Practice and Problems: the Fixed-term Employment Contract in China

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I. Brief Introduction of the historical development

Under the Planned Economy Period (1953--1979), there was no fixed-term employment in China.

The only permitted enterprises were state-owned enterprises during the Planned Economy Period.
Under the Planned Economy Period, the government recruited employees and assigned the employees to work in the enterprises.

There were only regular employees (lifelong employment) recruited by the government and temporary employees recruited by the enterprises at that time.
From the adoption of the policy of reform and opening to the outside world in 1980s, the private economy started to emerge and develop quickly in China.

Although the state-owned enterprises and other forms of enterprises all operated in the Chinese market at the same time, the employment regulations that applied to them were different before 1995.
The Labor Law of China was put in force on January 1, 1995, aiming to establish new regulations suiting the development of market economy.

Under Labor Law of China, those who could have chance to enter into an open-ended employment contract are very limited.
The dominion of fixed-term employment contract since 1995 caused lots of problems.

Therefore, Labor Contract Law of China (LCL), which was in force from 2008, is trying to stabilize the labor relation and change the fixed-term employment practice, which has got lots of criticism from employers and some scholars.
II. General overview of the fixed-term employment in the labor market

i. Present state of the fixed-term employment

In present China, most of the employees are working for the employers under the fixed-term employment contracts in enterprises.
Before the enforcement of LCL, 70% of employment contracts are fixed-term contracts, and 80% of the fixed-term employment contracts are within a term of three years and most of them are within one year.
Some investigations in the provincial level have indicated the changes brought about by the new regulations of LCL. The fixed-term has been prolonged than before and the number of employees who work under open-ended employment contract is growing.
ii. The problems caused by short fixed-term employment contract in China

Although the situation is changing since the enforcement of LCL from 2008, the following problems still exist.
The first problem is that the interests of the employees could not be well protected under fixed-term employment.

The second problem is that the fixed-term contract practice has been resulting in the continuing rise of the labor disputes.
The third problem is that the short fixed-term employment contract results in the high mobility of the labor force, which also hinders the training programs of enterprises.

Under the short fixed-term employment contract, whenever there is a better chance, the employee is more likely to transfer to another company.
The fourth problem is that the practice of fixed-term employment contract is unfavorable for China to transform to an industrialized country.
The fifth problem which has been brought about by the fixed-tem employment is that it has made the labor relation in the state-owned become worse.
iii. The relationship among fixed-term employment contract, open-ended employment contract and atypical employment

Although open-ended employment contracts and fixed-term employment contracts exist simultaneously at the same time in China, the problem is that the small percentage of the open-ended employment contracts cannot function in the way it should do.
The actual situation is that those who work under the open-ended employment contract are the high-level employees in the private enterprises, and high-level and former lifelong employees in the state-owned enterprises.
Also, in China, the lack of effective collective bargaining system has made those who work under open-ended employment contract unable to enjoy the stable employment. Sometimes, they need to jump to the other companies to get a better payment.
The atypical employment in China, which includes dispatched laborers, part-time laborers, has been increasing for the past more than ten years.
After the enforcement of Labor Law, labor dispatching began to flourish because Labor Law has put more obligations upon employer.
In the process of the LCL legislation, many scholars suggested that labor dispatching should be strictly limited in China.

LCL limits the scope of labor dispatching to generally the temporary, auxiliary or substitute job post.
But, there is no clear definition on the meaning of “temporary, auxiliary or substitute” and the meaning of the word “generally”.
Under such situation, labor dispatching begins to grow more rapidly because the limitations on fixed-term employment contract and the open-ended employment contract are stricter than before in LCL.
Another reason of the prevailing use of dispatched workers is that the anti-discrimination law is not adequate and there is no sound anti-discrimination system in China.

At present in some monopolized enterprises, even 70% of the employees are dispatched workers.
In 2007, LCL contains the new regulations on part-time workers, which defines the part-time labor as employee who 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 (art.68).
The problem for part-time employees in China is that they have no equal protection with other employees.
III. Current regulations and problems concerning fixed-term contracts

i. Current regulations concerning fixed-term contracts

LCL has established new rules on the open-ended employment contracts. Article 14 of LCL stipulates that the following employees can get a lifelong employment:

- The Employee has been working for the Employer for a consecutive period of not less than 10 years;
or prior to the renewal, a fixed-term employment contract was concluded on two consecutive occasions.
Also, if an employer fails to conclude a written employment contract with an employee within one year from the date on which it starts using the employee, the employer and the employee shall be deemed to have already concluded an open-ended employment contract (art. 14).
In China, there is no special protection for those who are under open-ended employment contracts.

For those who are wrongfully discharged in violation of LCL, the employer shall pay damages to the employee at twice the rate of the severance pay provided for in Article 47 hereof (art. 87).
In theory, fixed-term employees and employees under open-ended employment contracts enjoy equal treatment.

Actually, fixed-term employees are treated equally in the private enterprises, while in the state-owned enterprises they were treated differently.
ii. The opinion of the scholars on the fixed-term employment contract in China

Many Chinese labor law scholars have voiced their opinions on the fixed-term regulations.

Some scholars believe that open-ended employment contract system does not suit China and is not favorable for Chinese economy.

Most of the scholars believe that the changes in fixed-term employment regulation in the LCL are right.
IV. Evaluation of current regulations on fixed-term contracts in labor policy and future prospects

i. Will the open-ended employment be a common practice in China?

The answer is negative at present for several reasons:

- first, the conditions on terminating open-ended employment contracts and fix-term employment contracts are the same and they are not very strict;
second, in accordance with the LCL and Labor Law of China, termination conditions of employment contract are mainly decided by the employer;

third, it is very hard for Chinese collective bargaining system to be really established in the expected future, therefore, no collective force could be formed to help to change the situation.
ii. The objections from the enterprises and the efforts to comfort them from the government.

After the promulgation of LCL, there has been lots of criticism from enterprises. It was reported that about 70% of enterprise owners are against the open-ended employment and hope to return to the rules established in Labor Contract Law of China in 1995.
Under the situation, the government has been explaining to the employers that open-ended employment contract system is not equal to the lifelong employment under Planned Economy Period.
At present, the government is satisfied to see that the results brought about by LCL: more written contract have been signed; the period of the employment contract has been prolonged; more employers start to pay for the social insurance for employees.
However, as mentioned in the essay, more employees have lost the possibility of establishing a direct employment relation with employers and have been pushed to the position of dispatched laborers, and even some workers have been forced to be part-time laborers for the unbalanced employment system in China.
iii. The future of fixed-employment contracts in China

China is now still in the initial stage of industrialization. In this period of development, China is basically an interest-oriented society, in which all are striving for their own interests and profits.

Chinese government legislates for the interests of the nation too. The legislation of LCL and the changes in limitation of fixed-term employment contracts in it were based on the situation that the labor relations are getting worse and the stability of the society may be influenced.
What the future of the fixed-term employment of China is? The answer, the author of this essay believes, depends on the future labor relation of China.

In the long run, the number of fixed term employees will slowly increase and the employees will be better protected.
THANKS