



RESEARCH BRIEF

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Labor Protections for Overseas Chinese Workers: a Role for Chinese Courts?

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Key Points:

- Chinese regulations provide considerable legal protections for Chinese workers dispatched abroad, but these rights are hard to realize in practice.
- Chinese labor agencies and employers seek to avoid forming a “labor relationship” with these workers, instead putting the responsibility for wages or work injury compensation on the entity located overseas—where it is often difficult for workers to enforce their rights.
- However, while not necessarily the norm, there are instances in which Chinese courts have held the parent company in China liable for the abuses suffered by workers abroad.

As policymakers and scholars seek to understand how China’s outbound investment is shaping the world, the impact on labor rights is too often neglected. To the extent it receives any attention, the focus is often on workers in the host country—

not the roughly 1 million Chinese laborers working abroad each year. While little empirical data exists, Chinese firms engaged in infrastructure projects generally seem to bring managers from China, and many employ a significant number of Chinese engineers and workers as well. Particularly for less-skilled laborers, the precise arrangements by which they are dispatched abroad varies widely. One common scenario is that a parent company in China establishes a subsidiary overseas to construct a particular project, and the parent—often together with a labor agency in China—recruits Chinese workers to send abroad. In other cases, an entity registered abroad will work with an agency in China to recruit and dispatch workers. The process may be further complicated by the use of informal, unregistered recruiters on the Chinese side or by arranging for individuals to work abroad without proper visas.

My primary interest is in what rights these overseas workers have and how those rights are (or are not) enforced. For migrant workers within China, strong legal protections exist on paper, but they often struggle to obtain proper wages, social insurance, safe work conditions, and compensation for

injuries.¹ What happens when these migrant workers travel not just to another province, but another country?

The specific questions considered by my research include: What Chinese laws and regulations govern the rights of these overseas workers? What labor issues or abuses commonly arise? What remedies are available in the host country (i.e. where the work is performed), under either Chinese or local law? And, what can be done back in China to enforce these workers' rights? This Research Brief sketches out some preliminary answers to these questions.

Legal protections and practical obstacles

In the era of China's planned economy, labor relations (like many things) was governed not by law but by government policy. The first "Labor Law" was promulgated in 1994 and China has consistently increased the number, scope, and level of detail of laws and regulations in this area. As part of a major legislative effort in 2008, China passed three laws—addressing labor contracts, procedures for enforcing labor rights through arbitration and the courts, and prohibiting certain forms of employment discrimination. In the subsequent decade, government-sponsored legal aid to assist workers in enforcing these rights also increased dramatically. To a large extent, China now looks quite similar to Western market economies that have statutory protections concerning minimum wage, working hours, workplace safety, discrimination, and workplace injuries that are to

be enforced through a system of labor arbitration and courts.

For Chinese workers dispatched overseas, the government's basic approach has been to mandate that any such workers go through a labor agency, which is regulated by the government. In 2002, the State Council required labor agencies dispatching workers abroad to provide written contracts, prohibited the collection of excessive fees, and mandated contributions to a reserve fund for workers who are not paid their wages.² As labor abuses nonetheless persisted, further measures required all labor agencies to be registered, and demanded they purchase work injury insurance, ensure workers have valid visas, pay wages and comply with local standards, and not collect security deposits from workers. Government bureaus were also instructed to handle any complaints lodged by overseas Chinese workers.³

Despite these protections, abuses still occur, such as collecting security deposits and fees, underpaying wages, and failing to compensate injured workers. These problems stem from gaps in the existing legal protections, a lack of compliance with these rules, and inadequate enforcement.

As in the domestic context, one serious obstacle to ensuring the rights of workers dispatched overseas is establishing precisely *who* has a "labor relationship" with the worker (i.e. the identity of the worker's "employer"), and who thus bears responsibility for the worker's wages, injuries, or other benefits. Companies generally seek to place

¹ AARON HALEGUA, WHO WILL REPRESENT CHINA'S WORKERS? LAWYERS, LEGAL AID, AND THE ENFORCEMENT OF LABOR RIGHTS (U.S.-Asia Law Institute, NYU School of Law, 2016), available at <https://www.aaronhalegua.com/chinasworkers>.

² Jingwai Jiuye Zhongjie Guanli Guiding (境外就业中介管理规定) [Provisions on the Administration of Intermediary Activities for Overseas Employment] (promulgated by the Ministry of Labor and Soc. Sec., Ministry of Pub. Sec.,

and State Admin. of Indus. and Commerce, May 14, 2002, effective July 1, 2002).

³ Duiwai Laodong Hezuo Guanli Tiaoli (对外劳务合作管理条例) [Regulations on the Management of Foreign Labor Service Cooperation] (promulgated by the St. Council, June 4, 2012, effective Aug. 1, 2012).

these obligations on someone else. With overseas dispatch, the companies and agencies in China diligently avoid establishing such a labor relationship, often compelling workers to sign contracts stipulating that *no* labor relationship exists and they are *not* the worker's employer. This practice is essentially sanctioned by law: the 2012 regulations governing labor agencies that send Chinese workers to foreign employers require only that the agency sign *either* a "labor" or a "service" contract with the worker.⁴ Many agencies thus opt for the latter. While it is possible that the overseas entity will sign a contract establishing a "labor relationship" with the worker, any rights under that contract will most likely need to be enforced in the host country—which, for a number of reasons, is no easy task.⁵ The crucial point, however, is that many workers lack a contract that clearly obligates a company or agency in China to guarantee certain rights or treatment while they work abroad.

Channels for redress

Under these circumstances, what happens to workers who are not paid in full or suffer injuries while abroad? Generally, the host country employer and other entities involved will encourage them to return to China where they promise to resolve the matter. Many workers listen, only to then discover that the company and agency in China disclaim any responsibility for what occurred abroad. So what next?

The police could potentially be helpful in cases where recruiters or agencies deceive workers into paying fees through false promises about the job abroad, but workers often lack sufficient evidence

to establish a crime or the recruiter may have disappeared. The Ministry of Commerce (MOFCOM) operates a complaint mechanism for issues involving overseas activities. While it is primarily designed to help businesses, it also accepts labor complaints; however, few workers have filed grievances there and the mechanism has not demonstrated much utility for those who have.⁶ MOFCOM's local offices are also charged with maintaining a reserve fund to pay overseas workers who are owed money by their labor agency or employer. However, Chinese scholar Liu Guofu was unable to find any examples of a worker collecting money from this fund, and I only detected a handful of such cases.⁷

A role for Chinese courts?

The lack of other effective means for seeking redress triggers the question: what role, if any, do Chinese courts play in disputes involving overseas workers? I have used the China Judgements Online (中国裁判文书网) database, maintained by the Supreme People's Court, to find cases involving these issues.⁸ Unfortunately, but not entirely surprisingly, the initial results do not suggest that the Chinese courts will be a panacea for workers abused overseas. Based on my initial research, not many workers file cases with the courts. When they do, the courts often mechanically apply the contractual provisions used by Chinese companies and agencies to disclaim any responsibility for the worker's experience while overseas.

In one such case, Mr. Yang sued the labor agency that dispatched him to the UAE because he was not paid overtime. The court dismissed Yang's case

⁴ *Id.*, Art. 23.

⁵ Aaron Halegua & Jerome A. Cohen, *The forgotten victims of China's Belt and Road Initiative*, WASH. POST, Apr. 23, 2019.

⁶ GUOFU LIU, ASSESSMENT OF THE MIGRANT WORKER COMPLAINT MECHANISM IN CHINA (International Labor Organization, 2018).

⁷ *Id.*

⁸ See Benjamin L. Liebman, Margaret Roberts, Rachel E. Stern & Alice Wang, *Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law*, UC SAN DIEGO SCHOOL OF GLOBAL POLICY & STRATEGY, 21ST CENTURY CHINA CENTER RESEARCH PAPER NO. 2017-01; COLUMBIA PUBLIC LAW RESEARCH PAPER NO. 14-551 (2017).

because his contract with the agency stated that the UAE entity was his employer.⁹ In a similar 2019 case, Mr. Wang signed an agreement with a Chinese firm based in Dalian to be a driver in Equatorial Guinea. When Mr. Wang returned from Africa, he sued the Dalian firm for unpaid wages. Although Mr. Wang's agreement with the Dalian firm contained provisions about the basic salary he was owed, that firm had executed a contract with the company in Equatorial Guinea stating that the latter was responsible for paying Mr. Wang's wages. On this basis, the Court dismissed the case.¹⁰

Perhaps more interesting, though, are the cases in which the Chinese courts have been able to provide a remedy for those workers who return to China, even despite contractual arrangements designed to shield domestic actors from liability. For instance, in a case decided in 2018, a Chinese laborer sued a Chinese state-owned company in Beijing after suffering an injury while working for its subsidiary in Papua New Guinea.¹¹ The Chinese parent disclaimed responsibility because the worker had signed an agreement stating that the overseas subsidiary was his employer. However, the court found that Chinese law prohibits foreign entities from directly recruiting workers within China, meaning that such an agreement must be illegal. Accordingly, the court invalidated this agreement

designed to shield the Chinese company, and instead held that the parent entity was the worker's employer and thus liable for his injury. In this particular case, the plaintiff's position was strengthened by the helpful fact that it was the parent company who paid for the insurance to cover work injuries abroad. Unfortunately, this is often not the case for many overseas workers.

Conclusion

In summary, my initial research suggests that the protections afforded to overseas workers by Chinese regulations have proven hard to realize in practice. However, in at least a few instances, Chinese courts have been able to look beyond the contractual language designed to insulate Chinese actors from liability and provide a remedy to workers who suffer abuses while overseas. But, how common are such cases? Are they mere aberrations or part of a growing trend? Might these legal decisions help spur other types of policy reforms to protect overseas workers? My future research will endeavor to answer these questions.

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⁹ Yang Jian'an Yu Xue Hong, Yan Guoli Zhuisuo Laodong Baochou Jiufen Zaishen Fucha Yu Shenpan Jiandu Mingshi Caidingshu (杨建安与薛红、竺国利追索劳动报酬纠纷再审复查与审判监督民事裁定书) [Yang Jian'an and Xue Hong, Yan Guoli Recovering Labor Remuneration Dispute for Retrial Review and Trial Supervision Civil Ruling] (Jiangsu Interm. People's Ct. May 26, 2014) (China), available at <http://wenshu.court.gov.cn>.

¹⁰ Wang Shengli Yu Beijing Shengdasen Guoji Gongcheng Chengbao Youxian Gongsi, Dalian Guohe Shangdasen Guoji Gongcheng Chengbao Youxian Gongsi Laodong Zhengyi Ershen Minshi Panjueshu (王胜利与北京盛达森国际工程

承包有限公司、大连国合盛达森国际工程承包有限公司劳动争议二审民事判决书) [Wang Shengli and Beijing Shengdasen International Engineering Contracting Co., Ltd., Dalian Guohe Shengdasen International Engineering Contracting Co. Ltd. Labor Dispute Second Instance Civil Judgement] (Dalian Interm. People's Ct. Aug. 2, 2018) (China), available at <http://wenshu.court.gov.cn>.

¹¹ Shuchi Zhang, *My Rights Have Been Left Behind in Papua New Guinea: the Predicament of Chinese Overseas Workers*, MADE IN CHINA JOURNAL, July–Sept. 2018, available at <https://madeinchinajournal.com/2018/10/18/my-rights-have-been-left-behind-in-papua-new-guinea/>.