the employer can not dismiss the employee before the ending of contract unless there is a imperative reason. When the employers hire employees according to fixed-term employment contract, they can not fix too short employment term for their own purpose so they can renew the employment contract time after time. The Korea Fixed-Term and Part-Time Employees Protection Act stipulates that: At normal state, the fixed-term employment contract can not last for 2 years and above, unless the posts are provided by government or the jobs require professional knowledge and skill, or the work relate to elder men, or there are temporary substitution workers. The provisions of ECA of China can not constrain the short-terming trend of employment contracts.

3.3.3 Employment effects of the Articles of termination and ending contracts in the ECA

The most influential and controvertible part in ECA is chapter 4, termination and ending of employment contracts, including the termination and ending of both individual labor relationship and collective labor relationship. The relevant provisions mainly have effects on the employer's behavior and the government's responsibility.

(1) The employers will face more and more labor disputes. On one side, the employer are still be endowed with great discretion on termination and ending of employment contracts. After the article 40 of chapter 4, termination and ending of employment contracts are decided

by the employer to a great extent. The individual employee in atomic state has no power to contend with the employer. The employer can easily terminate the contracts and the employer still has great employing flexibility. On the other side, the ECA also gives the employee great freedom of quit a job, which will lower the staff stability in the enterprises. This situation usually happens in the small scale enterprises. Especially ECA stipulates the severance pay should be given in more cases, which might incur more labor disputes. The malicious illegal behavior from both the employee and employer will rise which will do harm to the social stability.

(2)The government's responsibility to promote employment will become heavier. Firstly, the disadvantaged group in employment will enlarge. The disadvantaged group are those people who are insufficient in either physical quality or mentality. The article 40 in the ECA prescribes that an employer may terminate an employment contract as the employee is incompetent because of illness, age, technical ability and so on. The nature of enterprises is pursuing profit maximization, they would not or not be able to let the low productivity people stay, which will make some disadvantaged person be dismissed and turn to be unemployed. The opportunity and possibility of re-employment for them is very low. In addition, the article 41 regulates on collective dismissals. Previously, the enterprises having lots of employees with no contract or only fixed-term employment contracts need not to pay the severance pay as the contracts end. Consequently, the business dismissal is out of the control of government, and the responsibility for the dismissed persons is not clear. In the future, the enterprises must conclude the employment contracts when employing. The government's responsibility to help the dismissed persons is definite. The effects on unemployment are very clear if large

scale business dismissal happens. The two aspects will certainly aggravate government burden to help the disadvantaged workers re-employed, and to lower down the un-employment rate and to maintain social stability.

Comparing to the employment effects incurred by the rising employment contract conclusion rate caused by the ECA , the effects on employment produced by the prescribing on termination and ending of employment contracts in the ECA is limited. The individual dismissal is not a large probability event, so it won't have great influence on employees or the large scale enterprises. The employer can minimize the effects of individual dismissal by internal management measures. On the contrary, concluding a employment contract means the relatively stable employment and stable social security for employees and the cumbersome employing and termination cost for employer, finally it will cast greatly influence on the social employment.

3.4 Employment Effects of the ECA on Enterprises

3.4.1 Effects on employment of labor costs increase caused by the ECA

The most important argument on the effects of the ECA is the effects of labor costs increase. Labor cost rise is the core and key point through which the ECA affects the economy. Labor costs include salary, bonus & workers' incentive planning, and welfare. The increased costs caused by the ECA include: Among the whole employment contract period, the marginal productivity of worker will decrease after some years while labor cost keeping increasing, so the open-ended employment contracts will cause the labor costs increase; the employers have to pay severance pay when ending the expired employment contracts, or terminating the

employment contracts because of bankruptcy and liquidation; since the salaries paid to the probation period workers should not be lower than 80% of the lowest salary of the same post or the agreed salary in employment contracts, the probation period costs increase; the higher incompliance costs than before. The employment effects of increased costs are limited. The severance pay just refers to some workers, and if it is implemented, it will mean one more working year, one more month salary's expenditure; the probation period provisions just refer to probation period workers, and the effects are not wide; the increased labor costs caused by open-ended employment can be flattened through management measures.

The most important part of the increased costs caused by the ECA is the lost income coming from illegal employment practice before. That means the employers should pay social insurance charges that haven't been paid, and provide higher overtime pay on legal festivals and holidays and ferias that haven't been provided. Many enterprises reflect that implementing ECA will cause labor costs to increase by more than 10%, and the labor costs in some labor intensive manufacturing industry will increase by more than 50%. The cost rise effects of the ECA on large enterprises and state-owned enterprises are very little because their social insurance charges are paid strictly; high tech companies have high added value of products and fewer employees, and the social insurance charges are paid strictly, so the cost rise effect is also little; so the cost rise mainly impacts small and medium sized private enterprises featured as labor intensive mode and low additional value products.

Table 9¹⁵ Effects of the ECA on Labor Costs of Enterprises

¹⁵ 'Effects of the new Labor Contract Law on Salary Costs of Different Enterprises'. *The First Finance and Economics Daily*, Feb. 18, 2008.

	Proportion of labor costs in total enterprise costs	Extra rise of Labor costs by ECA	Net profit ratio of the industry
Catering trade (above 100 persons)	15—20%	15%	5%
Textile industry (above 500 persons)	5%	7%	
Machinery and electronics industry (700 persons)	8%	No pressure	20% (gross)
Apparel industry (60 persons)	50%	15%	10% (gross)
Shoes industry (3200 persons)	17%~20%	Implicit pressure	
Smoking set industry (400 persons)	15%	20%	10% (gross)
The optics (500 persons)	25%	10%	12% (gross)

(1) The removal of illegal employment profit will have vital effects on labor intensive manufacturing enterprises. Labor intensive manufacturing enterprises, which including some low level processing manufacturing industry and service industry, depend mainly on labor inputs for production and services but less on the capital. Labor costs take a large proportion in total production management costs of firms. The employment in many labor intensive manufacturing enterprises are piecework wage, overtime working, no social insurance charges, and seasonal employment. The ECA will be a big problem for these enterprises: the enterprises will lose the agility of employment. Not only the salary costs but also the non-salary costs will increase sharply. For example, in the shoemaking industry, the labor costs increase by more than 50%. However, the profit margin of the industry is just less than 10%. Therefore, the implementation of the ECA directly results in bankruptcy of a number of low level labor intensive manufacturing enterprises. More than 30 Korean invested enterprises in Shandong ‘absconded in midnight’. Most of the employees working in these enterprises are low skill level and rural migrant labors. The bankruptcy leads these labors to become unemployment or move to other employers. The rural migrant worker labor market is affected seriously.

(2) Entrepreneurial activities will be affected. China is currently in a period of active entrepreneurship. There exist many necessity and opportunity entrepreneurships. A number of medium and small enterprises and some large private enterprises are the harvests of entrepreneurship since the Reforming and Opening-up, which created a lot of employment and contributed much to economic growth. However, the entrepreneurship assistance system in China is still distempered, and the environment of entrepreneurship is not good enough. Entrepreneurs and the self-employees often face the problem of lacking funds, and bear high risks. In order to develop, many enterprises operate irregularly in the initial entrepreneurship period, such as lowering labor costs as much as possible, evading concluding employment contracts, social insurances and taxes. Once implementing the ECA, entrepreneur enterprise should be regular in the beginning, and compete with mature enterprises in the same circumstances. The innovation and entrepreneurship activities will be restrained. At last, the dynamics of employment creation will be impacted.

3.4.2 The employment effects resulted from the ECA' effect on HRM of enterprises

The ECA adds labor costs, and challenges HRM of enterprises, such as employee recruitment, compensation design, performance appraisal, and internal rules and regulations. Employers reacted in different ways. Large enterprises often adopt reasonably avoiding, timely correction, and game playing, as countermeasures to the costs rise; medium and small employers often adopt the confrontation and elusion way. The core of HRM strategy change is to replace labor by capital and to substitute among different kind of staff in order to reduce labor cost, which will have important effects on employment. Employers may have and

continue to take following measures for HRM:

(1) Reduce the staff in advance, and decrease the workforce scale whole hog. There are a number of informal employments in SOE, private enterprises, foreign invested enterprises, institutional organizations, and even state organs. These organizations dismissed the informal staff and long tenure staff before the implementation of the ECA. CCTV dismissed more than 1800 casual laborers; the Education Bureau of Shenzhen dismissed temporary teachers; Museum of Xinhai Revolution asked all casual laborers to subscribe the voluntary service protocols; banks, telecoms, hospitals, governments, institutional organizations and other high quality SOE began to dismiss the casual laborers¹⁶; Wal-Mart's global procurement center in Shanghai dismissed 110 persons; LG dismissed 11% of Chinese staff in July 2007¹⁷.

(2) Sort out labor relationship, check the costs in different employment forms, and determine to take what kind of employment contract combinations. Since open-ended employment contracts will add labor costs and affect employment flexibility, employers will try to reduce these contracts. More than 7,000 staff of Shenzhen Huawei Group, who worked for more than 8 years in the same company, resigned and concluded employment contracts again with company before the New Year's Day of 2008; 40,000 staff of Carrefour, excluding small groups with open-ended employment contracts, concluded new two-year contracts again before Dec. 28, 2007 no matter whether their old contracts were expired. Furthermore, some enterprises conclude short term contracts with employees, or with discontinuous contracts to elude open-ended employment contracts; architecture industry determines terms

¹⁶ 'The Shortcomings and Scotomas of the new Labor Contract Law'. <http://blog.niwota.com/a/1206786.htm>

¹⁷ 'The Labor Contract Act: the gate of Huawei, the ridge of China'. Chinese News Net, Nov. 22, 2007.

of contracts according to subcontractors' workloads in order to elude open-ended employment contracts; some enterprises extend terms of fixed-term employment contracts to elude open-ended employment contracts.

(3)Reduce formal staff, then satisfy labor demands through HR outsourcing, dispatched labors, part-time labors and so on. Labor dispatching agreement is concluded by employer with labor dispatching corporation. They can elude the provision of continuum labor by concluding two contracts which have space between each other, and by changing the dispatched workers after the agreement expire. Costs for dispatched labor are relatively low. Therefore, labor dispatching will become an effective measure to prevent HR costs from increasing. Henan filiale of Sinopec paid 7,350,000 Yuan to transfer 144 staff of Zhengzhou Petrol Corporation to be 'dispatched labors'. Many large corporations are considering personnel outsourcing. For example, employment in hotel industry is seasonal. Most of hotels used many casual staff in peak seasons, and dismissed staff in slack seasons. Hotels are in a dilemma facing ECA: keeping too many casual laborers, employers should pay more wages in slack season; with too few casual laborers, they can not meet the demands of daily operation in peak season. Thus, they will consider outsourcing some business.

(4)Improve compensation management. Employers try to reduce fixed wages and add bonuses and overtime wages in order to cut down non-wages labor costs and other costs based on wages, which must or may happen, into the lowest level. In order to reduce labor costs, employers may also increase working intensity and workload, withdraw the welfare and then put it into salary to make a feint of wage increase.

The above HRM strategy changes will have effects on employment

as follows:

Firstly, employers clean up labor relationships, which will boost a revolution of contract employment and will reshuffle employment forms in China. Thereafter, employment will be based on contracts, and employment management will be regular, market economy employment system will begin to establish. The number of employed persons under contracts will increase sharply, thereinto, the number of employed persons under open-end contracts will increase a little, the number of employed persons by fixed-term and one-off mission contracts will increase much more, and the number of employed persons by labor dispatching contracts and other special contracts forms will increase a lot. The temporary labors full in various organizations, such as chauffeurs, kitcheners, cleaners, clerks and other assistance posts, will formalize by concluding contracts in the forms of part-time, outsourcing, and labor dispatching. Although non-contractual employment can not be eliminated, it can not change the whole environment and trend of contractual employment.

Secondly, employers are more cautious to employ freshmen, and rely on external labor markets much more, which is not good for college students' employment. College students lack work experience. Once they are found incompetent after being hired, the employer would have to bear high burden, which means the risk of hiring them becomes higher, so their employment gets more difficult. In addition, since the employment relationship of retirees is outside of jurisdiction of the ECA, the employer needn't worry about concluding open-ended contracts with them, and can terminate the employment relationship anytime, and needn't pay the social insurances and other fees, which will reduce the operation costs. Therefore, employers may rehire more retirees to perform consulting

service, mid-level management, administration and logistics and other posts, which means the retirees will substitute other groups' employment opportunities.

Thirdly, it may aggravate unemployment situation. In order not to be involved into open-ended employment contracts, some employers conclude fixed-term employment contracts with employees at intervals, making job-to-job flows increase, which aggravates frictional unemployment. In addition, employers will dismiss more aged labors. Since aged labors are difficult to be re-employed, this will aggravate structural unemployment.

3.5 Employment Effects of the ECA on the Macro Economy

3.5.1 Employment effects of ECA's impacts on inflation

Although the implementation of the ECA increases labor costs, based on the large national market, most employers can find way to absorb increasing costs and continue to operate. On one side, they can use internal control measures, such as HRM, to absorb costs; on the other side, they can absorb added costs by transferring costs. Some monopoly industries and industries with market competitiveness can transfer the costs increase caused by the ECA into consumption production market. Medium and small private enterprises and labor intensive industries, which have narrow margins of profit, are not able to transfer the added costs. At last, enterprise mergers and acquisitions in these industries may intensify, and the industry concentration ratio will be enhanced. Through such way, the added costs will be transmitted to prices of products. Therefore, the ECA may not bring obvious inflation pressure in short term besides affecting enterprises' profits and employment. However, the

pressure on prices should not be ignored in medium and long term.

There is big pressure of inflation in China today. It is pulled initially by global capitals, which drive prices to rise entirely. There are many bubbles in the economy, and may be pricked anytime. Under the current macro-control, the economic growth has slowed down, which affects employment negatively. If the inflation could not be effectively controlled and the economy growth trends reversed, enterprises' demands for labor would decrease while they can not employ workers neatly according to the practical demands, which would affect firm's competitiveness and damage employment in long term. If financial crises broke out, it would bring serious unemployment and the implementation of the ECA would become more difficult, even go by the board. On this point, it is not so proper to implement the ECA now.

3.5.2 Employment effects of ECA's impacts on industrial upgrading

In the global industry chain, China is seated on the low-level processing tache, which is the bottom end of the industry chain. The profit margin is so low. China's enterprises with low additional value, low output value, high resource-consuming, and high pollution meet survival difficulties because of RMB appreciation, material markup, export rebates policy adjustment, 'two taxes merges', insufficiency of effective labor supply, and environmental pressure. The implementation of the ECA accelerates the quit of these industries and enterprises, and provides good opportunities for China's industrial upgrading, especially for the East.

One half of the medium and small enterprises in China are located in eastern coastal area where foreign invested enterprises and labor intensive export and processing enterprises are dense. Since the implementation of

the ECA, some labor intensive and low profit margin foreign invested manufacture enterprises have stopped the investment in China, of which some evacuate or transfer to other countries in the Southeast Asia, and some transfer the processing enterprises to the hinterland, especially the Middle and West part of China. On the other hand, there is good commercial investment environment in these areas after 30-year development, such as industrial infrastructures, logistics environment, land, human resources, and privileged policies. The favorable conditions attract more high quality enterprises to settle there. These enterprises can survive without illegal behavior. Therefore, the effects of closes and moves of firms on the local economy are limited, which are helpful to the east area to develop new industries on the existent basis and upgrade industries. The unemployed workers because of enterprises closing and moving can find jobs in the new enterprises.

In addition, in the more developed eastern areas, the private enterprises, most of which are labor-intensive, have great demands of technicians and rural migrant workers. The labor supply is tight during recent years, and the recruitment becomes more and more difficult. The enterprises can only retain rural migrant workers by raising salaries, which makes the salary of the area increases by average 10%~15% each year recently. The productivity at the same time rises at a speed not below the salary, so the enterprises can bear the labor costs increase. There are short of labor even in the less developed Middle and Western areas. The ECA makes up for blanks of laws, avoids the lack of polices, and protects employees' rights and interests more timely and effectively.

Of course, it is possible that there are mass relocations of enterprises as well as no continuous industries come in some areas. In this case, staff are dismissed; local packagings, logistics and product-matching

enterprises are difficult to continue; the existent workshops and lets lie idle; hotels and catering trades are depressed; the proportion of bad assets of banks rises. All of these factors would strike the local economy, and the employment would be affected.

3.6 Effects of the ECA on Different Kinds of Employment

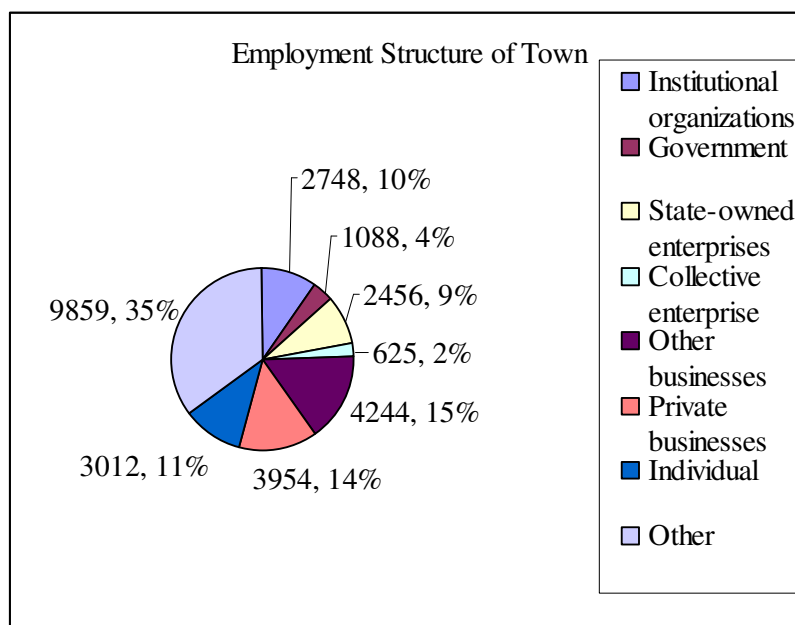
Before the Reforming and Opening, China implemented the lifelong employment system for the simplex public ownership for a long time, and provided high employment protection. Since the Reforming and Opening, the lifelong employment system for the simplex public ownership was broken. Many new kinds of employment developed with new ownerships developing. Since the reform of SOEs starting from mid 1990s, the number of employees of SOEs reduced from 112.61 million in 1995 to 64.3 million in 2006. Other kinds of employment have been the main force of new employment, and private enterprises and individual economies provide most new posts. Also, there are about 100 million new employees do not have administrative registrations, who scatter in society and all kinds of organizations including state-owned units. This employment is basically informal employment. At the end of 2006, among the urban employment, the number of employees in public sectors is 64.3 million, 23% of total employees of urban, 17% for non-public units, 25% for private enterprises and self-employment, 35% for others.

Table 10 Urban Employment Structure According to Economic Types from 1978 ¹⁸ (million)

¹⁸ Summary from *China's Labor Statistic Almanac* and *China's Statistic Almanac* in 2007

Year	Total	Urban	State-owned units	Collective units	Stock cooperation units	Pool units	Limited liability companies	Limited companies	Private enterprises	Units invested from Hong Kong, Macao, Taiwan	Foreign invested units	Individuals	Other
1978	401.52	95.14	74.51	20.48								0.15	
1985	498.73	128.08	89.90	33.24		0.38					0.06	4.50	
1989	553.29	143.90	101.08	35.02		0.82				0.04	0.43	6.48	
1990	647.49	170.41	103.46	35.49		0.96			.057	0.04	0.62	6.14	23.13
1993	668.08	182.62	109.20	33.93		0.66		1.64	1.86	1.55	1.33	9.30	23.15
1995	680.65	190.40	112.61	31.47		0.53		3.17	4.85	2.72	2.41	15.60	17.04
1998	706.37	216.16	90.58	19.63	1.36	0.48	4.84	4.10	9.73	2.94	2.93	22.59	56.98
2006	764.00	283.10	64.30	7.64	1.78	0.44	19.20	7.41	39.54	6.11	7.96	30.12	98.58

Diagram 3 Urban Employment Structure According to Economic Types at the End of 2006



China's labor markets differentiate seriously: employment in large enterprises are different from than in medium and small enterprises; employment in the east is different from that in the west; employment in capital-intensive enterprises are different from that of labor-intensive enterprises; public sectors employment are different from that of non-public sectors; formal employment is different from informal

employment; citizen workers are different from rural migrant workers. We should analyze in detail effects of the ECA on different kinds of employment, or we may ‘take a part for the whole’.

3.6.1 Effects of the ECA on the employment of public sectors

The number of employees in public sectors is about 1/4 of the number of urban employees. They enjoy the highest labor interests security, and all systems are designed taking them as targets: comprehensive and high standard social securities, high standard legal employment relationships protection, salaries higher than average salary of society, and lots of welfare treatments, such as paid vacations. The downsizing for efficiency of state-owned units in 1990s was to transfer a number of employees of state-owned enterprises under planned economy system into employees under market economy system. The internal management of SOEs changed a little, and the retained formal staffs still have extra steady labor relationships. They use a lot of informal employment to cover the staff shortages resulted from downsizing. One of the main reasons for enterprises’ efficiency increase is the costs reduction caused by informal employment substituting formal employment.

The ECA is implemented after more than ten years since SOEs’ reform. The informal employment will be formalized, and some efficiency gained through the former reforms will be lost. If SOEs could not improve and do well in HRM, the rigescent labor system like before would come out, which would damage the efficiency and competitiveness of the enterprises and be not helpful for employment increase. Therefore, SOEs should take advantage of the chance of implementing the ECA, to improve the labor systems and improve performances through good

management. In other words, the ECA is a great challenge to the HRM of public sectors.

3.6.2 The effects on employment in private sector of the ECA

Because of the limited employment opportunities in the public sector, more and more urban employees work in the private sector. The most important feature of private sector is that without historical burden of planned economy, with the management mechanism totally adapting to the market and the relatively flexible employing mechanism. The fast economic growth, especially the growth of total employment in China these years should mainly owe to the impressive development of private sector. The decreased employment stability is also mainly resulted from the development of private sector. Moreover, as a nation in progressive reform of economic system, the private sector hasn't developed sufficiently and need further enlarge. That is true the private sector is the main carrier of market mechanism in China and it is also the most eminent achievement of establishing market economy. Keeping the private economy healthily develop is the main contents of perfecting market economy system in China. As the legal means to adjust labor relationship in the market economy, the main adjusting object of the ECA is the behavior of complete market subject like private sector.

Some of the private sectors are canonically employing and they make a profit from efficient business management. The ECA has little influence on this kind of employers. But most private businesses have employment not normative or even illegal at different extent. One of the profit sources of these enterprises is to depress the labor costs. The ECA has relatively great influence on these enterprises as to never abusing the probation period nor only paying the social insurance for the core

employees, etc. The ECA will lower firms' profit due to the abusing labors and have a great impact on the employment of private sectors, but the established market mechanism in the enterprises will not be affected. In the long run, as long as the established market mechanism continue to play a role, the private sector would further develop and promote the employment more effectively.

3.6.3 Effects on the informal employment of ECA

There exists a large quantity of informal employment in China which drops into following five categories. The first is the social subsistence labor organization with government policy support .The second is the informal employment in small and medium-sized enterprises, including the urban individual economic organizations and helper therein, and the employment in small and medium-sized private enterprises. The third is flexible employment in formal sector including part-time workers, seasonal workers, short-term contracts workers, on call workers, apprentice and internship who are non-core employees in the formal units. The forth is casual labor. The fifth is free lance. It is estimated that about half of the informal employment is in the formal units, about 40 percents is in small and medium-sized private enterprises or individual economic organizations, only about 10 percents is community based employment¹⁹. Four kinds of people are involved into the informal employment: the first one is Rural Migrant Workers in Cities, the second one is the laid off and the unemployed of the state-owned enterprises or collective enterprises, the third one is the urban youth, the forth is others like retirees, the work-study students from colleges and technical secondary schools or the part-time workers. It is

¹⁹ The author's investigation in Dalian in 2004.

estimated that the first group people, that is the rural migrant workers accounts for 70 percents of the informal employment, laid-off workers is 20 percents and 5 percents for the youth²⁰.

The informal employees working overtime and paid less. Among them, nearly 55 percents work for 9 hours or above each day, nearly 45 percents has a 10 hours working time or even more. Considerable rural migrant workers even are not able to have rest time for only one day²¹. The majority of them do not have the social security. Among the urban employment, the participation rate of the urban workers' basic pension insurance, urban workers' basic medical insurance, the unemployment insurance, industrial injury insurance and maternity insurance are 52%, 46%, 40%, 42% and 27% respectively, over one half of the urban employment do not have any protection of the social security²². In the employed youth, about 8 percents have no welfare treatment. Over one half of the informal employment has no welfare treatment²³. The employment contract concluding rate is very low, over 40 percents of rural migrant workers without an employment contract. Among those contracts the rural migrant workers have been concluded, 62.8 percents are for only one or less than one year, and only 9.8 percents are for 3 years above²⁴.

Since the implementation of the Labor Act in 1995, other employments which are not in administrative statistics are rising rapidly from 17 millions to the max of 100 millions in 2004. It is the largest kind

²⁰ Libin ZHANG, "Research On The Basic issues of flexible Employment in China". "Economic Study Reference", No.45, 2005. Submit to The International Labor Organization.

²¹ Institute for Labor Studies, MHRSS, P.R.C., *'The Research on Migrant Workers' Mobile Employment and Uniform Labor Markets*, Mar, 2008

²² Calculate according to Labor and Social Security Development Statistic Bulletin in 2007.

²³ Institute for Labor Studies, MHRSS, P.R.C., *'The Investigation of Transition from School to Work in China'*, May, 2005

²⁴ Institute for Labor Studies, MHRSS, P.R.C., *'The Research on Migrant Workers' Mobile Employment and Uniform Labor Markets*, Mar, 2008

of employment either in absolute amount or absolute increment. Why do the informal employments rise rapidly even after the implementation of the Labor Act? One reason is from the employee himself. The majority of the informal employments are vulnerable groups of employment in the labor market who has a lower education level and skill level, and they are not able to find a in formal job because of the market segmentation and discrimination. Another reason is the unsoundness of legal protection. Some employers seize the opportunity to employ illegally. The most important reason is the labor market itself. The market could not offer enough formal employment opportunities to the informal employees, which lead to the law's enforcement difficult.

The ECA is not the law of labor standards, but to execute the ECA is equal to execute the law of labor standards. Ten years later, the economy situation is better but it is still not good enough to create enough formal employment opportunities; the quality of workforce has been improved but it still could not catch up with the market requirement. There are two consequences from the employment protection improvement resulted from the ECA: one is the profit come from the illegal employment has been eliminated, the employments will decrease as the enterprises don't survive the process; the other is there still is illegal employment behavior, the laborers' rights still can not be fully protected. According to distribution of the informal employment, the implementation of the ECA may results in consequences below: Among the informal employment which is nearly 1/3 of all the urban employments, about 1/5 will transfer into disguised employments because of enterprises closed, etc. The job losers mainly are the youth with low quality or the aged workers in the private and individual economic organizations. The employment contract concluding rate will rise and mainly happen in the formal sector, and

mainly in the form of fixed-term contracts like the labor dispatching contracts. The concluding rate of fixed-term employment contracts may increase by 30 percents and the concluding rate of employment contracts may increase by 15 percents because of this. The participant rate of the social insurance will rise too.

The rural migrant workers are the main group of informal employment, the ECA will be beneficial to transform the rural migrant workers into a permanent urban workers. According to the estimation²⁵, under current wage level and living standard, the rural migrant worker families afford to reside in the city and assure secondary vocational education for their children only when they work continuously until ten years before retirement that is for man 50 years old, for woman 45 years old. So considering the possibility to become an urban resident, not only the income level but also the stability and the sustainability of the job are needed. The ECA at least will made some rural migrant workers employed with contracts and some with long-term contracts, and at last some of them are able to become city residents. Some of the labor-intensive enterprises in southeast coast are starting to lower the age requirement of employing, favor to hire the couples and providing rooms for living. They do not dismiss anyone in the production slack season, which improves the income of the peasant workers. Unless rural migrant worker shortage is severe to certain degree, the enterprises won't volunteer to concluding open-ended contracts with the peasant workers. The thoroughly implementing of the ECA still shoulders heavy responsibilities.

3.6.4 Effects on unemployment of the ECA

²⁵ 'The Ninth Introduction of the Labor Contract Law: the Shortage of Peasant Workers Forces Enterprises to Consider the Employment Contract Act'. Workers Daily, Dec., 15, 2007.

According to the situation of unemployment and labor market in china, the implementation of the ECA will be beneficial to the youth employment in a long term. The provisions of probation period will be greatly beneficial to the employment rights of the youth, it will stimulate the youth to participate in economical activities actively and enhance the employment stability of the youth. While in shot term, implementing the ECA raises the employment threshold, which will lead to the decease of the opportunity of odd job and make it more difficulty for the unemployed to be reemployed.

4. The conclusion and policy recommendations

4.1 The conclusion

The ECA will play an active role in following five aspects:

Firstly, ECA would contribute to the coordinate and steady development of the society. After 30 years' Reform and Opening-up, the principal contradiction in China economy has begun to change. Changing the mode of economic growth, coordinating social conflicts becomes the necessity of sustainable development of economy and society in China. ECA is one of such kind of important means, it is designed to deal with the labor relationships contradictions legally, to enhance the job security on the premise of keeping labor market flexible, and to contribute to the coordinate and steady development of the society through concerning its impact on employment which is the most basic people's livelihood. In a word, it is the right time to formulating and enforcing ECA.

Secondly, the formulation and enforcement of ECA will promote the improvement of the labor laws in china. The formulating and implementation of the ECA has created surroundings and atmosphere for

people to develop the law consciousness gradually. The issued laws also lay a foundation for continuous improvement of the law system. With profound significance, this law provides a legal safeguard for building and developing harmonious and stable employment relationships.

Thirdly, ECA will boost a revolution of contract employment. Implementing the ECA will reshuffle employment forms in China. Employment will be based on contracts, and employment management will be regular, market economy employment system will begin to establish. The number of employed persons under contracts will increase sharply, the temporary laborers full in various organizations will formalize by concluding contracts in the forms of part-time, outsourcing, and labor dispatching. Although non-contractual employment can not be eliminated, it can not change the whole environment and trend of contractual employment.

Fourthly, carrying out ECA won't lead to rigid labor market. The ECA is an important legislation to formalize labor relationships. On the premise of specifying the rights and obligations of the parties to employment contracts, it stresses on protecting the lawful rights and interests of employees. ECA only provides the basic protection to the employees. To a certain extent, this protection is only to strengthen the existing law's execution and do some fine tuning. The protection level could not be as high as the one in the market economy countries because of the low productivity level in China. So it can never push the labor market towards rigidity.

Fifthly, with the long-term sight, it definitely is a good law, and it can bring positive effects on the employment by all means. As long as the established market mechanism continues to play a role, the private sector would further develop and promote the employment more effectively.

In short, to issue the ECA is inevitable and necessary. ECA has a positive significance, will promote the improvement of the labor laws in china, promote the establishment of market economy employment system, will not lead to rigid labor market. In the long run, it will surely have a positive effect on the employment.

There are following six conclusions about the concrete employment effects of ECA:

First, Comparing to the employment effects incurred by the rising employment contract conclusion rate caused by the ECA , the effects on employment produced by the prescribing on termination and ending of employment contracts in the ECA is limited.

Second, the employment contract concluding rate will rise and mainly happen in the formal sector, and mainly in the form of fixed-term contracts like the labor dispatching contracts. The concluding rate of fixed-term employment contracts may increase by 30 percents and the concluding rate of employment contracts may increase by 15 percents because of this. The participant rate of the social insurance will rise too.

Third, labor disputes will increase. The employer is still endowed with great discretion on termination and ending of employment contracts. On the other side, the ECA also gives the employee great freedom of quit a job. The malicious illegal behavior from both the employee and employer will rise, which might incur more labor disputes and do harm to the social stability.

Fourth, in the short-term, ECA will affect the profit of the enterprise; cause the enterprise to reduce staff, even to close. As a whole will have certain influence on the employment quantity. It will increase the flow among jobs, and aggravate the friction unemployment; The Employer

will terminate the employment relations with the aged employees, whose chance to re-employment will be small, and which will aggravate the structural unemployment. The unemployment rate will possibly rise a little. The Employer will be more prudent in employing new persons. The employment will become more difficult, especially for the new growth labor force, the university student. It will be propitious to the rural migrant workers to shift as permanent urban workers. The disadvantaged will increase.

Fifth, in the medium and long-term, ECA will cause the price rise. If the inflation could not be effectively controlled and the economy growth trends reversed, enterprises' demands for labor would decrease while they can not employ workers neatly according to the practical demands, which would affect firm's competitiveness and damage employment in long term. If financial crises broke out, it would bring serious unemployment and the implementation of the ECA would become more difficult, even go by the board. On this point, it is not so proper to implement the ECA now. The undertaking activity can undertake a certain influence negatively. The result will be that the scale of the employment will down inevitably.

Sixth, there is serious short of labor in the eastern area. ECA protects employees' rights and interests timely and effectively, is helpful to the east area to develop new industries on the existent basis and upgrade industries. As long as these areas find the new subsequent industries, the unemployed workers because of enterprises closing and moving can find jobs in the new enterprises, the local economy will be re-back the normal development and reforming rail, the employment will not under the excessively negative influence. Of course, it is possible that there are mass relocations of enterprises as well as no continuous

industries come in some areas. In this case, staff are dismissed; local packagings, logistics and product-matching enterprises are difficult to continue; the existent workshops and let's lie idle; hotels and catering trades are depressed; the proportion of bad assets of banks rises. All of these factors would strike the local economy, and the employment would be affected.

What needs to be stressed is that the effects of ECA shouldn't be exaggerated. ECA impacts employment directly, and its impact on the enterprise and the macro economy are eventually conducted to employment. However, ECA's effects are limited. After all, the fundamental determinant on the employment is the macroeconomic status. ECA is only one factor do influence on the enterprise and the macro economy. So, we shouldn't exaggerate effects of ECA.

4.2 Policy Recommendations.

Based on the above analysis and the conclusion, we can propose the following two aspects suggestions:

4.2 1. The suggestions that further consummate ECA

(1) Strengthen the revision of ECA at the right moment. South Korea Labor Standard Act has been revised 14 times until now since it was promulgated on March 13, 1997. And the laws' implementation did not reach one's goal instantly, but step by step carried on. For example, ACT ON THE PROTECTION, ETC. OF Fixed-TERM AND PART-TIME EMPLOYEES issued on December 21, 2006 stipulated that the law came into force on July 1, 2007, provided some provision f Articles come into force on different dates, and some provisions take effect on different dates according to the size of business or workplace: the companies with above

300 persons implemented on July 1, 2007; the companies with 100 to 300 persons implemented on July 1, 2008; the companies with 100 persons implemented on July 1, 2009.

It's over 10 years since China Labor Act promulgated in 1995, and it keeps invariable. It has the advantage that the law maintains stable, but if the law does not revise for a long time, it also very difficult to adapt realistic change of situation. ECA should be revised according to the situation unceasingly. The relevant authority should set up the specialized agency, the special project, the special funds, and carry on the close attention, on-the-spot investigation, the long-term track, the periodic analysis, the prompt summary, which can provide the basis and the safeguard for formulating and supplementing the Act, amending clauses, and making the adjustment to the legal insufficiency promptly and prudently.

(2) Gradually make the stipulation suitable to other employment relationships. We should rigorously define the standard on the existence of labor relations, each kind of non-standard labor relations and the civil labor relations from legislation point, and then gradually integrate the above each kind of labor relations into the setting range of the labor law system. So long as the worker carry on the work in order to obtain the payment or the operating income, no matter with several employers, no matter by any way, this kind of relations was suit to the adjustment of the labor law system.

After the implementation of ECA, the various flexible employment forms will increase, such as the concurrent job employment, the on call employment, the dispatching employment, the free lance and so on. Although ECA has special stipulation on part-time and the dispatching employment, it is obviously insufficient. Like Japan, South Korea, these

countries had the special legislation to specific employment relationships. China should speed up to standard the informal employment, make the concrete stipulation on other informal employment forms. It is necessary to gradually make the special legal rule to concurrent job employment, the on call employment, the free lance and so on.

(3) To exclude the non-profit undertakings funded by government and probation position and so on out of the applicable scope of ECA. The non-profit undertakings funded by government is a concrete measure of positive employment policy in China, which mainly help the people with difficulty in finding jobs to realize the re-employment through the fiscal re-employment fund subsidy. The policy has played the important role in employment promotion. The non-profit undertakings funded by government are not spontaneously created by the market, its cannot exist for the long-term. So it should be removed from the adjustment scope of ECA.

After the enforcement of ECA, the enterprises should pay more great attention on the work experience, which will make the youth with more difficulty to get job. Therefore, the law may stipulate do not permit to dismiss the youth for being low-skilled after the probation period or during the probation period. The probation post system should be set up to create more internship opportunities for the youth. The special probation contract instead of the general employment contract should construct for the probation post. Through the probation post, we can reduce the enterprise's burden in employing staff, and strengthen the youth's employment stability.

In addition, in order to promote the people with low employability to find jobs through market, and to safeguard the employees' right to participate in the social life through the employment firstly, the law

should consider that businesses below a certain designated size do not subject to the adjustment of ECA completely or partially.

(4) To pay great attention to the public opinions in the execution and the revision of ECA. The legislation on labor relationships is the gambling among the government, the employer and the employees. The employee's rights and interests do not manifest very well in ECA for the particularity of Trade Union in China (the Trade Union only represents employee's rights and interests of big group at least), the Act actually becomes the government and employer's two side gambling basically. The effects of ECA therefore are discounted greatly. In the future, when implementing and the revising the Act, the public opinions should be paid more great attention to. Since the rights and interests of labourers at first are employee's matter, the legislator should know what the employee most need.

(5) Further consummate the legal framework construction of the collective labor contracts. China's legal framework of the employment contract is different from most countries in the world. ECA mainly carries on the stipulation on the individual employment contract, also carries on the stipulation on the collective employment contract and the special employment contract, which indicates that employment relationship system in China is not very mature. In the individual labor relationships, compared with the Employer, the Employee as an individual forever is at a disadvantage. Since the employee's wills couldn't be well reflected by the government, the employee's rights and interests couldn't be effectively protected even through public rights intervening in the adjustment of individual employment relationship, even if it has the good wish. The trend will certainly be to enhance the collective consciousness and the power of the employees', and strengthen the carrying out of

collective agreement. Therefore, the Act needs to further consummate the legal framework construction on the collective contracts.

(6) To enhance the legal punishment of the illegal behaviors. What ECA safeguard is employee's fundamental human right. Human rights are sacred and inviolable, serious infringement should take criminal responsibility. But in the legal liability of ECA, there is no stipulations on criminal responsibility except 4 situations in Article 88: If an Employer's rule or regulation with a direct bearing on the immediate interests of Employees violates laws or administrative statutes, the labor administration authority shall order rectification and give a warning. If the said rule or regulation caused a Employee to suffer harm, the Employer will be liable for damages. If an Employer: ①uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work; ② Instructs in violation of rules and regulations, or peremptorily orders, a Employee to perform dangerous operations which threaten his personal safety; ③ Insults, corporally punishes, beats, illegally searches or detains a Employee; or ④ provides odious working conditions or a severely polluted environment, resulting in serious harm to the physical or mental health of Employees. Therefore, the cost of breaking the law increases in some degree, but not enough to deter the employers from illegal action completely. In the future, the revision of ECA should intensify the legal liability.

4.2.2. To consummate the related policy and measures

In order to implement ECA well, it not only needs to consummate ECA itself, but also needs to consummate all kinds of employment standards and relative implementing procedures.

(1) To perfect social insurance policies. According to the stipulation

of the present system, the enterprise's total social insurance burden sums approximately 30%, the employee burden 11% personally. In other words, apart from the salary directly paid to the laborers, the employer should pay social insurance equivalent to approximately one third of laborers' salary. The employee's salary will be deducted by about 10% for social insurances. For the self-employed, all social insurance bearing is undertaken by themselves, which exceeds 40% of the average income. Besides social insurances, the enterprise may allocate 5% as the training fund for employees and provide accumulation fund for housing and other benefits. Some enterprises also pay for additional insurances. For employees, personal income tax and private part of accumulation fund for housing should be deducted from the salary.

The most tremendous influence of ECA is the social insurance. According to the current system, employee's social insurance burden is truly overweight. Regarding the informal employed people, the salaries are usually very low, other allowance and welfare are very few, thus, the actual social insurance burden are heavier even at the similar premium rate. If there is not the positive coordination of the social insurance policy, ECA is impossible to be truly implemented. And, the social insurance system is imperfect and has many questions at present, especially the management level of social security funds are low, and transferring social security accounts nationwide still impossible. The ECA will truly convey the huge cost pressure to some employers.

We suggest that before the stipulation of "Social Insurance Act" in China, the State shall carry out the policy of classification administration of social insurance and impelled it in proper sequence. At the same time, put the employment contract and the related influence into account as making the Social Insurance Act. At the same time, regarding to the

different type of the enterprises, the law should make different social insurance subsidy policy: Researches should be carried on to formulate the classification standard of the enterprise; the social insurance subsidy should be given to the labor-intensive enterprises that profit level is low.

(2) To consummate the positive employment policy system. At present, the positive employment policy's content includes: First, set up the non-profit undertakings to locate the unemployed and under-employed by using direct government input. Second, various service-type enterprises and commercial and trade companies that create new jobs and recruit new employees with labor contracts signed for service longer than three years and communities that develop non-profit undertakings for employment can receive social security subsidies from the reemployment fund. Third, job subsidies. Fourth, micro -credit policy for personnel who are willing to seek employment or create business on their own but lack starter capital for the initial stage. Fifth, tax reduction and exemption policy for three sectors: the self-employed, the service type enterprises and commercial and trade companies and large and medium-sized enterprises that reposition redundancy by spinning off sideline industries. The receivers of the above policy support fall into four categories namely laid-off workers from SOEs, unemployed workers of SOEs, personnel to be relocated after the bankruptcy of the SOEs and other urban unemployed who receive minimum livelihood protection and have been out of job for over a year. The fund comes from the reemployment budget.

After the implementation of ECA, in order to promote the creation of employment well and stable the employment, the positive employment policy (including unemployment insurance policy) should have the adjustment. First, the targets of the policy support should be changed

from SOEs' laid off workers and unemployed workers to all the unemployed people; second, it needs to consummate the relevant policy that stimulating entrepreneurship to increase the employment further; Third, it is necessary to revise the Unemployment Insurance Regulation as soon as possible, to ensure the role of preventing unemployment and stabilizing employment be played legally, while to enhance the capability of unemployment insurance in dealing with the unemployment risk; Fourth, taking account of specific economic background, formulate and carry out the sets of coordinated measures of ECA, to positively cope with the possible inflation pressure as well as the possible influence on employment; Fifth, more special employment assistance should be given to the members of disadvantaged groups to promote their re-employment.

(3) To consummate macroeconomic policies. The fast growth of the economy is helpful to the re-employment of the unemployed. The government should pay even more attention to the stability of the macroscopic employment opportunity while pay attention to the employment stability of individual employee, and pay great attention to the macroscopic policies coordination.

First, alleviate the enterprises' social burdens. The enterprises assume three kinds of employment costs: the wages, the social insurance premium, and employment security expense added by ECA. Besides the taxes, government also charges employment and the social insurance fees in the way of employment cost from the enterprises. Considering the huge employment pressure, especially the low educated labor force's employment pressure, the social burdens of the enterprises should be alleviated by the way that reduce and exempt the taxes and fees, to enable the enterprises create more employment. The government should have this kind of consciousness, which would ensure the ECA's purpose to

protect the employee's rights be reached, and would also truly be advantageous to the employment. Secondly, we should figure out the contingency employment plan for economic crisis.

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Enclosure

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS

Adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007

Effective from January 1, 2008

By Baker & McKenzie

CHAPTER 1 GENERAL PROVISIONS

Article 1

This Law has been formulated in order to improve the employment contract system, to specify the rights and obligations of the parties to employment contracts, to protect the lawful rights and interests of Employees and to build and develop harmonious and stable employment relationships.

Article 2

This Law governs the establishment of employment relationships between, and the conclusion, performance, amendment, termination and ending of employment contracts by, or organizations such as enterprises, individual economic organizations and private non-enterprise units in the People's Republic of China ("Employers") on the one hand and Employees in the People's Republic of China on the other hand.

The conclusion, performance, amendment, termination and ending of employment contracts by state authorities, institutions or social organizations on the one hand and Employees with whom they establish employment relationships on the other hand, shall be handled pursuant to this Law.

Article 3

The conclusion of employment contracts shall comply with the principles of lawfulness, fairness, equality, free will, negotiated consensus and good faith.

A lawfully concluded employment contract is binding, and both the Employer and the Employee shall perform their respective obligations stipulated therein.

Article 4

Employers shall establish and improve internal rules and regulations, so as to ensure that Employees enjoy their labor rights and perform their labor obligations.

When an Employer formulates, revises or decides on rules and regulations, or material matters, that have a direct bearing on the immediate interests of its Employees, such as those concerning compensation, work hours, rest, leave, work safety and hygiene, insurance, benefits, employee training, work discipline or work quota management, the same shall be discussed by the employee representative congress or all the employees. The employee representative congress or all the employees, as the case may be, shall put forward a proposal and comments, whereupon the matter shall be determined through consultations with the Trade union or employee representatives conducted on a basis of equality.

If, during the implementation of an Employer's rule or regulation or decision on a crucial

If matter, the Trade union or an employee is of the opinion that the same is inappropriate, it or he is entitled to communicate such opinion to the Employer, and the rule, regulation or decision shall be improved by making amendments after consultations. Rules and regulations, and decisions on material matters, that have a direct bearing on the immediate interests of Employees shall be made public or be communicated to the Employees by the Employer.

Article 5

The labor administration authorities of People's Governments at the county level and above, together with the Trade union and enterprise representatives, shall establish a comprehensive tri-partite mechanism for the coordination of employment relationships, in order to jointly study and resolve major issues concerning employment relationships.

CHAPTER 2 CONCLUSION OF EMPLOYMENT CONTRACTS

Article 6

A Trade union shall assist and guide Employees in the conclusion of employment contracts with their Employer and the performance thereof in accordance with the law, and establish a collective bargaining mechanism with the Employer in order to safeguard the lawful rights and interests of Employees.

CHAPTER 2 CONCLUSION OF EMPLOYMENT CONTRACTS

Article 7

An Employer's employment relationship with a Employee is established on the date it starts using the Employee. An Employer shall keep a register of employees, for reference purposes.

Article 8

When an Employer hires a Employee, it shall truthfully inform him as to the content of the work, the working conditions, the place of work, occupational hazards, production safety conditions, labor compensation and other matters which the Employee requests to be informed about. The Employer has the right to learn from the Employee basic information which directly relates to the employment contract, and the Employee shall truthfully provide the same.

Article 9

When hiring a Employee, an Employer may not retain the Employee's resident ID card or other papers, nor may it require him to provide security or collect property from him under some other guise.

Article 10

To establish an employment relationship, a written employment contract shall be concluded.

In the event that no written employment contract was concluded at the time of establishment of an employment relationship, a written employment contract shall be concluded within one month after the date on which the Employer starts using the Employee.

Where an Employer and a Employee conclude an employment contract before the Employer starts using the Employee, the employment relationship shall be established on the date on which the Employer starts using the Employee.

Article 11

In the event that an Employer fails to conclude a written employment contract with a Employee at the time its starts to use him, and it is not clear what labor compensation was agreed upon with the Employee, the labor compensation of the new Employee shall be decided pursuant to the rate specified in the collective contract; where there is no collective contract or the collective contract is silent on the matter, equal pay shall be given for equal work.

Article 12

Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts to expire upon completion of a certain job.

Article 13

A "fixed-term employment contract" is an employment contract whose ending date is agreed upon by the Employer and the Employee.

An Employer and a Employee may conclude a fixed-term employment contract upon reaching a negotiated consensus.

Article 14

An "open-ended employment contract" is an employment contract for which the Employer and the Employee have agreed not to stipulate a definite ending date.

An Employer and a Employee may conclude an open-ended employment contract upon reaching a negotiated consensus. If a Employee proposes or agrees to renew his employment contract or to conclude an employment contract in any of the following circumstances, an open-ended employment contract shall be concluded, unless the Employee requests the conclusion of a fixed-term employment contract:

(1) The Employee has been working for the Employer for a consecutive period of not less than 10 years;

(2) when his Employer introduces the employment contract system or the state owned enterprise that employs him re-concludes its employment contracts as a result of restructuring, the Employee has been working for the Employer for a consecutive period of not less than 10 years and is less than 10 years away from his legal retirement age; or

(3) prior to the renewal, a fixed-term employment contract was concluded on two consecutive occasions and the Employee is not characterized by any of the circumstances set forth in **Article 39** and items (1) and (2) of **Article 40** hereof.

If an Employer fails to conclude a written employment contract with a Employee within one year from the date on which it starts using the Employee, the Employer and the Employee shall be deemed to have concluded an open-ended employment contract.

Article 15

An "employment contract with a term to expire upon completion of a certain job" is an employment contract in which the Employer and the Employee have agreed that the completion of a certain job is the term of the contract.

An Employer and a Employee may, upon reaching a negotiated consensus, conclude an employment contract with a term to expire upon completion of a certain job.

Article 16

An employment contract shall become effective when the Employer and the Employee have reached a negotiated consensus thereon and each of them has signed or sealed the text of such contract.

The Employer and the Employee shall each hold one copy of the employment contract.

Article 17

An employment contract shall specify the following matters:

- (1) The name, domicile and legal representative or main person in charge of the Employer;
- (2) The name, domicile and number of the resident ID card or other valid identity document of the Employee;
- (3) The term of the employment contract;
- (4) The job description and the place of work;
- (5) Working hours, rest and leave;
- (6) Labor compensation;
- (7) Social insurance;
- (8) Labor protection, working conditions and protection against occupational hazards; and
- (9) Other matters which laws and statutes require to be included in employment contracts.

In addition to the requisite terms mentioned above, an Employer and a Employee may agree to stipulate other matters in the employment contract, such as probation period, training, confidentiality, supplementary insurance and benefits, etc.

Article 18

If a dispute arises due to the fact that the rate or standards for labor compensation or working conditions, etc. are not explicitly specified in the employment contract, the Employer and the Employee may renegotiate. If the negotiations are unsuccessful, the provisions of the collective contract shall apply. If there is no collective contract or the collective contract is silent on the issue of labor compensation, equal pay shall be given for equal work; if there is no collective contract or the collective contract is silent on the issue of working conditions, the relevant regulations of the state shall apply.

Article 19

If an employment contract has a term of not less than three months but less than one year, the probation period may not exceed one month; if an employment contract has a term of more than one year and less than three years, the probation period may not exceed two months; and if an employment contract has a term of not less than three years or is open-ended, the probation period may not exceed six months.

An Employer may stipulate only one probation period with any given Employee.

No probation period may be specified in an employment contract with a term to expire upon completion of a certain job or an employment contract with a term of less than three months. The probation period shall be included in the term of the employment contract. If an employment contract provides for a probation period only, then there is no probation period and the term concerned shall be the term of the employment contract.

Article 20

The wages of a Employee on probation may not be less than the lowest wage level for the same job with the Employer or less than 80 percent of the wage agreed upon in the employment contract, and may not be less than the minimum wage rate in the place where the Employer is located.

Article 21

An Employer may not terminate an employment contract during the probation period unless the Employee is characterized by any of the circumstances set forth in **Article 39** and items (1) and (2) of **Article 40** hereof. If an Employer terminates an employment contract during the probation period, it shall explain the reasons to the Employee.

Article 22

If an Employer provides special funding for a Employee's training and gives him professional technical training, it may conclude an agreement specifying a term of service with such Employee.

If the Employee breaches the agreement on the term of service, he shall pay liquidated damages to the Employer as agreed. The measure of the liquidated damages may not exceed the training expenses paid by the Employer. The liquidated damages that the Employer requires the Employee to pay may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service.

The reaching of agreement on a term of service between the Employer and the Employee does not affect the raising of the Employee's labor compensation during the term of service according to the normal wage adjustment mechanism.

Article 23

An Employer and a Employee may include in their employment contract provisions on confidentiality matters relating to maintaining the confidentiality of the trade secrets of the Employer and to intellectual property.

If a Employee has a confidentiality obligation, the Employer may agree with the Employee on competition restriction provisions in the employment contract or confidentiality agreement, and stipulate that the Employer shall pay financial compensation to the Employee on a monthly basis during the term of the competition restriction after the termination or ending of the employment contract. If the Employee breaches the competition restriction provisions, he shall pay liquidated damages to the Employer as stipulated.

Article 24

The personnel subject to competition restrictions shall be limited to the Employer's senior management, senior technicians and other personnel with a confidentiality obligation. The scope, territory and term of the competition restrictions shall be agreed upon by the Employer and the Employee, and such agreement shall not violate laws and regulations.

The term, counted from the termination or ending of the employment contract, for which a person as mentioned in the preceding paragraph is subject to competition restrictions in terms of his working for a competing Employer that produces the same type of products or is engaged in the same type of business as his current Employer, or in terms of his establishing his own business to produce the same type of products or engage in the same type of business, shall not exceed two years.

Article 25

With the exception of the circumstances specified in **Articles 22** and **23** hereof, an Employer may not stipulate with a Employee provisions on the bearing of liquidated damages by the Employee.

Article 26

An employment contract shall be invalid or partially invalid if:

(1) A party uses such means as deception or coercion, or takes advantage of the other party's difficulties, to cause the other party to conclude an employment contract, or to make an amendment thereto, that is contrary to that party's true intent;

(2) The Employer disclaims its legal liability or denies the Employee his rights; or

(3) Mandatory provisions of laws or administrative statutes are violated.

If the invalidity or partial invalidity of the employment contract is disputed, it shall be confirmed by a labor dispute arbitration institution or a People's Court.

Article 27

If certain provisions of an employment contract are invalid and such invalidity does not affect the validity of the remaining provisions, the remaining provisions shall remain valid.

Article 28

If an employment contract is confirmed as invalid and the Employee has already performed labor, the Employer shall pay the Employee labor compensation. The amount of labor compensation shall be determined with reference to the labor compensation of Employees in the same or a similar position with the Employer.

CHAPTER 3 PERFORMANCE AND AMENDMENT OF EMPLOYMENT CONTRACTS

Article 29

The Employer and the Employee shall each fully perform its/his obligations in accordance with the employment contract.

Article 30

Employers shall pay their Employees labor compensation on time and in full in accordance with the employment contracts and state regulations.

If an Employer falls into arrears with the payment of labor compensation or fails to make payment in full, the Employee may, in accordance with the law, apply to the local People's Court for an order to pay; and the People's Court shall issue such order in accordance with the law.

Article 31

Employers shall strictly implement the work quota standards and may not compel or in a disguised manner compel Employees to work overtime. If an Employer arranges for a Employee to work overtime, it shall pay him overtime pay in accordance with the relevant state regulations.

Article 32

Employees shall not be held in breach of their employment contracts if they refuse to perform dangerous operations that are instructed in violation of regulations or peremptorily ordered by management staff of the Employer.

Employees have the right to criticize, report to the authorities or lodge accusations against their Employers in respect of working conditions that endanger their lives or health.

Article 33

Changes such a change in the name, legal representative or main person in charge of, or an (the) investor(s) in, an Employer shall not affect the performance of its employment contracts.

Article 34

If an Employer is merged or divided, etc., its existing employment contracts shall remain valid and continue to be performed by the Employer(s) which succeeded to its rights and obligations

Article 35

An Employer and a Employee may amend the provisions of their employment contract if they so agree after consultations. Amendments to an employment contract shall be made in writing. The Employer and the Employee shall each hold one copy of the amended employment contract.

CHAPTER 4 TERMINATION AND ENDING OF EMPLOYMENT CONTRACTS**Article 36**

An Employer and a Employee may terminate their employment contract if they so agree after consultations.

Article 37

A Employee may terminate his employment contract upon 30 days' prior written notice to his Employer. During his probation period, a Employee may terminate his employment contract by giving his Employer three days' prior notice.

Article 38

A Employee may terminate his employment contract if his Employer:

- (1) Fails to provide the labor protection or working conditions specified in the employment contract;
- (2) Fails to pay labor compensation in full and on time;
- (3) Fails to pay the social insurance premiums for the Employee in accordance with the law;
- (4) Has rules and regulations that violate laws or regulations, thereby harming the Employee's rights and interests;
- (5) causes the employment contract to be invalid due to a circumstance specified in the first paragraph of **Article 26** hereof;
- (6) Gives rise to another circumstance in which laws or administrative statutes permit a Employee to terminate his employment contract.

If an Employer uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work, or if a Employee is instructed in violation of rules and regulations or peremptorily ordered by his Employer to perform dangerous operations which threaten his personal safety, the Employee may terminate his employment contract forthwith without giving prior notice to the Employer.

Article 39

An Employer may terminate an employment contract if the Employee:

- (1) Is proved during the probation period not to satisfy the conditions for employment;
- (2) Materially breaches the Employer's rules and regulations;
- (3) Commits serious dereliction of duty or practices graft, causing substantial damage to the Employer;
- (4) has additionally established an employment relationship with another Employer which materially affects the completion of his tasks with the first-mentioned Employer, or he refuses to rectify the matter after the same is brought to his attention by the Employer;
- (5) causes the employment contract to be invalid due to the circumstance specified in item (1) of the first paragraph of **Article 26** hereof; or
- (6) Has his criminal liability pursued in accordance with the law.

Article 40

An Employer may terminate an employment contract by giving the Employee himself 30 days' prior written notice, or one month's wage in lieu of notice, if:

- (1) after the set period of medical care for an illness or non-work-related injury, the Employee can engage neither in his original work nor in other work arranged for him by his Employer;
- (2) The Employee is incompetent and remains incompetent after training or adjustment of his position; or
- (3) A major change in the objective circumstances relied upon at the time of conclusion of the employment contract renders it unperformable and, after consultations, the Employer and Employee are unable to reach agreement on amending the employment contract.

Article 41

If any of the following circumstances makes it necessary to reduce the workforce by 20 persons or more or by a number of persons that is less than 20 but accounts for 10 percent or more of the total number of the enterprise's employees, the Employer may reduce the workforce after it has explained the circumstances to its Trade union or to all of its employees 30 days in advance, has considered the opinions of the Trade union or the employees and has subsequently reported the workforce reduction plan to the labor administration department:

- (1) Restructuring pursuant to the Enterprise Bankruptcy Law;
- (2) Serious difficulties in production and/or business operations;
- (3) The enterprise switches production, introduces a major technological innovation or revises its business method, and, after amendment of employment contracts, still needs to reduce its workforce; or
- (4) Another major change in the objective economic circumstances relied upon at the time of conclusion of the employment contracts, rendering them unperformable.

When reducing the workforce, the Employer shall retain with priority persons:

- (1) Who have concluded with the Employer fixed-term employment contracts with a relatively long term;
- (2) Who have concluded open-ended employment contracts with the Employer; or
- (3) Who are the only ones in their families to be employed and whose families have an elderly person or a minor for whom they need to provide.

If an Employer that has reduced its workforce pursuant to the first paragraph hereof hires again within six months, it shall give notice to the persons dismissed at the time of the reduction and, all things being equal, hire them on a preferential basis.

Article 42

An Employer may not terminate an employment contract pursuant to **Article 40** or **Article 41** hereof if the Employee:

- (1) is engaged in operations exposing him to occupational disease hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having contracted an occupational disease and is being diagnosed or under medical observation;
- (2) Has been confirmed as having lost or partially lost his capacity to work due to an occupational disease contracted or a work-related injury sustained with the Employer;
- (3) Has contracted an illness or sustained a non-work-related injury, and the set period of medical care therefore has not expired;
- (4) Is a female employee in her pregnancy, confinement or nursing period;
- (5) Has been working for the Employer continuously for not less than 15 years and is less than

- 5 years away from his legal retirement age;
- (6) Finds himself in other circumstances stipulated in laws or administrative statutes.

Article 43

When an Employer is to terminate an employment contract unilaterally, it shall give the Trade union advance notice of the reason therefore. If the Employer violates laws, administrative statutes or the employment contract, the Trade union has the right to demand that the Employer rectify the matter. The Employer shall study the Trade union's opinions and notify the Trade union in writing as to the outcome of its handling of the matter.

Article 44

An employment contract shall end if:

- (1) Its term expires;
- (2) The Employee has commenced drawing his basic old age insurance pension in accordance with the law;
- (3) The Employee dies, or is declared dead or missing by a People's Court;
- (4) The Employer is declared bankrupt;
- (5) The Employer has its business license revoked, is ordered to close or is closed down, or the Employer decides on early liquidation; or
- (6) Another circumstance specified in laws or administrative statutes arises.

Article 45

If an employment contract expires and any of the circumstances specified in

Article 42 hereof applies, the term of the employment contract shall be extended until the relevant circumstance ceases to exist, at which point the contract shall end. However, matters relating to the ending of the employment contract of a Employee who has lost or partially lost his capacity to work as specified in item (2) of **Article 42** hereof shall be handled in accordance with state regulations on work-related injury insurance.

Article 46

In any of the following circumstances, the Employer shall pay the Employee severance pay:

- (1) The employment contract is terminated by the Employee pursuant to **Article 38** hereof;
- (2) The employment contract is terminated after such termination was proposed to the Employee by the Employer pursuant to **Article 36** hereof and the parties reached agreement thereon after consultations;
- (3) The employment contract is terminated by the Employer pursuant to **Article 40** hereof;
- (4) The employment contract is terminated by the Employer pursuant to the first paragraph of **Article 41** hereof;
- (5) The employment contract is a fixed-term contract that ends pursuant to item (1) of **Article 44** hereof, unless the Employee does not agree to renew the contract even though the conditions offered by the Employer are the same as or better than those stipulated in the current contract;
- (6) The employment contract ends pursuant to item (4) or (5) of **Article 44** hereof;
- (7) Other circumstances specified in laws or administrative statutes.

Article 47

A Employee shall be paid severance pay based on the number of years worked with the Employer at the rate of one month's wage for each full year worked. Any period of not less than

six months but less than one year shall be counted as one year. The severance pay payable to a Employee for any period of less than six months shall be one-half of his monthly wages.

If the monthly wage of a Employee is greater than three times the average monthly wage of employees in the Employer's area as published by the People's Government at the level of municipality directly under the central government or municipality divided into districts of the area¹ where the Employer is located, the rate for the severance pay paid to him shall be three times the average monthly wage of employees and shall be for not more than 12 years of work. For the purposes of this **Article**, the term "monthly wage" means the Employee's average monthly wage for the 12 months prior to the termination or ending of his employment contract.

Article 48

If an Employer terminates or ends an employment contract in violation of this Law and the Employee demands continued performance of such contract, the Employer shall continue performing the same. If the Employee does not demand continued performance of the employment contract or if continued performance of the employment contract has become impossible, the Employer shall pay damages pursuant to **Article 87** hereof.

Article 49

The state will take measures to establish a comprehensive system that enables Employees' social insurance accounts to be transferred from one region to another and to be continued in such other region.

Article 50

At the time of termination or ending of an employment contract, the Employer shall issue a proof of termination or ending of the employment contract and, within 15 days, carry out the procedures for the transfer of the Employee's file and social insurance account.

The Employee shall carry out the procedures for the handover of his work as agreed by the parties. If relevant provisions of this Law require the Employer to pay severance pay, it shall pay the same upon completion of the procedures for the handover of the work.

The Employer shall keep terminated or ended employment contracts on file for not less than two years, for reference purposes.

CHAPTER 5 SPECIAL PROVISIONS

SECTION 1 COLLECTIVE CONTRACT

Article 51

After bargaining on an equal basis, enterprise employees, as one party, and their Employer may conclude a collective contract on such matters as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval.

A collective contract shall be concluded by the Trade union, on behalf of the enterprise's employees, and the Employer. If the Employer does not yet have a Trade union, it shall

1 Translator's note: The phrase "of the area" does not appear in the Chinese text. It has been added by us in view of the context.

Conclude the collective contract with a representative put forward by the Employees under the guidance of the Trade union at the next higher level.

Article 52

Enterprise employees, as one party, and their Employer may enter into specialized collective contracts addressing labor safety and hygiene, protection of the rights and interests of female employees, the wage adjustment mechanism, etc.

Article 53

Industry-wide or area-wide collective contracts may be concluded between the Trade union on the one hand and representatives on the side of the enterprises on the other hand in industries such as construction, mining, catering services, etc. within areas below the county level.

Article 54

After a collective contract has been concluded, it shall be submitted to the labor administration authority. The collective contract shall become effective upon the lapse of 15 days from the date of receipt thereof by the labor administration authority, unless the said authority raises any objections to the contract.

A collective contract that has been concluded in accordance with the law is binding on the Employer and the Employees. An industry-wide or area-wide collective contract is binding on Employers and Employees in the industry or in the area in the locality concerned.

Article 55

The rates for labor compensation, standards for working conditions, etc. stipulated in a collective contract may not be lower than the minimum rates and standards prescribed by the local People's Government. The rates for labor compensation, standards for working conditions, etc. stipulated in the employment contract between an Employer and a Employee may not be lower than those stipulated in the collective contract.

Article 56

If an Employer's breach of the collective contract infringes upon the labor rights and interests of the employees, the Trade union may, in accordance with the law, demand that the Employer assume liability. If a dispute arising from the performance of the collective contract is not resolved following consultations, the Trade union may apply for arbitration and institute an action according to law.

SECTION 2 Placement

Article 57

Staffing firms shall be established in accordance with the relevant provisions of the Company Law and have registered capital of not less than RMB ¥ 500,000.

Article 58

Staffing firms are Employers as mentioned in this Law and shall perform an Employer's obligations toward its Employees. The employment contract between a staffing firm and a Employee to be placed shall, in addition to the matters specified in **Article 17** hereof, specify matters such as the unit with which the Employee will be placed, the term of his placement, his position, etc.

The employment contracts between staffing firms and the Employees to be placed shall be fixed term employment contracts with a term of not less than two years. Staffing firms shall

pay labor compensation on a monthly basis. During periods when there is no work for Employees to be placed, the staffing firm shall pay such Employees compensation on a monthly basis at the minimum wage rate prescribed by the People's Government of the place where the staffing firm is located.

Article 59

When placing Employees, staffing firms shall enter into staffing agreements with the units that accept the Employees under the placement arrangements ("Accepting Units"). The staffing agreements shall stipulate the job positions in which Employees are placed, the number of persons placed, the term of placement, the amounts and methods of payments of labor compensation and social insurance premiums, and the liability for breach of the agreement. An Accepting Unit shall decide with the staffing firm on the term of placement based on the actual requirements of the job position, and it may not conclude several short-term placement agreements to cover a continuous term of labor use.

Article 60

Staffing firms shall inform the Employees placed of the content of the placement agreements. Staffing firms may not pocket part of the labor compensation that the Accepting Units pay to the Employees in accordance with the placement agreement.

Staffing firms and the Accepting Units may not charge fees from the Employees placed.

Article 61

If a staffing firm places a Employee with an Accepting Unit in another region, the Employee's labor compensation and working conditions shall be in line with the rates and standards of the place where the Accepting Unit is located.

Article 62

Accepting Units shall perform the following obligations:

- (1) Implement state labor standards and provide the corresponding working conditions and labor protection;
- (2) communicate the job requirements and labor compensation of the Employees placed;
- (3) Pay overtime pay and performance bonuses and provide benefits appropriate for the job positions;
- (4) Provide the placed Employees who are on the job with the training necessary for their job positions; and
- (5) In case of continuous placement, implement a normal wage adjustment system.

Accepting Units may not in turn place the Employees with other Employers.

Article 63

Placed Employees shall have the right to receive the same pay as that received by Employees of the Accepting Unit for the same work. If an Accepting Unit has no Employee in the same position, the labor compensation shall be determined with reference to the labor compensation paid in the place where the Accepting Unit is located to Employees in the same or a similar position.

Article 64

Placed Employees have the right to lawfully join the Trade union of their staffing firm or the Accepting Unit or to organize such unions, so as to protect their own lawful rights and interests.

Article 65

Placed Employees may terminate their employment contracts with their staffing firms pursuant

to **Article** 36 or 38 hereof.

If any of the circumstances provided for in **Article** 39 and items (1) and (2) of **Article** 40 hereof applies to a placed Employee, his Accepting Unit may return him to the staffing firm, which may terminate its employment contract with him in accordance with the relevant provisions of this Law.

Article 66

The placement of Employees shall generally be practiced for temporary, auxiliary or substitute job positions.

Article 67

Employers may not establish staffing firms to place Employees with themselves or their subordinate units.

Section 3 Part-Time Labor

Article 68

The term “part-time labor” means a form of labor for which the compensation is chiefly calculated by the hour and where the Employee generally averages not more than 4 hours of work per day and not more than an aggregate 24 hours of work per week for the same Employer.

Article 69

The two parties to part-time labor may conclude an oral agreement.

A Employee who engages in part-time labor may conclude an employment contract with one or more Employers, but a subsequently concluded employment contract may not prejudice the performance of a previously concluded employment contract.

Article 70

The two parties to part-time labor may not stipulate a probation period.

Article 71

Either of the two parties to part-time labor may terminate the use of the labor by notice to the other party at any time. No severance pay shall be payable by the Employer to the Employee upon termination of the use of the labor.

Article 72

The hourly compensation rate for part-time labor may not be lower than the minimum hourly wage rate prescribed by the People’s Government of the place where the Employer is located. The labor compensation settlement and payment cycle for part-time labor may not exceed 15 days.

CHAPTER 6 MONITORING INSPECTIONS

Article 73

The State Council’s labor administration authority shall be responsible for overseeing the implementation of the employment contract system nationwide. The labor administration authorities of local People’s Governments at the county level and above shall be responsible for overseeing the implementation of the employment contract system in their respective jurisdictions.

In the course of overseeing the implementation of the employment contract system, the labor administration authorities of People’s Governments at the county level and above shall consider

the opinions of the Trade unions, the representatives on the side of the enterprises and the authorities in charge of the industries concerned.

Article 74

The labor administration authorities of local People's Governments at the county level and above shall conduct monitoring inspections of the implementation of the following aspects of the employment contract system, in accordance with the law:

- (1) Employers' formulation of rules and regulations that have a direct bearing on the immediate interests of Employees, and the implementation thereof;
- (2) The conclusion and termination of employment contracts by Employers and Employees;
- (3) Compliance with relevant regulations on placement by staffing firms and Accepting Units;
- (4) Employers' compliance with state regulations on Employees' working hours, rest and leave;
- (5) Employers' payment of labor compensation as specified in the employment contracts and compliance with minimum wage rates;
- (6) Employers' enrollment in the various types of social insurance and payment of social insurance premiums; and
- (7) Other labor matters requiring monitoring inspections, as specified in laws and administrative statutes.

Article 75

When the labor administration authority of a local People's Government at the county level or above conducts a monitoring inspection, it has the authority to review materials relating to the employment contracts and collective contracts and conduct an on-the-spot inspection of the work premises. Both the Employer and the Employees shall truthfully provide relevant information and materials.

When working personnel of a labor administration authority conduct a monitoring inspection, they shall show their IDs, exercise their functions and powers according to law and enforce the law in a well-disciplined manner.

Article 76

Such competent authorities as construction authorities, health authorities, production safety regulators, etc. of People's Governments at the county level and above shall, to the extent of their respective purviews, oversee the implementation of the employment contract system by Employers.

Article 77

A Employee whose lawful rights and interests have been infringed upon shall have the right to request that the relevant authority deal with the infringement according to law, or to apply for arbitration and institute an action according to law.

Article 78

Trade unions shall safeguard the lawful rights and interests of Employees in accordance with the law and monitor the performance of the employment contracts and collective contracts by Employers. If an Employer violates labor laws or statutes or breaches an employment contract or collective contract, the Trade union has the right to voice its opinion or require that the matter be rectified. If a Employee applies for arbitration or institutes an action, the Trade union shall provide support and assistance in accordance with the law.

Article 79

All organizations and individuals are entitled to report violations of this Law.

The labor administration authorities of People's Governments at the county level and above shall timely check and handle the violations reported and reward those persons whose reports are valuable.

CHAPTER 7 LEGAL LIABILITY

Article 80

If an Employer's rule or regulation with a direct bearing on the immediate interests of Employees violates laws or administrative statutes, the labor administration authority shall order rectification and give a warning. If the said rule or regulation caused a Employee to suffer harm, the Employer will be liable for damages.

Article 81

If the text of an employment contract provided by an Employer lacks any of the mandatory clauses which this Law requires to be included in such contracts or if an Employer fails to deliver the text of the employment contract to the Employee, the labor administration authority shall order rectification; if the Employee suffered harm as a result thereof, the Employer will be liable for damages.

Article 82

If an Employer concludes a written employment contract with a Employee more than one month but less than one year after the date on which it started using him, it shall each month pay to the Employee twice his wage.

If an Employer fails, in violation of this Law, to conclude an open-ended employment contract with a Employee, it shall each month pay to the Employee twice his wage, starting from the date on which an open-ended employment contract should have been concluded.

Article 83

If the probation period stipulated by an Employer with a Employee violates this Law, the labor administration authority shall order rectification. If the illegally stipulated probation has been performed, the Employer shall pay compensation to the Employee according to the time worked on probation beyond the statutory probation period, at the rate of the Employee's monthly wage following the completion of his probation.

Article 84

If an Employer violates this Law by retaining a Employee's resident ID card or other papers, the labor administration authority shall order the same returned to the Employee within a specified period of time and impose a penalty in accordance with the provisions of relevant laws.

If an Employer violates this Law by collection property from Employees as security or under some other guise, the labor administration authority shall order the same returned to the Employees within a specified period of time and impose a fine on the Employer of not less than RMB¥500 and not more than RMB¥2,000 for each person; If the Employees suffered harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages. If an Employer retains a Employee's file or other **Article** after the Employee has terminated or ended his employment contract in accordance with the law, a penalty shall be imposed in accordance with the preceding paragraph.

Article 85

If an Employer:

- (1) Fails to pay a Employee his labor compensation in full and on time as stipulated in his employment contract or prescribed by the state;
- (2) Pays labor compensation below the local minimum wage rate;
- (3) Arranges overtime without paying overtime pay; or
- (4) Terminates or ends an employment contract without paying the Employee severance pay pursuant to this Law; then the labor administration authority shall order it to pay the labor compensation, overtime pay or severance pay within a specified period of time; if the labor compensation is lower than the local minimum wage rate, the Employer shall pay the shortfall. If payment is not made within the time limit, the Employer shall be ordered to additionally pay damages to the Employee at a rate of not less than 50 percent and not more than 100 percent of the amount payable.

Article 86

If an employment contract is confirmed as being invalid in accordance with **Article 26** hereof and the other party suffers harm as a result thereof, the party at fault shall be liable for damages.

Article 87

If an Employer terminates or ends an employment contract in violation of this Law, it shall pay damages to the Employee at twice the rate of the severance pay provided for in **Article 47** hereof.

Article 88

If an Employer:

- (1) uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work;
- (2) Instructs in violation of rules and regulations, or peremptorily orders, a Employee to perform dangerous operations which threaten his personal safety;
- (3) Insults, corporally punishes, beats, illegally searches or detains a Employee; or
- (4) provides odious working conditions or a severely polluted environment, resulting in serious harm to the physical or mental health of Employees; it shall be subjected to administrative punishment; if the said conduct constitutes a criminal offense, criminal liability shall be pursued according to law; if the Employee suffers harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages.

Article 89

If an Employer fails, in violation of this Law, to issue to a Employee a certificate evidencing the termination or ending of his employment contract, the labor administration authority shall order rectification. If the Employee suffers harm as a result of such failure, the Employer will be liable for damages.

Article 90

If a Employee terminates his employment contract in violation of this Law or breaches the confidentiality obligations or competition restrictions stipulated in his employment contract, and if such violation or breach causes his Employer to suffer loss, he will be liable for damages.

Article 91

If an Employer hires a Employee whose employment contract with another Employer has

not yet been terminated or ended, causing the other Employer to suffer a loss, it shall be jointly and severally liable with the Employee for damages.

Article 92

If a staffing firm violates this Law, the labor administration authority and other relevant competent authorities shall order it to rectify the situation. If the circumstances are serious, it shall impose a fine of not less than RMB¥1,000 and not more than RMB¥5,000 for each person, and the administration for industry and commerce shall revoke the business license. If the Employee(s) placed suffer(s) harm, the staffing firm and the Accepting Unit shall be jointly and severally liable for damages.

Article 93

An Employer that carries on business without the legal qualifications therefore will be pursued according to law for its legal liability for its illegal and criminal acts. If its Employees have already performed labor, the Employer or its investor(s) shall pay them labor compensation, severance pays and damages in accordance with the relevant provisions of this Law. If the Employees suffer harm as a result thereof, the said unit shall be liable for damages.

Article 94

If an individual that contracts for the operation of a business hires Employees in violation of this Law and a Employee suffers harm as a result thereof, the organization that employed such contractor shall be jointly and severally liable with the contractor for damages.

Article 95

If a labor administration authority, another competent authority or a member of its working personnel neglects its/his duties, fails to perform its/his statutory duties or exercises its/his authority in violation of the law, thereby causing harm to a Employee or an Employer, liability for damages shall be borne and the leading official directly in charge and the other persons directly responsible shall be subjected to administrative penalties in accordance with the law; if a criminal offense is constituted, criminal liability shall be pursued in accordance with the law.

CHAPTER 8 SUPPLEMENTARY PROVISIONS

Article 96

Where laws or administrative statutes contain, or the State Council has formulated, separate regulations concerning the conclusion, performance, amendment, termination or ending of employment contracts by and between institutions and those of their working personnel that are subject to the employment system, matters shall be handled in accordance with such regulations; in the absence of such regulations, matters shall be handled in accordance with this Law.

Article 97

Employment contracts concluded in accordance with the law before the implementation of this Law and continuing to exist on the implementation date of this Law shall continue to be performed. For the purposes of item (3) of the second paragraph of **Article 14** hereof, the number of consecutive occasions on which a fixed-term employment contract is concluded shall be counted from the first renewal of such contract to occur after t

he implementation of this Law.

If an employment relationship was established prior to the implementation of this Law without the conclusion of a written employment contract, such contract shall be concluded within one month from the implementation date of this Law.

If an employment contract existing on the implementation date of this Law is terminated or ends after the implementation of this Law and, pursuant to **Article 46** hereof, severance pay is payable, the number of years for which severance pay is payable shall be counted from the implementation date of this Law. If, under relevant regulations in effect prior to the implementation of this Law, the Employee is entitled to severance pay from the Employer in respect of a period preceding the implementation of this Law, the matter shall be handled in accordance with the relevant regulations that were in effect at that time.

Article 98

This Law shall be implemented from January 1, 2008.

(Unofficial Translation Prepared by Baker & McKenzie)