Changing the Direction of the Great Eastern Sea: 
Regulating Urban to Rural Migration in China

Abstract

The following paper examines the ability of the Chinese regulatory system to address the problems of migrant laborers as many return to their provincial hometowns in a reversal of the decades long rural to urban migration patterns. The paper concludes that many of the greatest problems, such as the portability of benefits, access to the courts, universal medical insurance, and the need to federalize a fractured social insurance system, have been long anticipated, but they have taken on a greater urgency in the new economic environment. Current federal reforms are likely to help, but local participation remains the greatest problem facing the Chinese regulatory system.

1. Introduction

The classical Daoist philosopher, Zhuangzi, told a tale of a small country frog that lived in a collapsed well. The little frog was happy in his well and invited the turtle of the eastern sea to come in.

Before the turtle of the eastern sea could get his left foot in, his right knee was already stuck. He teetered and fell back, and then began to tell of the sea. ‘A thousand li wouldn’t measure its breadth. A thousand fathoms wouldn’t plumb its depths. . . . Not to change or shift for an instant or ever, not to advance or retreat a little or a lot- that’s the happiness of the eastern sea. When the frog in the caved in well heard this, he spluttered in surprise and forgot who he was. . . .’

Since the beginning of economic reforms in China, peasants have been trickling from the wells and springs of the countryside to swell the ranks of its urban labor

force, until the power of the Chinese cities became as large as the eastern sea of Zhuangzi’s folk tale.

In fact, the rural to urban migration in China was the largest movement of people in human history and resulted in China becoming the third largest economy in the world. Migrant labor now constitutes 80 percent of China’s construction work force, 68 percent of its processing sector, 58 percent of its manufacturing sector, and 52 percent of its service industry. In order to channel, protect, and pacify this ocean of migrant workers, the government has implemented a number of laws and regulations, culminating in a flood of legislation during the first half of 2008. The Labor Contract Law and the Employment Promotion Law both became effective on January 1, 2008, followed quickly by the Labor Disputes Law, effective on May 1, 2008.

The environment for which these laws were designed has changed in ways that their authors could never have anticipated. A credit crisis that began in the United States during the summer of 2007 expanded into a global economic crisis.

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8 Larry Elliott, Credit Crisis—How It All Began, THE GUARDIAN, Aug. 5, 2008 (“By last summer, it was clear that the housing market in the US was in free-fall and that mortgage-backed securities were worth less- a lot less- than those holding them imagined. With nobody sure how big the losses might eventually be, the markets abruptly lost the two ingredients vital to keep them
in September and October of 2008. The Asian Development Bank estimates that the value of global financial assets, including stocks, bonds, and currencies, fell by more than $50 trillion dollars in 2008 as a result, the equivalent of the world’s gross domestic product for a year. The World Bank has predicted that the pain is far from over, anticipating that the global economy in 2009 will shrink for the first time since World War II, and trade will decline by the most in 80 years.

China, as the factory for the world, has been especially hard hit by this change in fortune, and migrant laborers have disproportionately felt the impact of the downturn. Beginning in January 2009, the Ministry of Agriculture estimated that 13 million, or 10 percent, of migrant laborers faced

vibrant-confidence and trust…Cheap and easy credit has been the lubricant for both the US and UK economies in recent years; without it they have started to seize up.”).

9 Edmund L. Andrews, Vast Bailout by U.S. Proposed in Bid to Stem Crisis, N.Y. TIMES, Sept. 18, 2008 (“Hoping to shore up confidence with a show of financial shock and awe, the Federal Reserve stunned investors before dawn on Thursday by announcing a plan to provide $180 billion to financial markets…But after an initial sense of relief swept markets in Asia and Europe the fear quickly returned.”).

10 Shanim Adam, Global Financial Assets Lost $50 Trillion Last Year ADB Says, BLOOMBERG, March 9, 2009.

11 Id.

12 Fleur Leyden and Neil Wilson, China Hits Lowest Growth in Decades, HERALD SUN, April 16, 2009 (“China's economy is heavily geared toward trade but much of that is export-dependent, it is the factory for the world but a factory increasingly owned by businesses in the USs and EEC.”); All Uphill for the Ox, N.Z. HERALD, Jan. 31, 2009 (“According to officials, more than 15,500 businesses in Guangdong province shut in the first 10 months of 2008. More than half of those went under in October. Many more are teetering. Thousands packed workers home without pay months ahead of the holiday.”); David Barboza, A Textile Capital of China Is Hobbled by a Downturn Gone Global, N.Y. TIMES, Feb. 27, 2009 (A warning from Beijing last December was dire, too: As many as two-thirds of the country’s textile and apparel companies could go broke.”).

13 A Great Migration into the Unknown, ECONOMIST, Jan. 31, 2009 (“China’s leaders are struggling to cope with the biggest upsurge of unemployment the country has faced in years. Migrants from the countryside, the main source of labor for export-oriented industries and construction sites, have been the hardest hit so far.”); All Uphill for the Ox, supra note 12 (“Officially, the urban unemployment rate has hit 4.2 percent. But that does not include migrant workers, who are not registered in the cities. The Chinese Academy of Social Sciences puts the real level at 9.4 percent, and expects it to rise.”); More Job Losses May Surface for Urban Workers, XINHUA, Jan. 4, 2009 (“Migrant workers, who often work in factories, are among the first to bear the brunt of the current global financial crisis.”).
unemployment.\footnote{14} By February, the Ministry had increased its estimate to 20 million.\footnote{15} By the end of March, the government concluded that as many as 23 million migrant workers were unemployed.\footnote{16}

The timing of the downturn coincided with this year’s annual spring festival, during which tens of millions of migrant workers return from the cities to spend the New Year’s Holiday with their families in rural China.\footnote{17} Unlike years past, many migrants had no job to which to return and chose to remain in the countryside.\footnote{18} The National Bureau of Statistics reported that of the 70 million who left the cities during the holidays, 20 percent, or 14 million, did not anticipate returning.\footnote{19} Of the 56 million who did return to the urban centers, 11 million

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\footnote{14} A Great Migration into the Unknown, supra note 13.
\footnote{15} Choi Chi Yuk, Chinese Government Tells Bosses to Give Warnings Before Job Cuts, S. CHINA MORNING POST, Feb. 11, 2009.
\footnote{16} China Jobless Migrants now at 23 Million, REUTERS, March 26, 2009.
\footnote{17} A Great Migration into the Unknown, supra note 13.
\footnote{18} Migrants’ Mass Return Tests China’s Rural Administrators, XINHUA, March 5, 2009 (“Xiaobao Village head Yang Qiping has been much busier since the Lunar New Year holiday ended last month. The village, under Baogong Township of eastern Anhui Province, a major source of China’s 130 million rural migrant workers, saw about 2,000 of its residents leave for factories along the coast in recent years. But the global economic downturn, which is hitting China, has cost more than 600 their jobs. Many returned home as usual for the Spring Festival, which fell on Jan. 26 this year. But this year, many stayed in Xiaobao…With the worsening crisis curbing China’s economic growth, some 20 million migrant workers have gone home to rural unemployment since fall, according to government estimates. The flood or returnees is testing China’s grassroots rural officials who—like the newly jobless they must help—suddenly face unfamiliar challenges.”).}
\footnote{19} Tan Yingzi, Migrants’ Job Situation in Cities Better Than Expected, CHINA DAILY, March 27, 2009 (“Over 70 million migrant workers returned home during the festival, of whom 56 million had left for jobs in cities after the traditional family reunion, the report said. The remaining 14 million stayed back and were either working around their townships, tilling their land or looking for lower-paid jobs.”); see also, China: Migrants, Recession, Land, 15 MIGRATION NEWS (U.C. DAVIS CENTER FOR GERMAN & EUROPEAN STUDIES) (“A combination of factory closures and rising grain prices may reverse rural-urban migration in 2009. Some 10 million migrants laid off from their urban jobs returned to their rural homes in December 2008, well before the usual Chinese New Year return period. The Year of the Ox begins on January 26, 2009, and many of the migrants who return to their villages for the holidays may remain there if they do not have urban jobs to which they can return.”); Government Reacts to Return of Rural Migrants, supra note 4 (“In Hubei Province, an estimated 300,000 rural migrants are not expected to return to the city in which they were formerly employed.”).}
remained jobless at the end of March 2009.\textsuperscript{20} Combining those figures with the estimate of 23 million who are unemployed, 11 million are currently looking for jobs in the cities, leaving 12 million who remain unemployed in the country. The new Chinese labor laws designed to protect an industrialized labor force working in the cities now have to extend their coverage to an unemployed majority living in the countryside. Their ability to do so will be examined in the following paper.

\textbf{2. A Contemporary Portrait of Urban to Rural Migration}

Han Weidong and Li Yanyan are a couple whose problems are representative of those faced by migrant workers.\textsuperscript{21} The two left Houxi, a small village in Henan province, in 2002 in order to pursue work in Dongguan, an industrial city in the Pearl River Delta that borders Guangzhou and Shenzhen. They were following a well-worn path. Before the economic boom, Dongguan had been a quiet fishing village on the Pearl River, but for the past 30 years its GDP has grown at an annual rate of 18 percent, fueled by the influx of migrants like Han and Li.\textsuperscript{22} Migrant workers constituted 80 percent of Dongguan’s population in 2008.\textsuperscript{23} The flood of migrants has begun to recede, however. Between the summer months of 2008 and January 2009, 40 percent of Dongguan’s migrant population left the city. 66,000 job have been eliminated since the spring festival, 440 factories are currently in unstable condition, and another 48,000 jobs might be lost if those factories fold.\textsuperscript{24}

\textsuperscript{20} See, \textit{China Jobless Migrants now at 23 Million, supra} note 16.
\textsuperscript{22} \textit{Id.}
\textsuperscript{23} \textit{Id.}
\textsuperscript{24} \textit{Pearl River Delta Cracks Down on Fugitive Bosses, XINHUA}, March 6, 2009.
Han and Li have been at the center of those ups and downs. In 2002, the couple registered as temporary residents of Dongguan, participating in the China’s Hukou system that distinguishes between rural and urban residents, providing different privileges and benefits depending on one’s status.

Traditionally, holders of urban residence cards received free education, public housing, medical services, and retirement benefits.25 Rural workers, on the other hand, received none of those benefits.26 Those restrictions are being progressively dismantled, at least at the National level, though local implementation of the new regulations varies greatly by province.27 In Dongguan, the hukou system prevented Han and Li from working toward a full pension collectible in their hometown, and required them to pay school fees for their two children.28

In August, Li went home with the family’s savings hoping to build a new house in Houxi. In September she returned to find that her employer, China International Marine Containers (Group) Co. Ltd., the world’s largest shipping

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26 *Id.* (“Government policies that allocated ‘free compulsory education, urban employment, public housing, free medical services, and retirement benefits’ to holders of urban *hukou* registration broadened the system’s urban/rural divide. . . . [T] hose carrying agricultural registration received none of these benefits. . . .”).

27 *See*, Aaron Halegua, *Getting Paid: Processing the Labor Disputes of China’s Migrant Workers*, 26 BERKELEY J. INT’L L. 254 (2008) (Comparing the local implementation of central regulations in Changsha, Harbin, and Yinzhou). *See also*, ANDREAS LAUFFS, *EMPLOYMENT LAW & PRACTICE IN CHINA* (2008) (“Under the current social insurance system in the PRC, migrant workers are usually excluded from some or all of the pension insurance, medical insurance, and other benefits to which local or urban workers are entitled. Even where migrant workers and local urban workers receive equal wages, migrants may receive unequal benefits to which local urban workers are entitled. Even where migrant workers and local urban workers receive equal wages, migrants may receive unequal benefits because they are not as secure as urban workers in terms of illness or injury. However, this should change in the future in light of the Employment Promotion Law’s prohibition on establishing discriminatory limits on the employment of migrant workers, and other laws currently in the drafting stage that will further protect the rights of migrant workers.”).

container manufacturer, had been hit by a massive slowdown in orders.\textsuperscript{29} They responded by firing or mandating extended vacations for two-thirds of its employees, including Li. Her husband, Han on the other hand, did not return to Houxi for the Spring Festival, and was able to maintain his job as a forklift operator, provided that he take a roughly 75 percent pay cut, from 4,000 yuan per month to 1,100 yuan per month.\textsuperscript{30} Unable to find work and unable to live in the city on their reduced income, Li has returned to Houxi with the couple’s son, while Han remains in the city with their daughter. Li was able to withdraw the money she had contributed to her pension account, but the contributions made by her employer were retained by the labor and social security agencies.\textsuperscript{31}

In Houxi, Li and Han are each entitled to roughly .06 hectares of land, allotted to them as rural residents in the hukou system.\textsuperscript{32} The couples combined total amounts to .13 hectares, less than one third of an acre. If Li and Han retained rights to the land, the small plot would barely be sufficient to support a family, but they subcontracted it to relatives when they moved to Dongguan. Li now contemplates taking it back from her relatives, an action that local officials fear may become more common and lead to an increase in land disputes.\textsuperscript{33}

The situation that Li and Han find themselves in can be seen as a test case for the ability of the Chinese regulatory framework to function during the unforeseen economic downturn and the resulting change in demographics and

\textsuperscript{29} Id.
\textsuperscript{30} Id.
\textsuperscript{31} Id; See infra p. 26 and note 104 (discussing pension withdrawals).
\textsuperscript{32} Id. Cf., VAN LUYN, supra note 2, at 34 (“The peasants of Shangdouyin work an average of 4 mu, or .66 acre”).
\textsuperscript{33} Chang Hongxiao, supra note 21.
migratory patterns. Are the systems of social insurance available in the same way to laborers who return to the provinces and those who remain in the city? If the social insurance remedies have not been adequately implemented in all areas of the country, what steps has the Chinese government taken to address the problem? Finally, what is the likelihood that this transformation in labor relations will have a lasting effect on the long term stability of the country or the health and welfare of its population?

3. Social Insurance Schemes and Other Relevant Regulations

Under Chinese law, there are five mandatory social insurance schemes: maternity insurance, work-related injury insurance, pension insurance, unemployment insurance, and health insurance. Some of the schemes, such as maternity insurance, work-related injury insurance, and pension payments for those workers retiring before 15 years of service, require benefits to be paid in a lump sum. Severance pay, though not a social insurance scheme, has been expanded recently and is also provided as a lump sum at the termination of employment under certain circumstances. While the arbitration of these claims may be difficult for those returning to the country, a problem that will be considered below, lump sum payments provide significantly less difficulty than

34 Trial Measures for Maternity Insurance of Staff and Workers of Enterprises, effective Jan. 1, 1995.
37 See Labor Contracts Law, supra note 5, at art. 46(1) (providing the conditions for severance payments); Measures regarding Economic Compensation for Breach and Early Termination of Employment Contracts, issued by the Ministry of Labor, effective Jan. 1, 1995, art. 2 (stipulating that severance payments are to be made as a lump sum).
those insurance benefits which require continued contact with the migrant worker.

Unemployment benefits and long term pension payments offer the most difficult logistical problems in this regard. Medical insurance, established for China’s urban workers,\textsuperscript{38} has been difficult to get for rural residents who found work in the cities, but their coverage is likely to be even worse once they return to the countryside.\textsuperscript{39} The medical insurance scheme responsible for that disparity is currently undergoing examination and revision at the national level.\textsuperscript{40} The analysis that follows will look at the special hurdles that migrant workers face in the current climate in relation to their unemployment benefits, pension claims, and medical insurance. Also considered will be three additional elements of the Chinese regulatory scheme that greatly influence the lives of returning migrant laborers: (1) the arbitration system, under which they will make claims to their social insurance benefits; (2) the recent property reforms that have effected the status of the rural landholdings to which many hope to return; (3) the economic stimulus package recently introduced by the Chinese government through which they hope to stimulate growth in the rural sector of the economy.

4. Unemployment Insurance

In the current economic climate, continued access by migrant workers to unemployment insurance is of obvious concern. Unemployment insurance, like

\textsuperscript{38} Decision of the State Council on Establishing the Urban Employees’ Basic Medical System, effective December 14, 1998, translated in LAWINFOCHINA (last visited on April 10, 2009) (P.R.C.) [hereinafter Decision on the Basic Medical System].

\textsuperscript{39} Therese Hesketh, et al., Health Status and Access to Health Care of Migrant Workers in China, 123 PUB. HEALTH REP. 189, 190 (2008) (“There were large differences in health insurance coverage among the three groups: 58% of urban residents, 9.5% of rural residents, and 19% of migrants had coverage.”).

\textsuperscript{40} NDRC to Support Rural Health Care Reform, XINHUA, Apr. 8, 2009 (“China’s chief economic planning body, the National Development and Reform Commission (NDRC) will put more effort into building and perfecting a rural health care system.”).
most social insurance schemes in China, is governed by national law, but administered by local officials in accord with local standards. Employers are required to contribute two percent of the business’ total payroll to the unemployment insurance fund on a monthly basis, with employees required to contribute one percent of their total salary. Benefits are not dependent on the salary of the worker, but are set at a flat rate, depending on the locality. The duration of the unemployment payments ranges from one to two years, depending on the length of time the worker has contributed to the insurance fund.

Originally, migrant workers were not eligible to receive the same level of coverage as that provided to urban workers, though the government has taken important steps to rectify that disparity. In 2006 the State Council issued its Opinion on Solving Problems of Migrant Workers, which encouraged the government to arrange unemployment insurance for citizens without urban hukou

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41 See, Measures for Application for and Payment of Unemployment Insurance Money (promulgated by the Ministry of Labor & Soc. Sec., Nov. 8, 2000, effective Jan. 1, 2001); Regulations of Beijing Municipality on Unemployment Insurance for Staff and Workers of Enterprises, effective Nov. 1, 1999 [hereinafter Unemployment Insurance Measure].
42 Id.
43 LAUFFS, supra note 27, at 132-3 (citing Regulations on Employment Insurance, effective Jan. 22, 1999, art. 5). See also, Government White Paper: China’s Social Security and Its Policy, Information Office of the State Council, Sept. 2004 (P.R.C.), http://www.china.org.cn/e-white/20040907/index.htm [hereinafter, Social Security and Its Policy] (The people’s governments of provinces, autonomous regions and municipalities directly under the Central Government determine the unemployment insurance allowance in their own localities, which shall be lower than the minimum wage in their localities but higher than the minimum living allowance for urban residents.).
44 Social Security and Its Policy, supra note 43 (“An unemployed person whose former employer and himself or herself have continually paid unemployment insurance premiums for more than one year but less than five years is eligible for benefits for up to 12 months; if they have paid the premiums for more than five years but less than 10 years, the unemployed person is eligible for benefits for up to 18 months; if they have paid the premiums for more than 10 years, the unemployed person is eligible for benefits for up to 24 months.”).
45 Unemployment Insurance Measure, supra note 41, at art. 28 (“Where a farmer working as a contractual worker whose labor contract conforms to the Regulation but is not renewed at expiry or whose labor contract is rescinded in advance applies for a lump sum of living subsidies, the matter shall be handled in accordance with the measures of the present province, autonomous region, or municipality directly under the Central Government.”).
The Employment Promotion Law, effective January 1, 2008, reinforces the national government's commitment to providing unemployment insurance to all citizens without regional distinction by stating, "[t]he state shall establish a sound unemployment insurance system so as to ensure the basic living of the unemployed persons and promote their employment." Further, a draft law on social insurance is currently being considered by the National People's Congress "which specifies a common right for citizens, urban and rural alike, to pay premiums and enjoy old-age pensions and insurance for medical care, work injuries, unemployment and childbirth." The draft Social Insurance Law has been criticized as not providing sufficient details concerning how the divided rural and urban systems will be integrated, however.

Until that integration takes place, migrant workers without urban hukou certificates receive their unemployment benefits as a lump sum, and as a result are

46 LAUFFS, supra note 27, at 130 (citing Relevant Opinion regarding Solving Migrant Workers Problems, issued by the State Council, March 27, 2006).
47 Emp. Prom. Law, supra note 6, at art. 16.
49 Commentary on the Draft Social Insurance Law 14 (EU-China Social Security Reform Co-operation Project), available at http://www.eucss.org.cn/fileadmin/content/pdf/C1_report/ITAT_Comment_on_SIL_EN.pdf [hereinafter Commentary on the Draft Social Insurance Law] ("The Draft Law is silent on the circumstances when organizations and individuals should contribute to Social Insurance, and to which particular scheme. For example the law could make participation in basic social insurance mandatory for any enterprise legally registered as a company…and could require registration in the basic insurance schemes for enterprises or public organizations if their individual hukou is that of the company. Those whose hukou is not the same as the company hukou could be given the option of enrolling in the basic scheme or a supplementary scheme if that is available but with a default option for the basic enterprise scheme.").
likely to avoid many of the problems of portability that would be faced by a registered urban worker that wanted to transfer jobs from one region to another.\textsuperscript{50} The greatest problem that these workers face is the condition that they receive their lump-sum payment in the region in which they were employed, rather than any other province to which they may have traveled.\textsuperscript{51}

Migrants with urban hukou certificates who want to return to their rural provinces or who want to move from one city to another face greater difficulties. The current regulations for urban workers state that

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[i]n the event that the entity where an unemployed person worked prior to his unemployment and his own household registration do not fall within the same region for the overall arrangement of unemployment insurance, the payment of his unemployment insurance money and the provision of his other unemployment insurance treatments shall be negotiated between the labor security administrative departments of the two different regions, so as to clarify the specific measures. If they fail to reach an agreement through negotiation, the aforementioned matters shall be determined by the labor security administrative department at the higher level.\textsuperscript{52}
\end{quote}

The cooperation between provinces required for these negotiations is hampered by the lack of shared informational systems.\textsuperscript{53} Moreover, there is internal

\begin{footnotesize}
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\item Milan Vodopivec and Minna Hahn Tong, \textit{China: Improving Unemployment Insurance} 13 (Soc. Protection & Lab.: The World Bank, Discussion Paper No. 0820, 2008), available at http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0820.pdf. ("Benefits are paid monthly except to rural contracted employees recruited by enterprises, who are given a lump sum living allowance if they have had over one year of continuous service and their employers have paid the [unemployment insurance] contribution.").
\item See Unemployment Insurance Measure, supra note 41, at art. 28.
\item Id. at art. 21.
\item Id. ("To help migrant workers, inter-provincial benefit information systems could be developed to accommodate the needs of workers who became unemployed in one city and are looking for employment in another city.").
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institutional pressure against accommodating migrant workers, as benefit claims that exceed the reserves available in the insurance fund are to be provided for by the local governments, themselves. Provinces that once gained from the remittances sent by their migrant laborers are unlikely to be excited to see them returning, unemployed and needing government support. These forces work to depress worker participation in the program, though the World Bank has concluded that worker education on their rights and benefits helps to counteract these depressive forces.

The draft Social Insurance Law seems as if it will establish a unified system that may eliminate these cross border portability problems. Proposed Article 7 states that, “The social insurance administration under the State Council shall be in charge of the national social insurance administration. The social insurance administration under Peoples’ Government above the county level shall be in charge of the social insurance administration in its administrative area.”

The collaborative working group between the European Union and Chinese

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54 Social Security and Its Policy, supra note 43 (When the unemployment insurance funds in areas that have participated in the social pool program are not enough, the shortfall shall be made up by unemployment insurance regulating funds or subsidized by local financial budgets.”); but see, China: Improving Unemployment Insurance, supra note 50, at 14 (“Local governments cover the administrative costs of UI program operations but normally do not finance the UI program directly. For situations in which the UI fund is insufficient to pay out the current year’s expenditure, the regulations stipulate that the UI reserve fund accumulated from previous years, sale of government bonds, and UI pooled adjustment fund should be used to cover the deficit. Local government subsidies are to be used only as a last resort once the other three sources are depleted.”).

55 China: Improving Unemployment Insurance, supra note 50, at 30 n.13 (“The study of the six model cities, some of which have achieved nearly full Unemployment Insurance coverage among the urban labor force, showed that they share the common feature of proactive dissemination of information. The cities have compiled the relevant UI policies and procedures into free leaflets and published brochures in newspapers and other media as well as through the Internet. The materials help answer basic questions on labor and social security policies, how to apply for UI benefits, and employment training services. These activities have helped boost participation in the UI program, improve contribution collection rates, and raise public awareness.”).

56 Social Insurance Law (Draft), supra note 48, at art. 7.
officials stated in their analysis that the rhetoric of unification is not sufficiently
detailed to overcome the current debilitating fragmentation, however.57

In addition to the efforts at integration present in the draft Social Insurance
Law, the national government is developing a monitoring system intended to
function as an early warning device for unemployment concerns.58 In January
2009, six cities in the Yangzi Delta were designated as trial areas for the
implementation of the early warning system, with another 11 cities in Zhejiang
province expected to participate by the end of the year.59 Based on this early
warning system, the national government has sent out a number of directives and
guiding opinions to local governments concerning the implementation of
unemployment benefits in the wake of mass layoffs. On August 7, 2008, the
Ministry of Human Resources and Social Security issued the “Notice Concerning
Further Bettering the Work on Unemployment Insurance and Minimum Wages,”
in which local governments were encouraged to enforce the unemployment
benefits,60 but were also given a somewhat free hand in determining what “the

57 Commentary on the Draft Social Insurance Law, supra note 49, at 1 ([T] the draft law
represents largely a codification of existing schemes and principles and does not address as
fundamentally as it might the two core issues which affect implementation- namely clarity on
policy in key areas and reducing fragmentation in a system where the detailed implementation of
social insurance has been filled in by sub-national government regulation building on a national
framework of state Council decrees on individual social insurance schemes.”).
The draft law does not take advantage of the opportunity provided to reduce system fragmentation
and provide policy coherence even in areas where there is wide consensus on the way forward
(e.g., raising the pooling level and unifying contribution collection).
58 Emp. Prom. Law, supra note 6, at art. 42 (“The people’s government at or above county level
shall establish an unemployment forewarning system, and implement preventive measures,
adjustment and control concerning any comparatively large-scale unemployment which may
occur.”).
60 Notice Concerning Further Bettering the Work on Unemployment Insurance and Minimum
Wages (promulgated by Ministry of Human Res. and Soc. Sec., Aug. 7, 2008, effective Aug. 7,
2008) translated in ISINOLAW (last visited Feb. 12, 2009) (P.R.C.) ([V]arious areas shall continue
to better the work concerning the coverage expansion of unemployment insurance and collection
of insurance funds, and distribute unemployment benefits to the unemployed that meet
level of unemployment insurance benefits [should be] based on the local reality
[with] the specific adjustment range. . .to be determined by people’s governments
at the provincial level.”61

On January 23, 2009, four Chinese agencies, the Ministry of Human
Resources and Social Security, the All China Federation of Trade Unions, the
China Enterprise Confederation, and the China Enterprise Directors Association,
released a far more detailed directive intended to guide local governments,
employers, and employees during the global economic crisis. In the six part
“Guiding Opinions on Stabilizing Labor Relations under the Current Economic
Situation,” the government frankly addressed the increasing problems in labor
relations brought on by the economic downturn and encouraged local
governments to adopt creative solutions.62 The opinion acknowledged that

Since last year, with the impact brought by the
international financial crisis, China’s enterprises,
especially those export-oriented small and medium-
sized labour-intensive enterprises, have encountered
difficulties in operation. Some enterprises have
stopped their production and closed down. There
have been new changes emerging in the realm of
labour relations. The demand of enterprises for
labourers has shrunk, and massive layoffs and
phenomena of employees’ awaiting job assignments
or encountering suspension of employment have
increased. Cases of wages in arrears, cessation of
insurance contribution, or even running and hiding
away from the problems of wages in arrears have
continued to occur…63

61 Id.
62 Guiding Opinions on Stabilizing Labor Relations under the Current Economic Situation
(promulgated by Ministry of Human Res. and Soc. Sec., All-China Fed. Of Trade Unions, China
12, 2009) (P.R.C.).
63 Id.
It encourages the local Labor and Social Security Departments to do what they could to “enhance employment services; enable the insurance for unemployment to fully perform its function of promoting employment; and help and encourage those enterprises in difficulties to stabilize job vacancies as far as possible.”64 But it also acknowledges the difficulty of achieving that stabilization, stating that local government should address the “real situation” and implement “measures such as on-job training, rotation of duty shift and leave shift and wage negotiation so as to pay the greatest efforts to avoid layoffs or keep the scale of layoffs low. . . .”65 If layoffs were unavoidable, companies “should be guided and supervised on formulating the layoff plans in compliance with the law. . . .”66 If the employers do not have sufficient funds to clear their debts and provide a one time payment to laid-off workers as a severance package, they companies are encouraged to “negotiate with trade unions or employees to pay for the economic compensations by installments or by other modes of payment.”67 The document repeatedly calls for cooperation between government agencies, employers in financial trouble, and vulnerable employees in order to harmonize labor relations and prevent disputes.

Many local governments have responded to the new directive by reducing the social insurance contributions that are required from businesses in their districts. While this tactic reduces the amount of unemployment benefits in the overall system, it is hoped that by reducing the burden on companies before layoffs, fewer workers will be cut, and less money in the system will be needed.

64 Id.
65 Id.
66 Id.
67 Id.
Guangdong, for instance, has lowered social insurance premiums by 15 billion yuan ($2.2 billion), which the provincial government believes could save 1.9 million jobs.68 Shenzhen has allowed corporations to reduce their social premiums by up to 50 percent in order to provide more liquidity in the company’s day to day operations.69 Hubei is using unemployment benefits to subsidize at risk companies instead of at risk employees, hoping that by offering money to companies who provide vocational training to its employees for in-house re-employment, the employees will not have to be fired in the first place.70 This tactic is unusual, as previous regulations required unemployment benefits to go directly to jobless individuals as living subsistence or subsidies for technical training, not to corporations to prevent joblessness.71

In addition to the redirection of unemployment funds from individuals to companies, there is speculation that the Labor Contract Law and other provisions designed to protect workers are being ignored by distressed companies with the tacit approval of local governments.72 One manager of a 700-employee textile factory in Dongguan reported that government officials “don’t say you don’t have

69 Shenzhen Slashed Social Insurance Rates, ISINOLAW, Feb. 17, 2009 (“From February until January next year the work injury insurance rate will be reduced by 50 percent and the parts of comprehensive medical insurance, inpatient medical insurance and medical insurance for migrant workers paid by employers will be reduced by 10 to 30 percent, according to the new policy. However, the portions paid by individuals remain unchanged.”).
70 Government Reacts to Return of Rural Migrants, supra note 4.
71 Id. (“One new policy effective as of January 1 in Hubei is to use unemployment insurance to subsidize companies that offer vocational training for in-house re-employment and reward enterprises that have paid insurance premiums for more than two consecutive years without layoffs. Under current regulations, unemployment insurance can only go to the jobless as living subsistence or subsidies for technical training.”).
72 “Hostile” Forces Stirring up China Jobless: Official, REUTERS, Feb. 18, 2009 (“After enacting a landmark labor law last year giving greater protection to the country’s 130 million migrant workers, labor rights groups have accused officials of turning a blind eye to violations amid economic hardship to help factory owners survive the financial crisis.”).
to follow the labor laws, but not it’s ‘one eye open, one eye shut. . .,'” concerning labor law violations.\(^{73}\) Others report that rotating unpaid leave of many workers is being substituted for layoffs in order to avoid paying unemployment benefits.\(^{74}\)

Clearly, the political desire to enforce unemployment benefits is weakening in the face of economic realities. The social safety net of unemployment insurance had always been a more of a tightrope for migrant workers. But just as the restrictions of the hukou system have begun to loosen, the benefits provided by urban resident status have started to recede. A pragmatic flexibility in the face of economic hardships has allowed local governments to underwrite companies rather than workers, and to bend the restrictions on layoffs in favor of rotating unpaid leave. There are worries that the social insurance fund may be exhausted in some areas if a strict reading of unemployment benefits is maintained.\(^{75}\) Migrants will clearly have to navigate these unforeseen shoals with creativity and determination if the benefits guaranteed by law are to be realized in reality.

\(^{73}\) Carol Huang, *Migrant Workers Struggle as China’s Factories Slow*, CHRISTIAN SCI. MONITOR, Jan. 28 2009, at World 4.

\(^{74}\) James Fallows, *Interesting Times*, THE ATLANTIC, April 2009, at 54, 56 (“The electronics supplier Foxconn, whose gigantic compound in Shenzhen turns out components for Apple, Dell, HP, and countless other companies and which had recently employed more than 250,000 workers, sent all its employees on a one-month unpaid furlough late last year.”); *China’s Hard Landing*, FORTUNE, March 16, 2009 (“TMSC, the world’s largest contract computer-chip maker, has a factory in suburban Shanghai that opened in 2003; last month it started "involuntary unpaid leaves" of a few days a month for the majority of its 1,500 workers.”).

\(^{75}\) *Government Reacts to Return of Rural Migrants*, supra note 4 (“With an influx of 300,000 rural migrants back from China’s cities in the past two months, the central Hubei Province has ordered some companies to seek approval for job cuts to stabilize the job market. . . . Struggling small businesses in counties and townships were urged to refrain from cutting jobs intensively so as to ease the burden on the local government-financed unemployment insurance fund.”); see also, Jing Ulrich, *A New Direction in Social Welfare: China’s National Healthcare Reforms*, HANDS-ON CHINA REP. (J.P. Morgan, New York, N.Y.), March 9, 2009 (“According to a senior member of the Legislative Affairs Commission of the NPC Standing Committee, there are currently funding surpluses in the social insurance accounts of certain regions. However, the lack of fund flows between regions has led to funding imbalances.”).
5. Arbitration

The new Labor Contract Law provides a number of protections for workers, including provisions that their contracts be in writing, that severance benefits be paid at the end of fixed term contracts, that negotiations must first take place between the union and the employer before any mass layoffs take place, and that severance be paid at the rate of one month’s pay for every year worked at a company. The new Labor Disputes Law, effective on May 1, 2008, allows individuals with conflicts arising out of the Labor Contract Law to prosecute their dispute in court.76 Should any disputes arise concerning layoffs, severance pay, or pension distribution due to the economic situation, the legal system, as it is written, has powerful enforcement mechanisms to assist laborers with their claims. In practice, however, migrant workers, especially, may have trouble finding redress.

The Labor Disputes Law allows claims to be brought over the following disputes:

(1) Disputes arising from the confirmation of an employment relationship;
(2) Disputes arising from the conclusion, performance, amendment, termination or ending of an employment contract;
(3) Disputes arising from dismissal due to frequent absence without leave or other reasons, or from a formal or de facto resignation;
(4) Disputes arising from working hours, rest and leave, social insurance, benefits, training or labor protection;
(5) Disputes arising from labor compensation, medical bills for a work-related injury, severance pay or damages, etc.;

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76 Employment Disputes Law, supra note 7.
(6) Other employment disputes specified in laws or statutes.\textsuperscript{77} The statute of limitations under the Employment Disputes Law has been extended from 60 days to one year,\textsuperscript{78} and the damages have been increased, recently, as well. Under prior regulations, damages related to severance claims were usually the equivalent of 50 percent of the severance payment.\textsuperscript{79} The Labor Contract Law now stipulates that if there is a delay in awarding severance pay, “the Employer shall be ordered to additionally pay damages to the worker at a rate of not less than 50 percent and not more than 100 percent of the amount payable.”\textsuperscript{80} Clearly, the law is turning in favor of the workers.

A number of difficulties are present for those who want to press a claim in this climate, however. Jurisdiction may be the biggest problem for migrant workers who have returned home or who wish to return home. Although anyone who has an employment dispute can submit an application for a hearing to the relevant Employment Dispute Arbitration Commission. The location of that commission “is determined by the place of performance of the employment contract or the location of the employer’s address.”\textsuperscript{81} So any of the twenty million migrant workers who are currently unemployed and believe that they were terminated in violation of the stringent requirements in place after the Labor Contract Law will have to bring their case in the city or town where they no longer have a job. Even if the employer was a large corporation that had a

\textsuperscript{77} Employment Disputes Law, \textit{supra} note 7, at art. 2 (1-6).
\textsuperscript{78} \textit{Id.} at art. 27.
\textsuperscript{79} LAUFFS, \textit{supra} note 27, at 197 (citing Measures Concerning Compensation in Connection with Violations of Provisions of the Labor Law, effective May 10, 1995, art. 10).
\textsuperscript{80} Labor Contract Law, \textit{supra} note 5, at art. 85.
\textsuperscript{81} Employment Disputes Law, \textit{supra} note 7, at art 21.
business address in their home province, “[i]f one party applies to the labor arbitration commission of the place where the employment contract was performed and the other to that of the place where the employer is located, the labor arbitration commission of the place where the contract is performed shall have jurisdiction.”82 In other words, an employer who has offices in a laborer’s home province could make the migrant return to the province where the labor was performed in order to bring a trial over alleged labor violations.

The process for arbitration can be especially onerous for migrant workers, as well. Even before the economic downturn, the courts had a reputation for taking an extraordinarily long time to reach a decision. As recently as January 2009, the government has reiterated its commitment to carrying out reviews of wage disputes under the principles, “quick establishment of a case, quick launching of an investigation, quick vetting and quick settlement. . . .”83 It introduced expedited regulations in 2006 aimed at easing the burden of litigation for migrant workers,84 and just recently issued a guiding opinion to encourage the resolution of cases at the grass roots level, in an attempt to avoid litigation,

82 Id.
84 See LAUFFS, supra note 27, at 310 ([U]nder t]he 2006 Employment Dispute Interpretation...courts must accept as ordinary civil claims cases directly filed by employees for delayed payment of wages or salary if the employees can submit a written, employer-provided notice promising payment of the delayed wages or salary. The new change of the 2006 Employment Dispute Interpretation provides an expedited procedure for resolving disputes over delays in wage payments, which is mainly directed at cases involving migrant workers.”) (citing 2006 Employment Dispute Interpretation, Art. 3.).
altogether. Nevertheless, litigation will often times need to be brought, and the process by its nature takes a long time.

The current economic climate has only increased the burden that the courts face. The new Labor Contract Law introduced more sources of litigation at the exact time when more employers were tempted or forced to violate labor contracts. "Many local officials admitted the new Labor Law was great in protecting migrant workers’ rights, but it also unleashed a flood of arbitration and labor disputes." In response to government limitations on mass firings some bosses are finding creative ways to avoid firing workers, even if it violates the terms of the labor contract.

Shortly after 34-year-old Li Yanbing was told she was among the staff being let go from a detergent maker in Shenyang, she won a reprieve of sorts. The local government determined that of the 20 people Xian Kaimi Co. intended to dismiss - half its staff - only four would be eligible for public jobless benefits. That bureaucratic impediment kept Ms. Li and most of the group employed, since firing them without benefits would leave Kaimi susceptible to a lawsuit. Government support cut both ways at Kaimi. Officials registered no objection when, instead of reinstating Ms. Li to her management post and $440 (U.S.) monthly salary, Kaimi

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85 Notice on Doing a Good Job in Implementing the Regulation on the Implementation of the Employment Contract Law (promulgated by Ministry of Human Res. and Soc. Sec., Sept. 22, 2008) translated in ISINOLAW (last visited Feb. 12, 2009) ("They shall insist on the guideline of ‘giving priority to prevention, the grassroots level and mediation,’ innovate in the mediation forms and do the mediation work through various channels, at multiple levels and in diversified forms so as to try to solve about half of the petty cases through mediation.").

86 See LAUFFS, supra note 27, at 321 (Many critics have pointed out how time-consuming the employment dispute resolution process is in the PRC, even if the two parties skip the consultation and mediation steps. For example, the Labor Arbitration Tribunals may take up to 45 (or 60) days to make a decision, and if a party contests it, the courts routinely take six or more months to judge the case.").

87 Pearl River Delta Cracks Down on Fugitive Bosses, supra note 24.
assigned her to a commission-based job finding new detergent distributors.\footnote{James T. Aredy & Ellen Zhu, \textit{China Scrambles to Stem Rise in Jobless Ranks; Government Steps in as Arbiter between Workers, Companies, on Fears of Social Unrest}, WALL ST. J., Jan. 26, 2009.}

Evidence also indicates a number of bosses have fled in order to avoid paying the wages and social insurance benefits that are in arrears.

The head of the Jianglong Group, one of Shaoxing’s biggest dye factories, ran off in November, leaving behind 4,000 workers and more than $200 million in debts. Creditors pleaded with the government for help, and workers have demonstrated. Shen Ye, the owner of the Jinyu Textile Import and Export Company, whose orders are down as much as 80 percent, said some struggling factories were desperate but were afraid to seek bankruptcy. “If a factory files for bankruptcy, it has to pay back taxes to the government, salaries to the employees or money owed to the bank,” he said. “What’s left goes to private lenders. How much can be left? None! In order not to be beaten to death, they have to run.”\footnote{David Barboza, \textit{A Textile Capital of China Is Hobbled by a Downturn Gone Global}, N.Y. TIMES, Feb. 27, 2009.}

The increase in regulations coupled with the simultaneous downturn in the market has led to a nearly two-fold increase in labor disputes being submitted to the court since 2007.\footnote{China Vows to Address Public Complaints to Maintain Social Stability, XINHUA, Mar. 5, 2009 (“China’s labour dispute lawsuits nearly doubled last year over 2007 after the new labour contract law took effect and because of the economic downturn, according to the Supreme People's Court.”).} Not only has this led to a tremendous backlog of cases,\footnote{Aredy & Zhu, \textit{supra} note 88 (“Ms. Li isn't satisfied and wants a local labour arbitration commission to take up the case, although she isn't hopeful. ‘They said there are too many cases of this kind,’ she says.”).} but some litigants, including Ms. Li from above, have been turned away because “there are too many cases of [her] kind” for the local labor arbitration commission to review.\footnote{Pearl River Delta Cracks Down on Fugitive Bosses, \textit{supra} note 24 (“At the end of 2008, Guangzhou labor department's arbitration cases had been booked to the end of 2009,” said Ding Zhiqiang, deputy-head of Guangzhou Stability Maintaining Office.”).}
Some local governments are taking matters into their own hands in an attempt to deal with the situation. Shenzhen, in particular, has taken a number of creative steps in order to deal with the problem of defaulting businesses and fugitive bosses. The default situation in Shenzhen may be particularly severe. At the end of 2008, the city reported that 39,200 workers making claims against 370 businesses for wages in arrears totaling 102 million yuan. To deal with the problem, on June 1, 2008, Shenzhen introduced new regulations requiring every enterprise in Shenzhen to contribute 400 yuan per year to a local labor department fund for every worker on their payroll. The fund was created to insure against companies defaulting on salaries or social insurance. The fund has been a success, helping to pay back 25 million yuan in 48 cases in the fourth quarter of 2008, alone. On November 1, 2008, Shenzhen went further by creating a blacklist to punish fugitive bosses. “[T]hose with bad credit will be placed on a blacklist and prevented from bidding for government projects or government procurement. They are not allowed to enjoy preferential policies or register new enterprises for five years in the city.”

Shenzhen seems to be taking the lead in progressive ordinances designed to protect workers’ rights. Mark Frazier offers a word of caution, however, for those who hope such diligence may be adopted in other regions. “Although courts can exert a significant amount of pressure on firms to remit social insurance fees, local governments, which control the staffing and budgets of the

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93 Id.
94 Id.
95 Id.
96 Id.
courts, can strongly attenuate the courts’ autonomy, particularly in sensitive
bankruptcy proceedings.”97 As local officials are often intertwined with the
businesses that are facing fiscal problems, the impulse for harsh measures against
the failing businesses can politically dangerous for the courts. One assumes,
however that Shenzhen has not adopted its new measures out of a purely altruistic
spirit. The business climate itself demands worker protection in order to function.
There is currently such great pressure from both above and below, that is from
both the national government and the workers themselves, that local governments
may be more motivated than ever before to prevent abuses, bending in order to
preserve business without breaking in a way that would allow workers to be
fundamentally voiceless and disenfranchised.

6. Pension Benefits

Some migrant returnees may be eligible to receive pension payments, but
coordination across political boundaries remains difficult. The pension system in
China is mandated by federal law but is not managed as a unified federal
program.98 Instead, it is “an agglomeration of some two thousand ‘social pools’
(shehui tongchou) under the local control of provincial, city, county, and
prefectural governments.”99 The funding for these local pools comes from a mix
of employer and employee contributions, with the employer required to contribute
20 percent of an employee’s wages to these social insurance fund, with the

97 Frazier, supra note 105, at 123.
98 Basic Pension Decision, supra note 36.
employee contributing 8 percent of his or her wages.100 Eligible employees may begin to draw a pension from the general fund after 15 years of service101 and once they have reached the minimum age requirements.102 Benefits are delivered as monthly payments and continue for the life of the retiree.103 If an employee leaves a company before 15 years of service their personal contribution will be returned to them as a lump sum.104 The contributions made by their employer seem to remain in the general fund, at that point, and are unavailable to the individual employee.

100 Basic Pension Decision, supra note 36, at art. 3 (The enterprise contribution rate for basic pensions (hereinafter referred to as enterprise contribution) shall, in general, not go beyond 20% of enterprise total wage including contribution allocated to individual accounts. The people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall set the specific contribution rates thereof. Few provinces, autonomous regions, and municipalities directly under the Central Government that have a relatively larger number of retirees and heavy pension burdens and have to levy contribution rates beyond 20% of the total wage of the enterprises, shall report to the Ministry of Labor and the Ministry of Finance for examination and approval. The individual contribution rate for basic pensions (hereinafter referred to as the "individual contribution") in 1997 shall not be lower than 4% of the individual contribution wage. The individual contribution rate shall be raised by one per cent every two years from 1998 onwards, until it reaches 8 per cent of the individual contribution wage. In regions where conditions permit or during years when wages are increased comparatively fast, individual contribution rates shall be raised appropriately faster.”).

101 Basic Pension Decision, supra note 36, at art. 5 (who begin working after the implementation of this Decision will be paid basic pension every month after having contributed accumulatively for 15 years.”).

102 Felix Salditt, et al., Pension Reform in China, 61 INT’L SOC. SEC. REV. 47, 54 (2008). (“In addition to having contributed for 15 years, the qualifying conditions require that a worker must have reached the normal pension age of age 60 (men) or age 55 (women); age 50 (men and women) if engaged in arduous work.” (citing Y. Sin, China: Pension Liabilities and Reform Options for Old Age Insurance (World Bank, Working Paper No. 2005-1, 2005)).

103 Basic Pension Decision, supra note 36, at art. 5 (“The basic pension shall be comprised of base pension and individual account pension. The monthly benefit standard for the base pension at the time of retirement is 20% of average monthly wages for employees in the previous year in the provinces, autonomous regions, municipalities directly under the Central Government, or the prefectures or cities, and the monthly benefit standard of the individual account pension is the total saving in the individual accounts divided by 120.Id. at 55.”); see also Salditt, supra note 102, at 55 (“Significantly, even if individuals live more than 120 months after retirement and have ‘exhausted’ their accounts, payments continue to be made at the same rate out of the social pool.”).

104 Basic Pension Decision, supra note 36, at art 5. (“Those who have not contributed for a full 15-year period will not be entitled to enjoy the base pension benefit, but the savings in their individual accounts will be paid to them in a lump sum.”).
As it currently stands, only migrant workers who have urban resident certificates can claim pension benefits under the Basic Pension Decision,\textsuperscript{105} which, at the end of 2008, limited the availability of the pension plan to 17 percent of migrant workers.\textsuperscript{106} An additional administrative hurdle is that “residents must reside in the same region where their contribution payments are made. This is a problem for migrant workers, who often find themselves not covered under any region’s social insurance system.”\textsuperscript{107}

The national government is attempting to address these problems by instituting pilot projects that assign workers a portable identification number that can be used consistently across provinces.\textsuperscript{108} In May 2006, the government began such a program in 9 cities (Beijing, Tianjin, Shijiazhuang, Dalian, Nanjing, Changsha, Guangzhou, Chengdu, and Xi’an), and in July 2008 expanded that program to include all provincial capital cities and cities under separate state

\textsuperscript{105} Basic Pension Decision, supra note 36, at art. 1 (“The system shall... apply to all varieties of enterprise employees, as well as self-employed laborers in cities and towns.) See also, Id. at art. 6 (“Pension coverage shall be further expanded, and the basic system of endowment insurance shall be extended gradually to all urban and township enterprises and their employees. The basic system of endowment insurance shall also gradually apply to the self-employed laborers in urban areas...”); see also, Mark W. Frazier, \textit{What’s in a Law?: China’s Pension Reform and Its Discontents, in ENGAGING THE LAW IN CHINA: STATE, SOCIETY, AND POSSIBILITIES FOR JUSTICE} 108, 109 (Neil J. Diamant, Stanley B. Lubman, & Kevin J. O’Brien, eds., 2005) (“In the case of pensions...only registered urban residents remain eligible for coverage.”).

\textsuperscript{106} \textit{Pension Fund to Draw in More Workers, CHINA DAILY}, Feb. 8, 2009.

\textsuperscript{107} Jing Ulrich, A New Direction in Social Welfare: China’s National Healthcare Reforms, \textit{HANDS-ON CHINA REP.} (J.P. Morgan), March 9, 2009; see also, Salditt, supra note 102, at 65 (“Workers who change jobs between administrative units (county or provincial level) are in many cases not entitled to transfer their individual accounts to the pension fund in the next province, and risk losing the right to claim pension benefits from local pension funds to which they have contributed in earlier jobs. One reason for this problem is the inherent administrative challenges of transferring individual accounts and pension claims across local borders (horizontal fragmentation), and between different levels of administration (vertical fragmentation).”).

\textsuperscript{108} \textit{Pension Fund to Draw in More Workers, supra note 106 (“It said the government would also establish a national social security information system and every citizen will have their identity card numbers as the social security number to check on pension fund information. The project will first reach out to rural migrant workers.”).
planning.\textsuperscript{109} This program is a remarkable step towards consolidating the two thousand social pools into a national, portable pension system. Two additional proposals were announced by the Ministry of Human Resources and Social Security for public comment on February 5, 2009. One would allow migrant workers to continue their pension accounts from place to place by offering “pension premium certificates” issued by a former employer that would be accepted by the new employer.\textsuperscript{110} Another measure would reduce the contribution levels to the pension plan from 8 percent of the employee’s income to 4 percent, in order to encourage participation.\textsuperscript{111}

The proposed Social Insurance Law maintains the basic pension system that is currently in place, still requiring contributions by employers and employees,\textsuperscript{112} but it does offer specific provisions for transferring accounts from one province to another.\textsuperscript{113} The separation of rural migrants from those with urban resident certificates seems to be maintained, however.\textsuperscript{114} The recently released \textit{National Human Rights Action Plan} seems to confirm that the focus will

\begin{footnotesize}
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\item \textsuperscript{110} \textit{New Rules Improving Migrant Workers’ Pension Published to Seek Public Opinions}, ISINOLAW, Feb. 9 2009.
\item \textsuperscript{111} \textit{Id.}
\item \textsuperscript{112} \textit{Draft Social Insurance Law, supra} note 48, at art. 9 (all workers shall participate in basic old age insurance, and the basic old age insurance premiums shall be paid jointly by employer and workers. . . .)\textquotedblright.
\item \textsuperscript{113} \textit{Id.} at art. 17 (For individuals who are involved in trans-employment, their basic old age insurance entitlement can be transferred. After an individual retires, his basic pension shall be calculated separately by the localities where the premium is paid according to the basic pension rates and the contribution periods in their localities, and paid uniformly by the locality where he retires.”).
\item \textsuperscript{114} \textit{Id.} at art. 18 (“The state will gradually establish and improve the basic old age insurance system for urban and rural residents, and the specific measures shall be formulated by the State Council.”).
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remain on urban hukou holders, stating that its target for “the urban basic old-age pension insurance” is 233 million workers enrolled by 2010, but not mentioning any target number for old-age insurance available to rural workers.115

7. Medical Access

For those migrants moving from their urban work setting to the rural provinces, they will be going from a region with troubled access to medical insurance to a region with almost no access at all.116 Health care coverage is mandatory for employed urban workers,117 though half the employers in 2008 only provided that coverage for workers with contracts of at least one year.118 The result is that 58% of urban residents have basic health insurance and 19% of migrant laborers have coverage.119 By contrast, only 9.5% of rural residents have

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115 *Full Text: National Human Rights Action Plan of China (2009-2010), XINHUA, April 13, 2009* (“The coverage of various types of social insurance will be expanded. By 2010, the population covered by the urban basic old-age pension insurance is expected to exceed 223 million. . . . The population covered by rural social old-age pension insurance and corporate annuity will expand year by year.”).

116 Yuan Ye and Jiang Guocheng, China Unveils Health-Care Reform Guidelines, XINHUA, April 6, 2009 (After the founding of the People's Republic of China in 1949, governments covered more than 90 percent of medical expenses for urban residents, while rural people enjoyed simple but essentially free health care. But when China began its economic reforms in the early 1980s, the system was dismantled as the country attempted to switch to a market-oriented health care system.”).

117 Decision on the Basic Medical System, supra note 38, at art. 2 (“All urban employers, including enterprises (state-owned enterprises, collective enterprises, foreign-funded enterprises and private enterprises, etc.), state organs, public institutions, social organizations, private non-enterprise entities and their employees shall buy basic medical insurance. Whether township or town enterprises and their employees as well as urban individual economic organization owners and their staff shall buy basic medical insurance or not shall be decided on by the people’s government of the involved province, autonomous region, or municipality directly under the Central Government.”); see also Guiding Opinions of the State Council about the Pilot Urban Resident Basic Medical Insurance, effective July 10, 2007, *translated in LAWINFOCHINA* (last visited April 10, 2009) (expanding medical coverage to all urban residents, including children and the unemployed).

118 Hesketh, supra note 39, at 194 (“Coverage for urban workers was related to work unit, with 50% of work units providing coverage for all workers with urban hukou and the other 50% only providing it for workers on contracts for at least one year.”).

119 Id. (“There were large differences in health insurance coverage among the three groups: 58% of urban residents, 9.5% of rural residents, and 19% of migrants had coverage.”).
health insurance, resulting in “poorly-equipped rural clinics and a shortage of medical staff. . . .”

The National government has recently made improving rural access to medical care and medical insurance a priority, however. Two documents issued on April 6th and 7th, and not yet translated, set out an ambitious agenda to transform China’s medical system. The government intends to invest 850 billion Yuan ($125 billion), in an effort to extend coverage to 90% of all residents by 2011. In addition to improving medical coverage, the government intends to improve access by beginning massive campaign to build 2,000 new hospitals, 3,700 community clinics, and 11,000 health service centers. The action plan also includes elements to improve the quality and training of the medical personnel who work in rural regions. Physicians at city hospitals will be required to spend a year of service in the countryside before being promoted, and 1.9 million training sessions will be provided for village and township medical clinics in the next three years in order to improve their quality. Critics say that the

120 Id.
121 Yuan Ye and Jiang Guocheng, China Unveils Ambitious Plan to Overhaul Health Care Sector, Xinhua, April 7, 2009.
122 Will Patients be Rewarded? Economist, April 18, 2009 (“Two documents issued on April 6th and 7th set out reform targets through to 2020 as well as more specific objectives for the next three years.”).
123 Id. (“But by 2020 China is to have a “relatively robust” government-financed health-care system, with more than 90% of citizens covered by 2011. Also unchanged is the figure of 850 billion yuan (125 billion), which the government said in January it intended to spend on these reforms during 2009 and the two subsequent years.”).
124 Yuan Ye, supra note 121 (“The country will build or renovate 3,700 community clinics and 11,000 health service centers in urban areas within three years. The central government will also build 2,400 such centers in underdeveloped urban areas during the same period.”).
125 Zhuang Pinghui and Josephine Ma, Helping Migrants Key to Plan’s Success, China.org.cn, April 8, 2009 (“Medical services in rural areas, however, are expected to greatly benefit from stipulations that doctors from city hospitals and disease prevention and control centers must spend one year in rural areas before being promoted. . . . The government will offer 1.9 million training sessions for village and township medical clinics and urban community medical institutions over the next three years to improve their quality.”).
new medical insurance scheme will be plagued by the portability problems that
dog other social insurance schemes,126 but the push to increase access medical
access may transform rural Chinese life.

8. Property

Rural workers were originally excluded from urban social insurance
systems because their land was always viewed as their permanent safety net.
With land, agricultural workers would always have a means of subsistence. Two
recent forces have worked to undercut rural residents’ access to their land,
however. On the one hand, there has been an almost relentless pressure to develop
agricultural lands into urban workplace or residential units.127 On the other hand,
greater autonomy provided to the farmers themselves has led to increased
property consolidation, especially as many workers moved from their farms to the
cities in search of work.128 The result, as the rural to urban migration pattern turns
on itself, is that many former farmers no longer have farms to return to. Those
who stay in the cities may be in an equally tough bind. Factories typically

126 Zhuang Pinghui and Josephine Ma, Helping Migrants Key to Plan’s Success, CHINA.ORG.CN, April 8, 2009 (“The new measures to allow rural migrants to claim medical expenses for services outside their hometowns was also impractical. . . . Rural migrants tend to move to different cities to work and each of these cities has its own premiums and compensation standards, and settling the bills across cities would be a daunting task.”).
127 Margo Rosato-Stevens, Peasant Land Tenure in China’s Transitional Economy, 26 B.U. INT’L L.J. 97, 106 (2008) (“With a rising Chinese middle class in urban areas, demand for better housing saw the rapid development of rural land for residential use by the urban population as well. In the real estate boom much rural land was overtaken by urban sprawl as cities continued to expand and encroach upon rural land. A major cause of the loss of agricultural land has been the conversion of farmland to non-agricultural land.”) (citations omitted).
provide dormitories for the majority of their workers, so when a factory’ closes its
doors, workers lose both their jobs and their home.129

The trend to away from rural collectives began when the economy roared
to life after the reforms put into place by Deng Xiao Ping, rural land became more
and more valuable to the development needs of the country. The trend was
exacerbated by the profits that local officials stood to gain by encouraging
development. “This became particularly apparent in the 1990s when the Central
government exerted pressure on provincial governments to find alternative
sources of revenue. Local governments expropriated land and sold usage rights to
developers, often profiting handsomely.”130 Although restrictions have been put
in place to restrain some of the earlier excesses,131 much of the damage has
already been done.

According to the latest population census of
November 2000, there are 1.29 billion Chinese, of
whom 851 million are registered peasants…During
the past decade, more than 70 million peasants have
most likely lost their land to forced or illegal
annexation by “local real estate developers,”
according to an estimate by Qin Hui, an agricultural
expert at Qinghua University in Beijing. An
additional 2 million peasants continue to lose their
land annually. According to the Ministry of

129 Keith Bradsher, China’s Unemployment Swells as Exports Fall, N.Y. TIMES, Feb. 5, 2009
(“One big question is where penniless migrant workers will sleep until they find jobs or return
home. Factories here in the Pearl River delta region of Southeastern China, which accounts for
nearly a third of China’s exports, typically provide dormitories for a majority of their workers.
The rest, particularly married workers, live in crowded nearby apartments. But factories that have
shut down have closed their dormitories. Unemployed workers seem to be staying with friends in
local apartments for now, manufacturing and human resources managers said.”).
130 Rosato-Stevens, supra note 127, at 108.
131 Id. (citing 1998 Revised Law of the P.R.C. on Land Administration (also known as Land
Management Law), adopted 16th SCNPC, 6th Session (1986), amended 9th SCNPC 7th Session,
English/select Laws & Regulations/search title Land Administration Law (last visited Mar. 29,
2008).
Agriculture, every year more than 328,600 acres of farmland are lost to nonagricultural use.\(^{132}\)

On top of the changes in agricultural lands instigated by urban developers, the rural laborers themselves have entered into contracts and agreements that may preclude them from returning to their farms. In 2002, the Rural Land Contracting Law was passed,\(^{133}\) allowing farmers to contract their land,\(^{134}\) which may then be “circulated by means of subcontract, lease, exchange, or transfer, or by other means,”\(^{135}\) as long as the use of the land remains agricultural.\(^{136}\) Taking advantage of these laws, many peasants leased or sold the rights to their land, and now, with the loss of their urban jobs, have no land to which to return.\(^{137}\)

9. Economic Subsidies

In order to cushion the blow of what Prime Minister Wen Jiabao has called “the most difficult year for China’s economic development since the beginning of the century,”\(^{138}\) the national government has announced a 4 trillion yuan ($585 billion) stimulus package, while regional governments have

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\(^{132}\) VAN LUYN, supra note 2, at 46.


\(^{134}\) Id at Art. 5.

\(^{135}\) Id. at art. 32.

\(^{136}\) Id. at art 8.

\(^{137}\) See Chang Hongxiao, supra note 128 (“Another looming problem is a shortage of arable land. In the Qijiang District of Chongqing, more than 8 percent of the migrant workers who returned in November had no land to till. In nearby Caixian County, those who rented land from migrants to supplement their own plots now fear a loss of livelihood if their rentals are revoked. Some have been looking for land outside their villages. A survey of 16,268 migrants in 20 regions in the country’s east, west and central districts showed nearly 92 percent of migrant workers do not have pensions, and that at least two people in 21 percent of the families surveyed do not have contracted farmland at all. The three-year survey was conducted by the Research Office of the Democratic League’s Chongqing branch.”).

\(^{138}\) China Vows to Address Public Complaints to Maintain Social Stability, XINHUA, Mar. 5, 2009.
inaugurated programs of their own. The enormous national stimulus package, worth 8% of China’s GDP, includes a number of plans to increase labor opportunities, stimulate spending, and improve the social safety net for urban and rural workers alike.

Work has already begun on labor intensive infrastructure projects like highways and rail lines which are designed both to create jobs and increase efficiency. The government also plans to build 510,000 “countryside” stores by 2010, hoping to increase rural spending and add up to 775,000 new non-agricultural jobs. Also created in an effort to stimulate rural spending, farmers will receive a 10 percent subsidy for buying an automobile or light truck, and a 13 percent subsidy for buying a motorcycle. Banks that assist in the creation of small businesses will also get a share of the stimulus money. The small loan ceiling for individual borrowers has been increased from 20,000 Yuan to 50,000 Yuan, and the banks that underwrite those loans will receive a 1 percent bonus of the total number of small business loans they make. The banks have responded vigorously, “making an astonishing 4.58 trillion yuan in new loans in the first quarter [of 2009], close to the government’s minimum target of 5 trillion yuan for the full year.”

Local governments are participating in the economic revitalization, as well. Guangzhou has established a number of job fairs, but it seems to be most

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139 Bradsher, supra note 129.
140 Keith Bradsher, In Downturn, China Sees Path to Growth, N.Y. TIMES, March 16, 2009.
142 China Encourages Farmers to Buy Automobiles, ISINOLAW, March 17, 2009.
143 Government Reacts to Return of Rural Migrants, supra note 4.
144 New China Stimulus Tranche Less Than Expected, REUTERS, April 26, 2009.
interested in encouraging workers to leave the city. “The provincial labor
bureau... said it would offer numerous subsidies for workers willing to leave the
cities and go to rural areas— including free vocational classes, subsidized school
fees for children, and a waiver for government fees for the registration of new
small businesses.” 145 Henan and Shenzhen, by contrast, seem to want workers to
stay. Henan, generally a large exporter of labor, is attempting to address the
needs of millions of returning migrants by offering subsidized vocational training
programs such as welding and information technology. 146 It has also launched a
government subsidized program that will provide up to 2 million migrants with a
400 to 600 Yuan training bonus. 147 Shenzhen has instituted a multi-tiered training
program, with initial bonuses being given to unemployed workers who complete
one level of training, and larger bonuses for those who attend a similar training
program but at a more advanced level. 148 Job agencies will also receive a 500
yuan bonus for each unemployed person they help to place in a job. The union,
meanwhile, has indicated that it expects to provide aid to more than 10 million
migrant workers in the form of job training or living assistance. 149

It is too soon to tell whether or not the stimulus measures will prove
sufficient in the face of such an enormous economic transition. Many
corporations in the city grumble that the training provided to laborers in the
country is insufficient for the job skills that are required. 150 There are other

145 Bradsher, supra note 140.
147 Id.
reports that the vocational training opportunities are, as yet, unavailable or unadvertised in the provinces.\textsuperscript{151} Nevertheless, the government is clearly willing to use its enormous resources to improve job prospects and combat what it takes to be one of the largest threats to social stability it has ever faced.

\section*{10. \textbf{Conclusion}}

According to the United Nations, 2008 marks the first year in history that more people live in urban areas than in the countryside.\textsuperscript{152} The expectation for China is that its proportion of urban dwellers will rise from 40 percent in 2008 to 70 percent by 2050.\textsuperscript{153} At the end of 2008, there was a pause in that trend towards urbanization, as unemployed migrant workers return to the shelter of their provincial homes to wait out the global economic storm. As Zhuangzi predicted, the fit is no longer perfect. The urban ways and web of urban regulations that now follow them are inadequately designed for application in the countryside. The problems that the rural residents face, however, are not different in kind than many that were envisioned. The Chinese government has long contemplated the problems of portability that comes from trying to apply federal legislation across its enormously diverse political landscape. The stakes are high. \textquote{Mass incidents,} as the government calls strikes and demonstrations, averaged over 80,000 per year in the countryside in 2005,\textsuperscript{154} with a similar number of incidents

\begin{itemize}
\item\textsuperscript{151} Id. (\textquote{In Chengdu, the capital of Sichuan, the government issued training vouchers to rural workers and unemployed college graduates. But outside the city, training is hard to find. . . .}).
\item\textsuperscript{152} Half of Global Population Will Live in Cities by End of This Year, Predicts UN, UN NEWS CENTRE, Feb. 26, 2008 (\textquote{By the end of this year, half of the world’s 6.7 billion people will live in urban areas, according to a report unveiled by the United Nations today, which also predicts that future growth will be concentrated in Asia and Africa.}).
\item\textsuperscript{153} Id.
Social stability depends on the government’s ability to extend its protective legislation to its citizens, regardless of where they live. As a result, improvements have been implemented in both the protection of the laws and the universality of their application. The Labor Contract Law, effective in 2008, extended severance pay to migrant workers at the conclusion of fixed term contracts. The Employment Promotion Law of 2008 extended unemployment benefits to rural as well as urban workers. The rural health care system is being overhauled, and the draft Social Insurance Law anticipates universal applicability of all social insurance schemes to urban and rural workers.

The greatest problem is not in the coverage granted by the laws, but their implementation. “[W]hile laws designed to protect workers are made centrally, they are intended to apply at all levels--i.e. state, county and provincial levels--but it is not often that the laws specify the mechanism to implement them.” This silence at the national level is welcomed at the local level. Employers rarely are hesitant to make the large contributions demanded of the various and social insurance programs. And, “[t]he relatively young age of most migrants means they forego participating in programs in favor of saving money or sending funds to the communities they come from.”

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155 Bradsher, supra note 140 (“In the last two years, there was-on average-one strike a day involving 1,000 or more workers in the Pearl River delta, and many more strikes by smaller groups of workers.”).
156 Labor Contract Law, supra note 5, at art. 46.
157 Emp. Prom. Law, supra note 6, at art. 16
159 Id. (This reflects hesitancy on the part of employers to contribute to insurance premiums.”).
160 Carin Zississ, China’s Internal Migrants, COUNCIL ON FOREIGN RELATIONS, March 26, 2007.
participation rate across all social insurance schemes. “[A]mong all persons employed in 2003, only 14% had unemployment insurance 16% had pension insurance and 11% had health insurance.”161 Before these laws are able to have their full effect, participation at the local levels has to be more fully enforced.

161 Guthrie, supra note 158, at 15.