

**From:** Scott Nova  
**Sent:** Thursday, December 06, 2007 3:22 PM  
**Subject:** China Labor Contract Law: Implementation Concerns

Dear [Licensee Contact Name],

As you probably know, China's new Labor Contract Law is scheduled to go into effect on January 1. Although the final version of the law, which was passed this summer, is not as strong in some regards as the original draft that was first proposed last year, it still represents a significant step forward in terms of protecting the basic legal rights of Chinese workers.

Unfortunately, there have been some disturbing developments related to the pending implementation of the law that we believe require the constructive intervention of licensees. The events include the following:

- **Violence against labor rights advocates:** In October and November, the office of the Shenzhen Dagongzhe Migrant Worker Center (DGZ Center) was twice ransacked by unknown individuals, resulting in significant property destruction. On November 20, the DGZ Center's legal representative, Mr. Huang Qingnan, was attacked by two armed men just after leaving the center. Mr. Huang was seriously injured. The DGZ Center has been playing an important and prominent role in educating workers about the new law, and it appears that these attacks were carried out in retaliation for the Center's efforts to promote workers' understanding of the protections that the new law will provide – although it is not known who is responsible.
- **Proposed standard contracts may restrict worker rights:** In October, the Dongguan City Labor Bureau released a draft of a standard labor contract in order to assist employers in implementing the new law. Of significant concern, however, the standard contract contains a clause that would permit employers to terminate workers, without compensation, if they cause "serious problems" including strikes or work stoppages. The language in the proposed contract appears to give employers broad discretion in defining "serious problems" and places strikes and stoppages in the same category as criminal activity such as theft and corruption. It is important to note that the new Labor Contract Law itself, in listing circumstances under which the employer can terminate a contract, does not mention strikes or work stoppages. Furthermore, although Chinese law does not protect the right to strike, participation in strikes is not considered a criminal act. There have been a growing number of strikes and stoppages in Dongguan over the past year, and we are concerned that the clause is an attempt by employers to curtail this type of collective protest activity. It is likely that most factories in Dongguan City will adopt this contract. This would be a step backwards for associational rights at Chinese factories because it places strikes and stoppages in the same category as criminal behavior and creates an affirmative legal right for employers to terminate workers for their participation in collective protest.

The standard contract also conflicts with the new law in two other key ways: 1) the contract suggests that a worker needs to give a reason for terminating his or her contract and implies that the employer may reject an employee's resignation if the employer does not approve of the reason(s) given—no such justifications are required by the Labor Contract law, provided that the employee gives 30 days' notice; and 2) in listing circumstances under which employees are protected from termination, the standard contract omits mention of workers who may suffer from an occupational illness and have not undergone a pre-departure medical assessment—according to the law, such workers may not be terminated.

- **Mass terminations in order to avoid new obligations:** Because the new law will require employers to provide long-term employees with permanent work contracts come January, many employers have been terminating workers in recent months. Terminations have taken the following forms: factories requiring workers to resign and then re-apply for employment at the factory, thus

forfeiting any seniority; employers requiring workers to sign new employment contracts with third-party employment agencies in order to continue working at the company, also resulting in a loss of seniority; mass layoffs; and factory closures and relocations. Some factories have reportedly terminated workers without paying proper severance, sparking protests in some areas.

Each of these events has serious implications for the level of compliance with university codes of conduct at facilities in China, particularly in the Shenzhen and Dongguan City areas, where collegiate production is concentrated. As an organization responsible for monitoring compliance with university codes, the Workers Rights Consortium recommends that licensees take the following steps:

1. Any licensee sourcing from Shenzhen should communicate with the Chinese government in Beijing as well as with the Shenzhen city government, to convey the following points: a) the government should condemn all acts of violence against worker rights advocates, particularly the recent attack on Huang Qingnan, and should investigate the attacks on Mr. Huang and the DGZ Center; b) the government should assist the DGZ Center in restarting its operations after the attacks and should provide Mr. Huang with appropriate medical treatment; and c) both the national and local government should take appropriate measures to ensure that organizations working to protect worker rights can operate in a safe environment, which is essential to improving the level of code compliance in Chinese factories.
2. Any licensee sourcing from Dongguan City should: a) contact the Dongguan Labor Bureau and express concern regarding the provision in the standard labor contract that would allow employers to terminate workers for participating in collective labor protests, as well as the other provisions that conflict with the Labor Contract Law; b) ensure that their suppliers do not use labor contracts that contain these or other provisions that restrict associational rights or other rights and benefits provided by Chinese law.
3. All licensees sourcing from China should consult with their suppliers to ensure that a) they are properly implementing the law, including providing all employees with contracts that guarantee, at a minimum, the rights and benefits required by Chinese law, and b) that they are not requiring employees to sign contracts that curtail their rights in any way.

This is a critical juncture for China, where the legal and political environment has long posed serious obstacles to ensuring respect for the basic worker rights embodied in university codes of conduct. The new law represents a positive, if limited, step by the government to improve worker protections, both in law and in practice. The manner of its implementation will set the tone for further reforms that might bring China closer to meeting international standards.

Please let me know how [licensee name] intends to respond to these matters. If you have already taken action with respect to these recent developments in China, please inform us accordingly. We will be reporting on these issues to our university affiliates shortly and would like to be able to note what actions are being taken by major licensees.

Sincerely,

Scott Nova

Scott Nova  
Worker Rights Consortium  
5 Thomas Circle NW  
Washington DC 20005  
ph 202 387 4884  
fax 202 387 3292  
[nova@workersrights.org](mailto:nova@workersrights.org)  
[www.workersrights.org](http://www.workersrights.org)