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Does Black-Letter Law Matter in Labor Rights Protection in China? - A Tale of Two Cities

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DOES BLACK-LETTER LAW MATTER IN LABOR RIGHTS PROTECTION IN CHINA? - A TALE OF TWO CITIES

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Abstract: This article discusses the role of black-letter law in labor protection in China in cases where employers dismiss employees on the grounds of serious breaches of internal regulations. This article presents an empirical analysis of the judicial practice of two of China's economically developed cities, Suzhou and Wuxi. Suzhou employers have to give employees the opportunity to be heard prior to dismissal, while Wuxi does not provide that opportunity. First, this article introduces the Chinese labor legislation system, the dismissal system, and the two cities' local labor regulations. Second, the article will analyze and discuss 140 cases from Suzhou and 234 employment cases from Wuxi. Third, this article concludes that giving employees the opportunity to be heard is essential for protecting their rights, as evidenced by the higher success rates (i.e. the combination of full win and partial win rates) for employees in Suzhou compared to those in Wuxi. The analysis highlights the significance of black-letter law in ensuring labour protection in China. Finally, this article calls for national legislation to provide more explicit and detailed guidance on dismissals, or in the alternative, to mandate local authorities to enact clear labor protection rules appropriate to local circumstances.

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I. INTRODUCTION

A. The Establishment of National Labor Legislative Framework

As a socialist nation, China's labor legislation is widely acknowledged as pro-labor.[1] China's set of labor statutes aim to safeguard the rights and interests of workers, and include the Labor Law (LL) and the Labor Contract Law (LCL).[2] The LL pertains to the rights and responsibilities of employees, while the LCL enhances the LL by focusing specifically on labor contracts and dismissal.[3] One of the primary objectives of both frameworks is to safeguard the legitimate rights and interests of employees, a stance that has been perceived by some as offering preferential treatment to workers.[4]

In 1994, the LL was enacted against the background of the establishment of a socialist market economy, the transformation of state-owned enterprises' employment systems, and the marketization of labor relations.[5] The LL of 1994 laid the groundwork for "titled protection" for labor, regulated labor and a collective contract system, established labor standards for working hours,

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[1] *See* Peter C.H. Chan, *Are Chinese Courts Pro-Labour or Pro-Employer?*, 43 PA. J. INT'L L. 281 (2022).

[2] *See* JIA LIN (林嘉), LAO DONG FA DE YUAN LI, TI XI YU WEN TI (劳动法的原理、体系与问题) [THE PRINCIPLES, SYSTEM AND PROBLEMS OF THE LABOR LAW] (2016).

[3] *See* Peter C.H. Chan, *The Regulation of Dismissal in China: Diverging Standards of Serious Breach Dismissal and the Need for Reform*, 33 KING'S L.J. 208 (2022).

[4] *Id.*; *see also* Li Gen, *The Legal Analysis of the Dilemma of Labour Relationship Development in the Process of Social Transformation in China: From the Perspective of "Labour Blackmail"*, 5 CHINA LEGAL SCI. 3 (2017).

The Labor Law and the Labor Contract Law (LCL) purport to protect the legitimate rights and interests of the employees. The Labor Law states that "this Law is formulated in accordance with the Constitution in order to protect the legitimate rights and interests of laborers, regulate labor relationship, establish and safeguard a labor system suited to the socialist market economy, and promote economic development and social progress." Laodong Fa (劳动法) [The Labor Law] (promulgated by the Standing Comm. Nat'l People's Cong., July 05, 1994, effective Jan. 01, 1995, amended by the Standing Comm. Nat'l People's Cong., Dec. 29, 2018), art. 1, 2019 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 155, *translated in* https://www.lawinfochina.com/display.aspx?id=29683&lib=law (China) [hereinafter Labor Law].

The LCL states that "this Law is formulated for the purposes of improving the labor contractual system, clarifying the rights and obligations of both parties of labor contracts, protecting the legitimate rights and interests of employees, and establishing and developing a harmonious and stable employment relationship." Lao dong he tong fa (劳动合同法) [Labor Contract Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 29, 2007, effective Jan. 1, 2008, amended by the Standing Comm. Nat'l People's Cong., Dec. 28, 2012, effective Jul. 1, 2013), art. 1, 2013 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 45, *translated in* https://www.lawinfochina.com/display.aspx?id=6133&lib=law (China) [hereinafter Labor Contract Law].

[5] *See* Jun Guo (郭军), *"Laodongfa" Weida De Lishi Zuoyong He Xianshi Yiyi* (《劳动法》伟大的历史作用和现实意义) [*The Great Historical Role and Relevance of the* "Labor Law"], 工人日报 [WORKERS' DAILY] (Jul. 8, 2014), http://politics.people.com.cn/n/2014/0708/c1001-25252124.html; *see also* Xifen Lin & Wanqiang Wu, *Something Lost, Something Gained: Changes in China's Procuratorate in Response to the Reform of the National Supervision System* CHINA L. & SOC'Y REV. 79–110 (2022).

changed wages, and standardizing social insurance system. Importantly, the LL also set up mediation, arbitration, and litigation systems for labor disputes. As the first comprehensive and systematic law governing labor relations in China,[6] the LL 1994 marked a significant development.

Despite this leap forward, the LL saw the number of labor disputes raised from 33,000 in 1995 when it was implemented to 317,000 in 2006, a 9.6-fold increase.[7] Issues such as low labor contract signing rates, the prevalence of short-term labor contracts, unstable labor relations, and the exploitation of employees' rights by employers persisted.[8] These issues are part of the reason why labor disputes have increased drastically during that period. The LL devoted only one chapter to labor contracts, which proved insufficient in comprehensively regulating the labor contract system and providing adequate protection to employees. Consequently, the LCL was enacted in 2007 (took effect in 2008) to further specify and operationalize the labor contract system established by the LL.[9] The LCL provided detailed provisions on labor contracts, addressed their establishment, performance, modification, and termination.[10] While there was some overlap between the LL and the LCL regarding the labor contract system, the LCL superseded the LL in the event of a conflict between the two laws,[11] and had become the primary reference in judicial decisions.[12]

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[6] *Id.*

[7] Jingyu Yang (杨景宇), *Shishi "Laodong Hetongfa" De Sikao Weishenme Yao Zhuoli Jianshe Hexie Laodong Guanxi* (实施《劳动合同法》的思考——为什么要着力建设和谐劳动关系) [*Reflections on the Implementation of the "Labor Contract Law" – Why We Should Focus on Building Harmonious Labour Relations*, 光明日报 [GUANGMING DAILY] (Aug. 4, 2008), https://www.gmw.cn/01gmrb/2008-08/04/content_816552.htm#commentAnchor.

[8] *Id.*

[9] Lei Mao (毛磊) & Wenjuan Du (杜文娟), *Zhuanjia Pingdian Laodong Hetongfa Caoan Laodong Hetong Zhidu You Tupo* (专家评点劳动合同法草案 劳动合同制度有突破) [*Experts Commented on Draft Labor Contract Law with Breakthrough in Labour Contract System*] , 人民日报 [PEOPLE'S DAILY] (Mar. 29, 2006), http://www.npc.gov.cn/c3001/c3003/201905/t20190524_45491.html.

[10] *See* Kai Chang (常凯), Lao dong guan xi de ji ti hua zhuan xing yu zheng fu lao gong zheng ce de wan shan (**劳动**关系的集体化**转**型与政府**劳**工政策的完善) [The Collective Transformation of Labor Relations and the Improvement of the Government's Labor Policy], ZHONGGUO SHEHUI KEXUE (中国社会科学) [SOC. SCI. IN CHINA] no. 6, 2013, at 91; *see also* Jun Zhu (朱军), Xiufa Beijingxia Laodong Hetongfa Di 39 Tiao De Wanshan (修法背景下《劳动合同法》第 39 条的完善) [Improvement of Article 39 of the Labor Contract Law in the Context of Amendment], FAXUE (法学) [L. SCI.] no. 9, 2017, at 99.

[11] Lifa Fa (立法法) [Legislation Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000, amended by the Standing Comm. Nat'l People's Cong., Mar. 13, 2023, effective March 15, 2023), art. 92, https://www.gov.cn/xinwen/2023-03/14/content_5746569.htm (China) [hereinafter Legislation Law].

[12] *See* Thomas F. Remington & Xiao Wen Cui, *The Impact of the 2008 Labor Contract Law on Labor Disputes in China*, 15 J. E. ASIAN STUD. 271 (2015).

B. Structure of the LCL

While China's LCL and other labor legislation intended to offer preferential treatment to workers, its actual impact remained a subject of controversy. On the one hand, scholars pointed out that while labor laws provided a fundamental framework for protecting labor rights, their efficacy in terms of establishing labor standards and contracts was insufficient.[13] For example, the implementation of China's labor laws was hampered by a lack of specificity.[14] On the other hand, the labor provisions imposed constraints on employers. Constraints occurred because he LCL offered excessive protection to employees, resulting in higher employment costs and diminished labor flexibility, ultimately impeding business development.[15] Additionally, critics contended that the implementation of the LCL led to higher inflation, the emergence of a dual labor market, and increased inequality within China.[16]

Another subject of controversy regarding the LCL pertains to dismissals, particularly those that are initiated unilaterally by employers. There are three types of dismissals: fault-based dismissals, non-fault-based dismissals, and economic dismissals. Fault-based dismissals allow the employer to terminate the labor contract if the employee is found to be at fault, as prescribed by Article 39 of the LCL.[17] Non-fault-based dismissal enables the employer to terminate the labor contract without attributing any fault to the employee, but rather for specific objective reasons, as outlined in Article 40 of the LCL.[18] Economic dismissal applies to situations where the employer is either on the brink of bankruptcy, facing severe production and operational difficulties, or facing other circumstances necessitating dismissal, as described in Article 41 of the LCL. When unilateral dismissal occurs, the employer must notify the labor union in advance of the reasons for the intended dismissal.[19] This notification

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[13] *See* Anita Chan, *A "Race to the Bottom": Globalisation and China's labour standards*, 46 CHINA PERSPS. 59 (2003); *see also* Kinglun Ngok, *The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition*, 73 INT'L LAB. & WORKING-CLASS HIST. 45, 56 (2008).

[14] *See* Sean Cooney, *China's Labor Law, Compliance and Flaws in Implementing Institutions*, 49 J. INDUS. RELS. 673 (2007).

[15] *See* Xujun Gao (高旭军) & Wenjiang Han (韩文江), *Lun "lao dong he tong fa" dui qi ye li yi bao hu de que* shi (论《劳动合同法》对企业利益保护的缺失) [*On the Lack of Protection for Enterprises' Benefits by the "Labor Contract Law"*], AN HUI NONG YE DA XUE XUE BAO (SHE HUI KE XUE BAN) (安徽农业大学学报(社会科学版)) [ANHUI AGRIC. UNIV. (SOC. SCI. ED.)], no. 3, 2011, at 66; *See also* Russell Cooper, Guan Gong & Ping Yan, *Costly Labor Adjustment: General Equilibrium Effects of China's Employment Regulations* (Nat'l Bureau of Econ. Rsch., Working Paper No. 17948, 2012); Zhiming Cheng, Russell Smyth & Fei Guo, *The Impact of China's New Labor Contract Law on Socioeconomic Outcomes for Migrant and Urban Workers*, 68 HUM. RELS. 329 (2015); Baohua Dong (董保华), *Lao dong he tong fa de shi da shi heng wen ti* (《劳动合同法》的十大失衡问题) [*Ten Imbalances of the "Labor Contract Law"*], TAN SUO YU ZHENG MING (探索与争鸣) [EXPL. & FREE VIEWS], no. 4, 2016, at 10.

[16] *See* Gayle Allard & Marie-José Garot, *The Impact of the New Labor Law in China: New Hiring Strategies for Foreign Firms?*, 6 REVISTA DIREITO GV 527 (2010).

[17] Labor Contract Law, art. 39.

[18] *Id*. art. 40.

[19] *Id*. art. 43.

does does not grant the labor union veto power over an employer's decision to dismiss an employee. Rather, the trade union is entitled to request the employer to rectify its decision, with the employer merely required to "consider" the labor union's position and provide written communication of its final decision.[20]

C. The benefits of the LCL

From the black-letter law standpoint, the LCL had, to some extent, elevated the level of protection afforded to employees regarding dismissal.[21] Statutory law indicated that China had implemented relatively stringent regulations to safeguard employees from dismissals. According to a study carried out by the Organization for Economic Co-operation and Development (OECD), China had surpassed all OECD member countries in terms of protecting employees against collective dismissals.[22] Another OECD survey revealed that China ranked first among OECD countries and selected emerging economies, in terms of safeguarding against individual and collective dismissals.[23]

D. Downside to the LCL

Despite the discernable benefits of the LCL, it also has downsides. From a pragmatic standpoint, excessively stringent dismissal regulations potentially augment employers' costs. A successful business operation necessitates flexibility given to the employer to decide on its employment arrangements. Overly stringent dismissal regulation may result in employers unable to terminate under-performing staff, thereby increasing the employer's costs of running the business. The provisions outlined in the LCL that require written[24] and open-ended labor contracts,[25] were posited to impede employers' flexibility in dismissal, resulting in escalated labor costs.[26] Moreover, the LCL motivated employers to terminate the employment of fixed-term contract workers who

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[20] *Id.*

[21] *See* Yefang Qian (钱叶芳) & Jizhe Wang (王冀哲), *Yetan Laodong Hetongfa De Shiheng Wenti: Yu Dong Baohua Jiaoshou Shangque* (也谈劳动合同法的失衡问题——与董保华教授商榷) [*The Imbalance of the Labor Contract Law – Discussion with Professor Dong Baohua*], ZHEJIANG XUEKAN (浙江学刊) [ZHEJIANG ACAD. J.], no. 6, 2017, at 166.

[22] *See* Danielle Venn, *Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators*, OECD Ref. No. DELSA/ELSA/WD/SEM(2009)17 (Jul. 2, 2009).

[23] OECD, OECD EMPLOYMENT OUTLOOK 2013 65 (2013).

[24] "To establish a labour relationship, a written labour contract shall be concluded." Labor Contract Law, art. 10.

[25] The LCL defines an open-ended labor contract as, "a labor contract in which the employer and the employee stipulate no certain time to end the contract. An employer and an employee may, through negotiations, conclude a labor contract without a fixed term." Labor Contract Law, art. 14. Article 14 also sets forth a number of scenarios under which an open-ended labor contract may be concluded. *Id.*

[26] *See* Baohua Dong, *supra* note 15; *see also* Mary Gallagher et al., *China's 2008 Labor Contract Law: Implementation and Implications for China's Workers* 68 HUM. RELS. 197 (2015).

were nearing the 10-year tenure threshold.[27] The Global Competitiveness Report 2019 indicated that China secured the 64th position among 141 economies evaluated for labor market flexibility.[28] Its hiring and firing practices received a ranking of 26, which indicated a relatively high degree of flexibility.[29] Conversely, the country's ranking for employee rights was 93, which implied a relatively low level of legal protection provided to workers.[30] Furthermore, China's rank of 116 for redundancy costs indicated that the expenses associated with employee dismissal may be higher in China compared to other countries.[31] The Report indicated that the practical implementation beyond the black-letter law imposes additional costs on dismissals.

In theory, the LCL had the potential to augment employee protection; however, the enforcement authorities had been ineffective in ensuring the exercise of such rights.[32] Furthermore, the LCL was deemed to be inadequately enforced, which diminished the legal safeguards against unjustifiable termination of employment.[33] Under Article 39(2) of the LCL and Article 25(2) of the LL, an employer reserves the right to terminate the labor contract without notice or compensation in cases where an employee "seriously violates" the employer's internal regulations.[34] Nonetheless, the employer must compensate the employee if the dismissal was unfair or unwarranted.[35] The LCL and the LL do not define an unjust or wrongful termination of employment; therefore, the court makes its own determination in the absence of explicit legislative guidance.[36] For example, the absence of a precise definition of the term "serious" in relation to breaches of an employer's internal regulations under Article 39(2) of the LCL, results in varied decisions and indirect responses in court rulings.[37] Moreover, local authorities interpreted this ambiguous term

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[27] *See* Randall Akee, Liqiu Zhao & Zhong Zhao, *Unintended Consequences of China's New Labor Contract Law on Unemployment and Welfare Loss of the Workers*, 53 CHINA ECON. REV. 87 (2019).

[28] *See* Klaus Schwab (Founder and Executive Chairman, World Economic Forum), *The Global Competitiveness Report 2019* (2019), at 156.

The 2019 report, among other things, measured the level of labor protection. The indicators include civil rights, the right to bargain collectively, the right to strike, the right to associate freely, and access to due process rights. However, the report does not provide substantive analysis or interpretation of labor protections.

[29] *Id*. at 156.

[30] *Id.* at 156.

[31] *Id*. at 156.

[32] Christopher John Yee Coyne, *All Bark and No Bite: How Attorney Fee Shifting Can Solve China's Poor Enforcement of Employment Regulations*, 39 BROOK. J. INT'L L. 1145, 1161 (2014); *see also* Wenwen Ding & JH Verkerke, *Has China's Labor Contract Law Curtailed Economic Growth?*, 99 DENV. L. REV. 453, 454 (2022).

[33] *See* Eli Friedman & Ching Kwan Lee, *Remaking the World of Chinese Labour: A 30-Year Retrospective*, 48 BRIT. J. INDUS. RELS. 507 (2010).

[34] Labor Contract Law, art. 39; Labor Law, art. 25.

[35] Labor Contract Law, art. 87.

[36] Chan, *supra* note 3.

[37] Baohua Dong, *supra* note 15; Dawu Hu (胡大武) & Fang Yang (杨芳), *Yan zhong wei fan dan wei gui zhang zhi du zhi yan zhong xing bian jie de shi zheng fen xi —— yi "Lao dong he tong fa" di 39 tiao di (er) kuan wei shi jiao* (严重违反单位规章制度之严重性边界的实证分析——以《劳动合同法》第 39 条第（二）款为视角) [*An Empirical Analysis of the Boundary of the Severity of the Labor's Violation of the Rules and*

using Article 25(2) of the LL and Article 39(2) of the LCL. Therefore, it was crucial to examine the practical implementation of China's labor laws by the legal enforcement authorities, particularly the courts.

While it is important to consider the court's implementation of these national policies, local regulations and practices also determine the degree of protection afforded to employees.[38] Another source of information used in adjudication of labor disputes is the internal regulations of employers. As per Article 4 of the LL and Article 4 of the LCL, employers must establish and improve rules and regulations in accordance with the law, ensuring that workers enjoy labor rights and fulfill labor obligations.[39] In addition, the LCL has certain procedural requirements for the formulation of internal regulations by employers:

> (1) when the employers formulates, amends, or decides on regulations or major matters that directly affect the essential interests of employees, the employers shall, after discussion by the conference of employees or all the employees, put forward plans and suggestions and make decisions after consulting with the trade union or the representatives of the employees on an equal basis; (2) in the process of implementing regulations and decisions on major matters, the labor union or the employees hold that such rules, regulations, or decisions are inappropriate, it or they are entitled to put forward the opinion to the employers, and have the rules, regulations, or decisions modified and improved through consultation; (3) the employers shall make public or inform the employees of the rules and regulations, and the decisions on important matters, which have a direct bearing on the immediate interests of the employees.[40]

Since the local regulation and its interplay with the court is important, this article seeks to answer the following research question: does black-letter law influence the safeguarding of labor rights in local judicial practice?

Two cities in Jiangsu Province of China have been selected for this study: Suzhou（苏州）and Wuxi（无锡). Wuxi was selected as the comparative city since it shares similarities with Suzhou in terms of GDP, population, and

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Regulations of Business Owners - From the Perspective of Article 39 (2) of the "*Labor Contract Law*"], ZHONGGUO LAODONG (中国劳动) [CHINA LABOR], no. 24, 2016, at 23.

[38] Jinhua Cheng (程金华) & Zhenxing Ke (柯振兴), *Zhong guo falu quan li de lian bang zhi shi jian yi lao dong he tong fa ling yu wei li* (中国法律权力的联邦制实践——以劳动合同法领域为例) [*The Practice of Federalism in Chinese Legal System: An Empirical Study on Labor Contract Law*] FA XUE JIA (法学家) [THE JURIST], no. 1, 2018, at 1.

[39] Labor Contract Law, art. 4; Labor Law, art 4.

[40] Labor Contract Law, art. 4.

the level of economic development.[41] Suzhou stands out as one of the few, if not the only, cities in China that mandates employers to provide employees with an opportunity to be heard when terminating for serious breaches of the employer's internal regulations.[42] If the employer does not follow this method, the termination will be deemed an unfair dismissal.[43] Wuxi, on the other hand, does not mandate employers to provide employees with an opportunity to be heard before termination. To answer the research question, this study scrutinizes 140 cases in Suzhou and 234 cases in Wuxi from 2012 to 2020, focusing on the "opportunity to be heard" afforded to employees. The findings of this study demonstrate that providing employees with the opportunity to be heard can be an effective measure in safeguarding their rights, as evidenced by the higher success rates for employees in Suzhou compared to those in Wuxi. This analysis highlights the significance of the black-letter law in ensuring labor protection in China. In other words, black-letter law has serious impacts on labor rights protection in China. The lack of specificity in national legislation resulted in differential protection of labor rights under different local rules. The local rules in Suzhou, which favor employees, led to court decisions in the employee's favor.

This article is set forth as follows: Section II provides an overview of China's legal system and the relevant dismissal provisions. Section III presents the hypothesis, data sources, methodology, and variables used in this study. Section IV discusses how the data supports the view that giving employees the opportunity to be heard under black-letter law is conducive to protecting their rights and interests as a matter of judicial practice. Section IV also discusses other noteworthy findings from the empirical analysis. Finally, Section V article concludes by discussing the implications of the study's findings and emphasizing its contribution to the existing literature.

II. INSTITUTIONAL FRAMEWORKS

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[41] Fenshi Fenhangye Diqu Shengchan Zongzhi 2020 Nian (分市分行业地区生产总值 2020 年) [*Regional GDP by City and Industry 2020*], TJ.JIANGSU.GOV.CN (last visited Nov 13, 2022), http://tj.jiangsu.gov.cn/2021/nj02/nj0210.htm; An Diqu Fen Changzhu Renkou (按地区分常住人口) [*Resident Population by Region*], TJ.JIANGSU.GOV.CN (last visited Nov 13, 2022), http://tj.jiangsu.gov.cn/2021/nj03/nj0306.htm (illustrating that in 2020, the gross regional product in Wuxi and Suzhou was CNY 123.7 billion and 201.7 billion respectively; additionally, Wuxi's total population was 7.46 million and Suzhou's total population was 12.74 million).

[42] Chan, *supra* note 1, at 283.

[43] *Suzhoushi Zhongji Renmin Fayuan Suzhoushi Laodong Zhengyi Zhongcai Weiyuanhui Laodong Zhengyi Yantaohui Jiyao* (苏州市中级人民法院、苏州市劳动 争议仲裁委员会劳动争议研讨会纪要) [*Summary of Seminar on Labor Dispute of Suzhou Intermediate People's Court and Suzhou Labor Dispute Arbitration Committee*], GONGSHANG PEICHANG FALÜ WANG (工伤赔偿法律网) [WORK INJURY LEGAL COMPENSATION NETWORK] (Sept. 8, 2014), http://www.ft22.com/jiangsusheng/2014-9/5822.html [hereinafter Summary of Seminar on Labor Dispute].

A. China's Legal System and Labor Legislation

The Chinese legal framework encompasses four distinct levels of law: the Constitution, state laws, administrative regulations, and other statutes. Statutes encompass local regulations, autonomous regulations, separate regulations, and rules. Within this comprehensive legal framework, China's labor legislation presents itself in the Constitution, laws (e.g., the LL, and the LCL), administrative regulations (e.g., the Regulations on the Implementation of the Labor Contract Law), local regulations (e.g., the Shanghai Labor Contract Regulations), rules (e.g., the Collective Contract Rules, the Beijing Labor Contract Rules), judicial interpretations of the Supreme People's Courts (SPC), normative documents, and international conventions.[44]

The Constitution holds the utmost legal authority and is superior to all other laws, administrative regulations, and statutes, which must not contradict its provisions.[45] The Constitution states: "Citizens of the People's Republic of China shall have the right and the obligation to work. The state shall, in various ways, create employment opportunities, strengthen worker protections, improve working conditions and, based on the development of production, increase remuneration for work and work-related benefits."[46] The Constitution offers fundamental safeguards for protecting the lawful rights and interests of workers, which is commonly referred to as "titled protection". As the apex legal document, the Constitution's labor-related provisions carry the highest legal weight, and law-making bodies are obliged to promulgate labor legislation in accordance with the Constitution.

The legislative function in the People's Republic of China is carried out by the National People's Congress and its Standing Committee, which is a group responsible for the formulation and enactment of laws.[47] Within the hierarchy of legal norms in the People's Republic of China, laws hold a position lower than that of the Constitution but higher than that of administrative regulations, local regulations, and rules.[48] The LL and the LCL are classified as state laws. Notably, Article 1 of both the LL and the LCL explicitly state that the protection of employees is one of the fundamental objectives of these statutes.[49] This is an objective because the prospect of an imbalanced power dynamic between employers and employees, wherein the former holds a superior position that fosters an inequitable labor relationship that subjugating the latter is untenable.[50] The "titled protection" inferred from the Constitution required

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[44] JIA LIN (林嘉), LAODONG FA HE SHEHUI BAOZHANG FA (劳动法和社会保障法) [LABOR LAW AND SOCIAL SECURITY LAW] 32 (4th ed. 2016).

[45] Legislation Law, art. 87.

[46] XIANFA art. 42 (1982) (China).

[47] Legislation Law, art. 7.

[48] *Id*. art. 88.

[49] *Id*. art. 1.

[50] JIA LIN, *supra* note 44.

that labor laws should prioritize the protection of employees, who are in a vulnerable position. However, the title protection does not disregard the employer's interest.[51]

The next level of law is administrative regulations formulated by the State Council.[52] In the legal hierarchy of China, administrative regulations hold a higher position than local regulations and rules.[53] Local congresses and their standing committees promulgate these local regulations.[54] Local regulations hold a superior legal position compared to the rules established by local governments.[55] Departments of the State Council, other relevant institutions, and local governments are authorized to formulate rules.[56] During the trial process, local courts make reference to the judicial interpretations issued by the SPC as well as the summaries of seminars.

The SPC interprets issues related to the specific application of laws during trials because the Standing Committee of the National People's Congress affirmed the SPC's role in the legal system.[57] The Standing Committee dictated the SPC's role in two primary aspects. Firstly, the law interpreted by the court must be relevant to the trial, such as the LCL, which may serve as the foundation for judicial decision-making.[58] Secondly, the focus of the interpretation should be on the application of the law, meaning the court should clarify the specific meaning of legal provisions and terms in the context of resolving contentious issues.[59] As per the regulations outlined in the Provisions of the Supreme People's Court on the Judicial Interpretation Work (the Provisions on JIW), the judicial interpretations promulgated by the SPC are considered to have the force of law.[60] A judicial interpretation carries equal

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[51] *See* Jia Lin (林嘉), *Woguo De Laodong Falv Zhidu* (我国的劳动法律制度) [*China's Labour Legislation System],* CIVILLAW.COM, http://old.civillaw.com.cn/article/default.asp?id=47364 (last visited Nov. 12, 2022).

[52] Legislation Law, art. 65.

[53] *Id*. art. 88.

[54] *Id*. art. 72.

[55] *Id*. art. 89.

[56] *Id*. arts. 80, 82.

[57] *See* Guanyu Jiaqiang Falu Jieshi Gongzuo De Jueyi (关于加强法律解释工作的决议) [Resolution on Strengthening the Interpretation of Laws]（promulgated by the Standing Comm. Nat'l People's Cong., June 10, 1986, effective June 01,1986）Linyi Lanshan Dist. Ct., http://www.lscps.gov.cn/html/20422 (China); Renmin fayuan zuzhi Fa (人民法院组织法) [The Organic Law of the People's Court] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 2018, effective Jan. 01, 2019), art.1, Nat'l People's Cong., http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-10/26/content_2064483.htm (China).

[58] Huapu Sun (孙华璞), *Guan yu wan shan wo guo si fa jie shi wen ti de si kao* (关于完善我国司法解释问题的思考) [*Reflections on the Improvement of Judicial Interpretation in China*], ZHONGGUO YINGYONG FAXUE (中国应用法学) [CHINA J. APPLIED JURIS.], no. 3, 2017, at 3.

[59] *Id.*

[60] Zuigao Renmin Fayuan Guanyu Sifa Jieshi Gongzuo De Guidin, Fafa [2007] Shier Hao (最高人民法院关于司法解释工作的规定，法发【2007】12 号) [The Provisions of the Supreme People's Court on the Judicial Interpretation Work, Judicial Documents No. 12 [2007]] (promulgated by the Judicial Comm. Sup. People's Ct., Mar. 22, 2001, effective Apr. 30, 2001, amended June 09, 2021, effective June 16, 2021), art. 5, Sup. People's Ct. Gaz., http://gongbao.court.gov.cn/Details/b1a7af04dadc864fc2b87fd9bbe4dc.html (China); Legislation Law, *supra* note 11, at art. 104; Cheng Wang (王成), *Zui gao fa yuan si fa jie shi xiao li yan jiu* (最高法院司法解释

weight as the particular legislative provisions that it elucidates.[61] In the year 2020, the SPC issued the "Interpretation of the Supreme People's Court on the Application of Law to the Trial of Labor Disputes" ("the New Judicial Interpretation"), which superseded previous judicial interpretations. [62] According to the 2001 SPC Judicial Interpretation, internal regulations formulated by the employers through democratic procedures in accordance with the provisions of Article 4 of the LL[63] (which do not contravene national laws, administrative regulations, and policies, and have been publicized to the employees) may be used as the basis for the people's courts in adjudicating labor disputes. In the 2020 New Judicial Interpretation, the phrase "may be used as the basis for the people's courts in adjudicating labor disputes" changed to "may be used as a basis for determining the rights and obligations of both parties." To clarify, prior to 2021, the courts directly utilized the internal regulations of employers that were established through democratic procedures in accordance with the law and publicized to employees as a basis for resolving labor disputes. As of 2021, these internal regulations serve as the fundamental criterion for determining the rights and obligations of parties involved in labor relations.

Apart from the judicial interpretations issued by the SPC, courts in China exercised oversight of trials by utilizing summaries of seminars, such as the Suzhou Regulations. Additionally, normative documents, which encompassed legal documents beyond laws, regulations, and rules, were also used to regulate legal practices in Chinese courts.[64] As an illustration, the Suzhou Regulations were jointly formulated by the Suzhou City Intermediate Court and the Suzhou City Labor Disputes Arbitration Committee. Consequently, the Suzhou Regulations qualify as a normative document, which represents a category of legal documents not specified under the Legislation Law but was nevertheless influential in the adjudication of labor disputes and the regulation of labor relationships.[65] The Suzhou Regulations furnished directives for the judicial rulings of courts operating within the territorial jurisdiction of Suzhou.

效力研究) [*Study on the Effectiveness of the Judicial Interpretation of the Supreme People's Court*], ZHONGWAI FAXUE (中外法学) [PEKING U. L. J.], no. 28, 2016, at 263.

[61] *Id.*

[62] Zuigao Renmin Fayuan Guanyu Feizhi Bufen Sifa Jieshi Ji Xiangguan Guifan Xing Wenjian De Juedin, Fashi [2020] Shiliu Hao (最高人民法院关于废止部分司法解释及相关规范性文件的决定，法释【2020】16号) [Decision of the Supreme People's Court on the Repeal of Some Judicial Interpretations and Related Normative Documents, Judicial Interpretation No. 16 [2020] (promulgated by the Judicial Comm. Sup. People's Ct., Dec. 29, 2020, effective Jan. 01, 2021) Sup. People's Ct. Gaz., http://gongbao.court.gov.cn/Details/ae5b93285eab867ce0346bee77be26.html?sw=%e5%8f%b8%e6%b3%95%e8%a7%a3%e9%87%8a (China).

[63] The LCL had not been enacted in 2001, so the SPC was written under the LL.

[64] Jinrong Huang (黄金荣), *"Gui fan xing wen jian" de falu jie ding ji qi xiao li* ("规范性文件"的法律界定及其效力) [*The Legal Definition of a "Normative Document" and its Effects*], FAXUE (法学) [L. SCI.], no.10, 2014.

[65] Lin, *supra* note 44, at 34.

With this basic overview of China's legal system and labor law framework, it is now important to look into the dismissal system and its development throughout the years to give context to this study.

B. China's Dismissal System and its Development

In between the establishment of the People's Republic of China and the implementation of the reform and opening-up policy, the Chinese employment model was marked by a guaranteed lifetime employment approach commonly referred to as the "iron rice bowl" (铁饭碗).[66] This approach was in alignment with the socialist ideology of the time, which deemed unemployment to be a capitalist concept.[67] This ideology made it so that workers, at least in urban state-owned enterprises (SOEs), almost never lost their jobs.[68] Due to the lifetime guarantee of employment, there was no provision for employee dismissal during the implementation of the "iron rice bowl" system. However, this approach resulted in significant challenges such as excessive staffing and decreased employee morale.[69] Beginning in 1978, China initiated a transformative period marked by economic development and the transition towards a market economy through the implementation of the reform and opening-up policy.

In 1979, the Chinese government took measures to spur economic development, and established Special Economic Zones (SEZs) in Shenzhen, Zhuhai, Shantou, and Xiamen. The SEZs were created with the objective of attracting foreign investment to the regions.[70] Simultaneously, the government opened up opportunities for international economic cooperation and technological exchange by permitting foreign companies, enterprises, and individuals to establish joint ventures with Chinese companies, enterprises, or economic organizations.[71] The hiring and dismissal of employees within joint ventures were subject to agreements and contracts between the involved parties,

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[66] Zhou Xiuying (周秀英), *Jiuye "Zhongshen Zhi" he "Tiefanwan" Gongzi Zhi Xingcheng de Chanquan Yiju ji Qi Weihai* (就业"终身制"和"铁饭碗"工资制形成的产权依据及其危害) [*The Property Basis and Its Harms of the "Lifetime Employment" and "Iron Rice Bowl" Wage System*], CHANGCHUN SHIFAN XUEYUAN XUEBAO (RENWEN SHEHUI KEXUE BAN) (长春师范学院学报(人文社会科学版)) [J. CHANGCHUN NORMAL UNIV. (HUMANS. & SOC. SCIS.)], no. 1, 2009, at 1–4.

[67] *See* Daniel Z. Ding & Malcolm Warner, *China's Labour-Management System Reforms: Breaking the "Three Old Irons" (1978–1999),* 18 ASIA PACIFIC J. MGMT. 315, 318 (2001).

[68] *Id.*

[69] *See* Malcolm Warner, *Economic Reforms, Industrial Relations and Human Resources in the People's Republic of China: An Overview*, 27 INDUS. RELS. J. 195, 199 (1996).

[70] Jiang Zemin (江泽民), *Shezhi Jingji Tequ, Jiakuai Jingji Fazhan (Yijiu Ba Ling Nian Bayue Eryiri)* (设置经济特区, 加快经济发展(一九八〇年八月二十一日)) [*Setting Up Special Economic Zones to Accelerate Economic Development (August 21, 1980)*], DANG DE WENXIAN (党的文献) [PARTY LITERATURE], no. 5, 2010, at 12–13.

[71] *See* Zhongguo Zhongwai Hezi Jingying qiye Fa (中外合资经营企业法法) [The Law of the People's Republic of China on Chinese-Foreign Joint Ventures] (promulgated by the Standing Comm. Nat'l People's Cong., July 01, 1979, effective July 08, 1979), art. 1, Ministry of Com., http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045777.shtml (China).

as per the law's provisions.[72] These agreements marked the initial inclusion of dismissal provisions in Chinese law.

The dismissal system went through major changes in the 1980s. The mid-1980s saw the abolishment of the lifetime employment system in SOEs. In 1986, the State Council issued the Interim Provisions on the Implementation of the Labor Contract System in State-owned Enterprises, the Interim Provisions on the Recruitment of Workers in State-owned Enterprises, the Interim Provisions on the Dismissal of Undisciplined Employees in State-owned Enterprises, and the Interim Provisions on Unemployment Insurance for Employees in State-owned Enterprises.[73] Notably, the Interim Provisions on the Implementation of the Labor Contract System in State-owned Enterprises mandated the adoption of a labor contract system within SOEs[74] and provided four circumstances in which the employers may dismiss the employees:

> (1) labor contract workers who are found not to meet the employment conditions during the probationary period; (2) labor contract workers who are ill or injured not because of work and unable to perform their jobs after the expiration of the medical treatment period; (3) those who are subject to dismissal in accordance with the Interim Provisions on the Dismissal of Undisciplined Employees in State-owned Enterprises; (4) SOEs declared bankrupt, or on the verge of bankruptcy in the period of legal rectification.[75]

The labor contract system in SOEs encompassed various aspects, including conclusions, variation, terminations, and dissolutions of labor contracts. Significantly, the contract system served as a framework for the lawful dismissal of employees.[76] The new contract system introduced three procedural elements of dismissal: (1) the employers must give one month's notice to the employees before dismissal; (2) the employers should report the dismissal to the higher supervisory authorities and the local labor administration authorities for record; (3) the employers should consult the labor unions before the dismissal.[77]

In the Interim Provisions on the Dismissal of Undisciplined Employees in State-owned Enterprises, the employer may dismiss for serious violations of

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[72] *Id.* art. 6.

[73] Chen Wenyuan (陈文渊), *Lun Laodong Hetong Zhidu* (论劳动合同制度) [*On the Labor Contract System*], ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCI.], no. 3, 1987, at 50–56.

[74] *See* Guoying Qiye Shixing Laodong Hetong Zhi Zanxing Guiding (国营企业实行劳动合同制暂行规定) [The Interim Provisions on the Implementation of the Labour Contract System in State-owned Enterprises] (promulgated by the St. Council, July 12, 1986, effective Oct. 01, 1986), art. 2, St. Council Gaz., https://www.gov.cn/zhengce/content/2012-09/21/content_7444.htm (China).

[75] *Id*. art. 12.

[76] *Id*. arts. 7–17.

[77] *Id*. arts. 16, 17.

labor disciplines, operational requirements that caused economic loss, poor working attitude, disturbance of economic and social order, and other serious wrongs, for which education or administrative sanctions failed.[78] In instances of such dismissals, it was mandatory for the employer to consult with the labor unions and notify the supervisory authority of the enterprise and the local labor authorities for record-keeping purposes.[79] During that period, the dismissal mechanism in SOEs was inequitable. Employers were exclusively mandated to document and seek advice from labor unions in cases of dismissals, without any directive on how to proceed if the unions disagreed with the decision. The only restriction stipulated was that the employers must provide employees with one month's notice of the dismissal. This notice period implied that employers could still comply with the legal requirements for dismissals, even if it was done arbitrarily or unjustly, as long as one month's notice was provided to the employee.

The year 1994 witnessed the promulgation of the LL which established a regulatory framework for fault-based dismissals, non-fault-based dismissals, as well as economic dismissals.[80] Regarding non-fault dismissals and economic dismissals, it was mandatory for the employers to provide monetary compensation to the employees.[81] Furthermore, the LL also specified and clarified the status and obligations of labor unions concerning dismissals.[82] These provisions related to dismissal have been retained in the LL amendments of 2009 and 2018, and further strengthened by the enactment of the LCL in 2007 and its amendment in 2012.

The amalgamation of these laws led to the current dismissal system in China. The current dismissal system generally encompassed three types of dismissal: fault-based dismissal, non-fault-based dismissal, and economic dismissal. Fault-based dismissal, which means the employer may dismiss the labor contract if the employee is at fault, is stipulated in Article 39 of the LCL. There are six circumstances for fault-based dismissals:

> (1) being proved unqualified for recruitment during the probation period; (2) seriously breaching the internal regulations of the employer; (3) causing major losses to the employer due to serious dereliction of duty or engagement in malpractices for personal gain; (4) concurrently establishing a labor relationship with another

[78] Guoying Qiye Citui Weiji Zhigong Zanxing Guiding (国营企业辞退违纪职工暂行规定) [The Interim Provisions on the Dismissal of Undisciplined Employees in State-owned Enterprises] (promulgated by the St. Council, July 12, 1986, effective Oct. 01, 1986), art. 2, St. Council Gaz., https://www.gov.cn/zhengce/content/2012-09/21/content_7444.htm (China).

[79] *Id*. art 3.

[80] Labor Law, arts. 25–27.

[81] *Id*. art. 28.

[82] *Id*. art. 30.

> employer, which seriously affects the accomplishment of the task of the original employer, or refusing to rectify after the original employer brings the matter to his attention; (5) invalidating the labor contract as a result of the circumstance specified in Subparagraph (1) of the first paragraph of Article 26 of this Law;[83] or (6) being investigated for criminal responsibility in accordance with law.[84]

Under the circumstances of Article 39 of the LCL, employers can dismiss employees without providing any monetary compensation. Employers must provide advance notice to labor unions when dismissing employees. Labor unions act as representatives of employee interests and are responsible for defending their lawful rights and interests. Therefore, in the event of dismissal, employers are obliged to notify labor unions of the reasons for dismissal in advance.[85] If the employers violate the provisions of laws and administrative regulations, or the labor contracts, the labor unions shall have the right to request the employers to take corrective action.[86] Employers must take into account the opinions of labor unions and provide written notification of the results to the labor unions.[87] Additionally, failing to provide advance notification to labor unions carries a penalty of monetary compensation. As per the 2013 judicial interpretation, if an employer with an established labor union neglects to notify the union beforehand of either fault-based or non-fault-based dismissals, and an employee sues the employer for unlawful dismissal, the court will rule in favor of the employee's claim for monetary compensation, unless the employer has already rectified the relevant procedures before the prosecution.[88] This provision was incorporated into the 2021 judicial interpretation.[89]

The second type of dismissal, non-fault-based dismissal, means the employer may dismiss the labor contract without the employee's fault but for certain objective reasons. There are three circumstances of non-fault-based dismissals:

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[83] This refers to an employee who fraudulently or coercively, or by taking advantage of someone else, makes the employer conclude or modify a labor contract against the employer's will. Labor Contract Law, art. 26.

[84] Labor Contract Law, art. 39.

[85] Gonghui Fa (工会法) [The Trade Union Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 03, 1992, effective Apr. 03, 1992), art. 22, *translated in* https://www.lawinfochina.com/display.aspx?lib=law&id=452&CGid= (China).

[86] *Id.*

[87] *Id*.

[88] *See* Zuigao Renmin Fayuan Guanyu Shenli Laodong Zhengyi Anjian Shiyong Falü Ruogan Wenti De Jieshi Si, Fashi [2013] Si Hao (最高人民法院关于审理劳动争议案件适用法律若干问题的解释(四)，法释【2013】4 号) [Interpretation of the Supreme People's Court on the Application of Law to the Trial of Labour Disputes (IV), Judicial Interpretation No. 4 [2013]] (promulgated by the Judicial Comm. Sup. People's Ct., Jan. 18, 2013, effective Feb. 01, 2013), art. 12, Sup. People's Ct. Gaz., http://gongbao.court.gov.cn/Details/811bdac65d1992d26d60339c558077.html?sw=%e5%8a%b3%e5%8a%a8%e4%ba%89%e8%ae%ae (China).

[89] Interpretation of the Supreme People's Court on the Application of Law to the Trial of Labour Disputes (I), art. 47.

> (1) the employee is unable to take up his original work or any other work arranged by the employer on the expiration of the specified period of medical treatment for illness or for injury incurred when not at work; (2) the employee is incompetent for the post and remains incompetent after receiving a training or being assigned to another post; or (3) the objective conditions taken as the basis for conclusion of the contract have greatly changed, so that the original labor contract cannot be performed and, after consultation between the employer and the employee, no agreement is reached on modification of the contents of the labor contract.[90] In the case of non-fault-based dismissals, the employers must notify in writing the employees of their intention 30 days in advance or pay them extra one month salary.[91]

Employers must offer financial compensation to affected employees for non-fault-based dismissal. This compensation is calculated at a rate of one month's salary for each year the employee worked for the employer.[92] In situations where an employee had worked for six months or more but less than one year, their tenure was calculated as one year for the purpose of determining financial compensation. Conversely, if an employee worked for less than six months, they receive half of their monthly salary as financial compensation.[93] Regarding financial compensation in these circumstances, the monthly salary was defined as the average of the employee's monthly salary for the 12 months preceding the date of dismissal.[94] The notification to labor unions requirement is the same as fault-based dismissals.

The third type of dismissal is economic dismissal. Economic dismissal means the employer is on the verge of bankruptcy or has serious difficulties in production and operation and other circumstances that require dismissal. There are four circumstances in which economic dismissals may occur:

> (1) the employer is to undergo reorganisation pursuant to the provisions of the Law on Enterprise Bankruptcy; (2) the employer is in dire straits in production and management; (3) the employer changes its line of production, introduces a major technological updating or adjusts its business method, and, after modification of the labor contracts, still needs to reduce its personnel; or (4) the objective economic conditions taken as the basis for conclusion of the labor

[90] Labor Contract Law, art. 40.
[91] *Id*.
[92] Labor Contract Law, art. 47.
[93] *Id*.
[94] *Id*.

> contracts have substantially changed, so that the original labor contracts cannot be performed.[95]

In the circumstances of economic dismissals, employers must provide an explanation of the situation to the labor unions or all employees at least 30 days prior to the proposed dismissal.[96] Additionally, employers must consider and take into account the views and opinions of the labor unions or employees before submitting the dismissal plan to the labor administration department.[97] The calculation for financial compensation under economic dismissals is the same as that under non-fault-based dismissals.[98] The notification to labor unions requirement is the same as fault-based dismissals.

As described above, according to national law, employers need to notify labor unions before dismissal, but do not require that employers consult labor unions or provide employees the right to a hearing.[99] The national laws regarding dismissal in China do not provide clear guidance on whether a minor breach of procedural obligations by employers would automatically result in unlawful dismissal.[100] The ambiguity and lack of clarity in the national laws have led to inadequate enforcement of labor legislation in practice. In cases where an employer unjustly creates unreasonable internal regulations and dismisses an employee without justifiable cause, unfair dismissal can occur under Article 39(2) of the LCL. Notably, only in Suzhou are employers required to provide employees with a chance to be heard, as we will explore further below.[101]

C. Labor Legislations in Suzhou and Wuxi

The administrative hierarchy of a city is an important factor in its development in China. Based on the level of government and administrative organization, Chinese cities are classified into seven levels, namely municipality, vice-provincial city, general provincial capital, general prefecture-level city, county-level city, county town, and general designated town.[102] Diverse administrative hierarchies across cities result in variations in administrative powers, resource allocation, and institutional arrangements.[103] Studies indicate a strong correlation between city size and growth patterns with their administrative hierarchy, where cities at higher administrative tiers

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[95] Labor Contract Law, art. 41.
[96] *Id*.
[97] *Id*.
[98] Labor Contract Law, arts. 46–47.
[99] Chan, *supra* note 1, at n.43.
[100] Chan, *supra* note 3, at 11.
[101] Summary of Seminar on Labor Dispute, *supra* note 43..
[102] *See* Houkai Wei, *The Administrative Hierarchy and Growth of Urban Scale in China*, 3 CHINESE J. URBAN & ENV. STUD. 1550001-1, 1550001-18 (2015).
[103] See *id.*

demonstrate faster growth rates in comparison to those at lower administrative tiers.[104]

An essential determinant of a city's potency is its Gross Domestic Product (GDP) attaining or surpassing the threshold of one trillion Yuan.[105] Regarding China's urban progress, a significant portion of the available resources goes to municipalities and vice-provincial cities. In the duration encompassed by this study, spanning from 2012 to 2020, Suzhou and Wuxi were the initial ordinary prefecture-level cities to surpass the GDP threshold of one trillion Yuan.[106] Suzhou accomplished this feat in 2011, followed by Wuxi in 2017.[107] Moreover, Suzhou and Wuxi are both situated in Jiangsu province and have comparable GDPs and population sizes.[108]

In terms of labor legislation, it is imperative for Suzhou and Wuxi to prioritize adherence to national laws, administrative regulations, and pertinent policies of Jiangsu Province, which include the LL, the LCL, and the Jiangsu Labor Contract Regulations. Local courts in Suzhou and Wuxi are also obligated to observe the judicial interpretations and guidelines stipulated by the SPC and the Jiangsu People's Court (the provincial high court) when resolving labor disputes. Within the confines of these regulatory frameworks, Suzhou and Wuxi can devise their own localized rules and regulations based on their unique circumstances, while the local courts and labor dispute arbitration committees are authorized to establish corresponding regulations to guide the relevant authorities during adjudications.

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[104] *See id.*

[105] *See* Jinlei Li (李金磊), *Zhongguo 23 Zuo Chengshi GDP Chao Wanyi Yuan (*中国 23 座城市 GDP 超万亿元*)* [*China's 23 Cities Exceed Trillion Yuan in GDP*], CHINA NEWS NETWORK (Jan. 22, 2021), http://news.china.com.cn/2021-01/22/content_77141673.htm.

[106] The claim that reaching or exceeding a trillion yuan in city GDP is a crucial determinant of a city's strength holds ground. For instance, in 2023, the number of Chinese cities with a GDP exceeding one trillion yuan increased to 26, with these cities' economic output accounting for as much as 39.4% of the national total. *See GDP Wanyi Chengshi Kuozhi 26 Cheng, Zhongxibu "Duanceng" Le* (GDP 万亿城市扩至 26 城，中西部"断层"了) [*The GDP of Trillion Yuan Cities Has Expanded to 26 Cities, Causing a "Fault" in the Central and Western Regions*], XINLANG CAIJING (新浪财经) [SINA FIN.] (Mar. 12, 2024), https://finance.sina.com.cn/jjxw/2024-02-18/doc-inainpuh2937902.shtml.

Geographically, one-trillion-yuan cities in the eastern coastal regions significantly outnumber those in the central and western parts, totalling 19. *Id*. These cities generally possess stronger economic vitality and comprehensive capabilities. For example, Shanghai and Beijing reached a GDP scale of four trillion yuan, while Shenzhen and Guangzhou hit three trillion yuan. Changzhou was a new entry in 2023, reaching the the one trillion yuan mark for the first time, earning the title "Capital of New Energy." In 2023, Changzhou's energy industry output was approximately 750 billion yuan, nearly one-third of the city's total industrial output value. *Id*. Overall, a city's total GDP is indeed an important metric for assessing its economic strength, particularly for those surpassing the trillion yuan threshold, often demonstrating better performance in economic scale and industrial development. *See Zhongguo Wanyi Zhicheng Zengzhi 26 Zuo Yiweizhe Shenme?* (中国万亿之城增至 26 座 意味着什么？) [*What Does It Mean for China's Trillion Dollar Cities to Increase to 26?*], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA NEWS] (Mar. 12, 2024), https://news.cnr.cn/native/gd/20240131/t20240131_526577458.shtml.

[107] *See* Jinlei Li, *supra* note 105.

[108] *See* Labor Contract Law, art. 4, and accompanying text.

The labor legislation in Suzhou and Wuxi shares broad similarities and offers guidance on specific issues encountered in arbitration, mediation, and litigation. This guidance serves as a reference for the courts and arbitration and mediation committees to ensure appropriate application. These specific issues include but are not limited to, determination of labor relations, labor contract performance, and dismissal, among others. For instance, in 2009, the Jiangsu High People's Court and the Jiangsu Labour Disputes Arbitration Committee released the Guidance on the Trial of Labor Disputes that provided a framework for local courts and labor disputes arbitration committees at all levels. The Guidance outlines how to identify the parties involved in labor relations, the conclusion and performance of labor contracts, the termination and dissolution of labor contracts, the settlement of salary disputes, and relevant procedural obligations.[109] The Suzhou Intermediate People's Court and the Suzhou Labour Disputes Arbitration Committee leveraged this Guidance to interpret complex issues arising in labor disputes and subsequently devised the Suzhou Regulations in 2010.

While the cities seem similar, the difference is in the implementation of LCL and LL policies. On the one hand, the Suzhou Regulations elucidate the intricate challenges encountered in managing labor disputes within the geographical boundaries of Suzhou during that period. These challenges included disputes relating to overtime salary and the termination of labor contracts.[110] One important point of concern is the requirement for employers to provide their employees with an opportunity to be heard in the event of dismissal under Article 39(2) of the LCL:

> An employer who dismisses an employee for serious breaches of internal regulations shall give the employee an opportunity to be heard to comply with basic due process requirements; if the employer cannot prove that the employee has been given an opportunity to be heard and the employee claims that the employer has unlawfully terminated the labor contract, the claim shall be upheld. Whether the employer has given the employee an opportunity to be heard shall be determined based on whether the employee's wrongful conduct is in a continuing status.[111]

With respect to the procedural aspects, the Suzhou Regulations additionally outline the recourse available in the event of an employer's failure to notify the labor union:

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[109] *See Guanyu Shenli Laodong Zhengyi Anjian De Zhidao Yijian* (关于审理劳动争议案件的指导意见) [*The Guidance on the Trial of Labour Disputes*], CHINA.FINDLAW.CN (Apr. 17, 2019), https://china.findlaw.cn/laodongfa/ldgszy/laodongzhengyichulitiaoli/75550.html.

[110] Summary of Seminar on Labor Dispute, *supra* note 43.

[111] *Id.*

> If the employer has evidence that the employee has been dismissed for serious breaches of internal regulations, but has not fulfilled the obligation to notify the labor union as stipulated in Article 43 of the LCL, the dismissal may be deemed valid if the employer notifies the labor union of the cause of the dismissal before the arbitral decision and the labor union approves it; If the employer does not have a labor union, the employer shall publicize the reasons for the dismissal to all employees.[112]

In other words, non-compliance by the employer with the procedural requirement to notify the labor union about the dismissal of an employee pursuant to Article 39(2) of the LCL does not necessarily render the dismissal null and void.

On the other hand, the labor legislation in Wuxi does not expressly grant employees the entitlement to a fair hearing, thereby distinguishing it from the labor legislation of Suzhou with respect to Article 39(2) of the LCL.

III. DATA, METHODOLOGY, HYPOTHESIS, AND VARIABLES

A. Data and Methodology

This article deliberately selected Suzhou and Wuxi as the empirical research locations for strategic purposes. Limited empirical research has been conducted on the employee's right to a fair hearing opportunity and related cities. The Suzhou regulations unequivocally affirm the right of employees to be heard, whereas employees in Wuxi are not afforded the same. The opportunity to compare the level of employee rights protection between these two cities constitutes a compelling rationale for this study, given the dearth of empirical evidence in the literature. This study has coded and analysed the most common justifications or reasons for dismissal. For example, absence without justification, disobedience to work arrangements and irregular professional behaviour are the commonly featured reasons for dismissal. The reasons for dismissals are found in the internal regulations of employers, not statute. The relevant judgments (which is the data source of this study) refer to these reasons for dismissal.

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[112] *Id.*

Our subsequent course of action entailed downloading all relevant cases from the China Judgments Online website as our designated dataset.[113] Overall, this study conducted an analysis of 140 cases of labor contract disputes in Suzhou and 234 ones in Wuxi spanning from 2012 to 2020 (which represented all the cases in the two cities during this period).

The author developed a coding scheme and trained a research assistant for content analysis and coding. The following basic information of cases were coded, including general information of the trial (level, location, type of proceedings, year of court decision, etc.), general information of the employee (location, gender, average salary, legal representation, etc.), and general information of the employer (location, genre, legal representation, etc.)

In addition, the following nine major measurements were coded: (1) employer's success rate, (2) employee's success rate, (3) principal reason for dismissal, (4) employee's main claim, (5) recovery of monetary claims, (6) whether the employer given the employee an opportunity to be heard, (7) whether the court conducted a substantive review of the dismissal to determine its fairness, (8) whether the employer notified the labor union before dismissal, and (9) relevant labor laws applied by the court. This study employed a coding process for several independent variables relating to both employees and employers, which may exert a direct or indirect influence on case outcomes. For instance, in relation to employee codes, gender was coded to ascertain its impact on the outcome. In the case of employer codes, the genre of the employer was coded to examine the potential impact of differing ownership statuses on the outcome. Similarly, legal representative codes encompassed whether the employee and employer had legal representatives, as well as other circumstances, in order to explore the potential impact of legal representatives on the outcome. Moreover, variables linked to dismissal were coded, such as the principal reasons for the dismissal and whether labor unions were notified before the dismissal.

B. Descriptive Statistics of the Data

The data for the variables examined in this article were collected from the China Judgments Online website. The significant findings are presented in the subsequent tables.

Table 1: General Outcome

	Wuxi	**Suzhou**
N	234	140

[113] *See* ZHONGGUO CAIPAN WENSHU WANG (中国裁判文书网) [CHINA JUDGEMENTS ONLINE], https://wenshu.court.gov.cn/ (last accessed Nov. 13, 2022). This website offers the collection of judgments and decisions from Chinese courts.

Employee's success rate	Full Win		11.50%	16.40%
	Partial Win		10.30%	11.40%
	Loss		78.20%	72.10%
Recovery of monetary claims	Recover 100%		8.80%	1.50%
	Recover 0%		80.10%	71.30%
Whether the court conducted a substantive review of the dismissal to determine its fairness	Yes, and the dismissal was fair	Full Win	2.30%	2.50%
		Partial Win	1.50%	3.80%
		Loss	96.20%	93.7%
	Frequency		55.60%	56.40%
	Yes, and the dismissal was unfair	Full Win	50.00%	100.00%
		Partial Win	0.00%	0.00%
		Loss	50.00%	0.00%
	Frequency		0.90%	0.70%
	Did not conduct a substantive review	Full Win	22.50%	30.90%
		Partial Win	21.60%	20.00%
		Loss	55.90%	49.10%
	Frequency		43.60%	39.30%
The employer notified the labor union before the				

dismissal				
	Notified	Full Win	4.90%	9.80%
		Partial Win	4.90%	80.50%
		Loss	90.10%	67.30%
	Frequency		77.80%	59.90%
	Did not notify	Full Win	34.60%	14.50%
		Partial Win	28.80%	58.20%
		Loss	36.50%	32.70%
	Frequency		22.20%	40.10%
The employer gave the employee a warning notice before the dismissal				
	Gave	Full Win	6.30%	15.90%
		Partial Win	3.20%	11.40%
		Loss	90.50%	72.70%
	Frequency		40.60%	31.40%
	Did not give	Full Win	15.10%	16.70%
		Partial Win	15.10%	11.50%
		Loss	69.80%	71.90%
	Frequency		59.40%	68.60%
Whether the court ruled the dismissal was lawful	The dismissal was lawful	Full Win	4.10%	2.00%
		Partial Win	1.50%	3.00%

		Loss	94.30%	95.00%
	Frequency		82.90%	72.10%
	The dismissal was unlawful	Full Win	47.50%	53.80%
		Partial Win	52.50%	33.30%
		Loss	0.00%	12.80%
	Frequency		17.10%	27.90%
Whether the court ruled that the relevant internal rules of the employer were illegal	Yes	Full Win	0.00%	0.00%
		Partial Win	50.00%	0.00%
		Loss	50.00%	100.00%
	Frequency		0.90%	0.70%
	No	Full Win	11.60%	16.50%
		Partial Win	9.90%	11.50%
		Loss	78.40%	71.90%
	Frequency		99.10%	99.30%

Table 2 Employee's Success Rates by the Employer's Genre

Employer's genre		**Wuxi**	**Suzhou**
State organs and institutions	Full Win	0.00%	
	Partial Win	0.00%	
	Loss	100.00%	
	Frequenc	0.90%	

	y		
State-owned enterprise	Full Win	0.00%	0.00%
	Partial Win	0.00%	0.00%
	Loss	100.00%	100.00%
	Frequency	0.90%	0.70%
Non-listing (private) firm	Full Win	15.40%	20.70%
	Partial Win	12.10%	12.20%
	Loss	72.50%	67.10%
	Frequency	64.20%	59.40%
Listing (private) Firm	Full Win	18.20%	0.00%
	Partial Win	9.10%	0.00%
	Loss	72.70%	100.00%
	Frequency	4.70%	0.70%
Foreign firm	Full Win	3.10%	11.80%
	Partial Win	7.70%	9.80%
	Loss	89.20%	78.40%
	Frequency	28.00%	37.00%
Subsidiary	Full Win	0.00%	0.00%
	Partial Win	0.00%	50.00%
	Loss	100.00%	50.00%
	Frequency	0.90%	1.40%

Others	Full Win	0.00%	0.00 %
	Partial Win	0.00%	0.00 %
	Loss	100.00 %	100.0 0%
	Frequenc y	0.40%	0.70 %

Table 3 Principal Reasons for Dismissal and Outcomes of Cases

City	**Principal Reasons for Dismissal**	**Frequency**		
Wuxi	Absence without justification	30.80%	Full Win	11.10 %
			Partial Win	6.90 %
			Loss	81.90 %
	Violation of Security behaviour	20.50%	Full Win	4.20 %
			Partial Win	2.10 %
			Loss	93.80 %
	Irregular Professional Behaviour	17.50%	Full Win	19.50 %
			Partial Win	22.00 %
			Loss	58.50 %
	Disobedience to work arrangements	10.30%	Full Win	4.20 %
			Partial Win	8.30 %
			Loss	87.50 %
	Violation of diligent duty	9.40%	Full Win	27.30 %
			Partial Win	9.10 %

	Others	8.10%	Loss	63.60%
			Full Win	10.50%
			Partial Win	26.30%
	Kickback	1.30%	Loss	63.20%
			Full Win	0.00%
			Partial Win	0.00%
	Refuse adjustment of the position	1.30%	Loss	100.00%
			Full Win	0.00%
			Partial Win	0.00%
	Extra-long sick leave	0.40%	Loss	100.00%
			Full Win	0.00%
			Partial Win	0.00%
	Strike	0.40%	Loss	100.00%
			Full Win	0.00%
			Partial Win	0.00%
Suzhou	Irregular Professional Behaviour	25.70%	Loss	100.00%
			Full Win	25.00%
			Partial Win	8.30%
	Absence without justification	17.90%	Loss	66.70%
			Full Win	4.00%
			Partial Win	12.00%
			Loss	84.00%

Violation of Security behaviour	17.10%	Full Win	8.30 %
		Partial Win	16.70 %
		Loss	75.00 %
Violation of diligent duty	16.40%	Full Win	21.70 %
		Partial Win	8.70 %
		Loss	69.60 %
Disobedience to work arrangements	9.30%	Full Win	7.70 %
		Partial Win	7.70 %
		Loss	84.60 %
Others	8.60%	Full Win	33.30 %
		Partial Win	16.70 %
		Loss	50.00 %
Strike	3.60%	Full Win	20.00 %
		Partial Win	20.00 %
		Loss	60.00 %
Refuse adjustment of the position	1.40%	Full Win	0.00 %
		Partial Win	0.00 %
		Loss	100.00%

Table 4 Employee's Success Rate with Their Different Types of Legal Representation

City	**Types of legal representation**	**Frequency**	

Wuxi	No legal representative	28.30%	Full Win	%	14.30
			Partial Win	%	7.90
			Loss	%	77.80
	Relative or friend	2.20%	Full Win	%	80.00
			Partial Win	%	20.00
			Loss	%	0.00
	Professional attorney(s) from a law firm	59.60%	Full Win	%	7.50
			Partial Win	%	10.50
			Loss	%	82.00
	Professional attorney from government	3.1%	Full Win	%	0.00
			Partial Win	%	0.00
			Loss	%	100.00%
	Basic-level legal service workers	5.4%	Full Win	%	16.70
			Partial Win	%	16.70
			Loss	%	66.70
	Multiple Legal Counsel	1.3%	Full Win	%	33.30
			Partial Win	%	33.30
			Loss	%	33.30
Suzhou	No legal representative	25.90%	Full Win	%	11.40
			Partial Win	%	8.60
			Loss	%	80.00

Professional attorney(s) from a law firm	65.90%	Full Win	18.00%
		Partial Win	12.40%
		Loss	69.70%
Basic-level legal service workers	7.40%	Full Win	10.00%
		Partial Win	0.00%
		Loss	90.00%
Multiple Legal Counsel	0.70%	Full Win	0.00%
		Partial Win	100.00%
		Loss	0.00%

Table 5 Employee's Success Rates by Legal Representation of Each Party

City	Legal Rep.		Frequency	Full Win	Partial Win	Loss
Wuxi	**Employee**	Legal Rep Present	71.70%	10.60%	11.30%	78.10%
		No Legal Rep	28.30%	14.30%	7.90%	77.80%
	Employer	Legal Rep Present	94.20%	11.80%	9.50%	78.70%
		No Legal Rep	5.80%	7.70%	23.10%	69.20%
Suzhou	**Employee**	Legal Rep Present	74.10%	17.00%	12.00%	71.00%
		No Legal Rep	25.90%	11.40%	8.60%	80.00%
	Employe	Leg	97.80%	15.9	12.01	72.0

r	al Rep		0%	%	0%
	Present No Legal Rep	2.20%	66.7 0%	0.00%	33.3 0%

IV. DISCUSSION

A. In General, Employers Prevailed over Employees; Suzhou Employees are More Successful than Wuxi Employees

Based on the data obtained from Suzhou (n=140) and Wuxi (n=234), it is evident that employers generally hold an advantageous position regarding the outcome of litigation against their employees. Specifically, in Suzhou, the employer emerged victorious in 72.1% of cases, while in Wuxi, it was 78.2%.[114] The overall success rate of employees in Suzhou was 16.4%, which is notably higher than 11.5% observed in Wuxi.[115] The probability of achieving monetary recovery was comparable in both Suzhou and Wuxi. Specifically, in Suzhou, the employer emerged victorious in 71.3% of cases, resulting in no monetary compensation for the employee. In Wuxi, the corresponding figure was 80.1%.[116] Despite the challenges associated with securing monetary recovery, a noteworthy proportion of employees in Wuxi (8.8%) were able to obtain 100% of their claimed compensation, compared to a comparatively lower proportion of 1.5% observed in Suzhou.[117] This study showed employees in Suzhou had a greater likelihood of complete resolve of their legal disputes when compared to employees in Wuxi. However, the employers are still generally the big winners, which lends support to the author's earlier research that the Chinese courts tend to exhibit a pro-employer inclination in their practical functioning.[118]

B. Better Protection for Suzhou Employees - The Importance of Local Rules

The entitlement for an employee to be granted a hearing prior to dismissal is grounded in their right to be duly informed of the imminent dismissal and to avail themselves of the opportunity to offer a rebuttal to the grounds for dismissal before the employer renders a conclusive determination.[119] The empirical evidence indicates that employers generally possess a dominant bargaining position vis-à-vis their employees. Nonetheless, the analysis reveals

[114] See *supra* Table 1 (Employer's success rate).
[115] *Id*.
[116] See *supra* Table 1 (Recovery of monetary claims).
[117] *Id*.
[118] Chan, *supra* note 1, at 297.
[119] *See* Mark Harcourt et al. *Distributive Justice, Employment-at-will and Just-cause Dismissal*, 115 J. BUS. ETHICS 311, 311 (2013).

that employees in Suzhou manifest a superior success rate than their counterparts in Wuxi, which may be attributed to the former's ability to exercise their right to a hearing.[120]

The distinguishing factor accounting for the disparate rates of success among employees in Suzhou and Wuxi pertains to the safeguarding of the former group's right to a pre-dismissal hearing under the Suzhou Regulation; while the absence of legal protection precludes Wuxi employees from prevailing in their cases. In instances where national laws are ambiguous, the local Suzhou Regulation could furnish supplementary protections for employees, such as affording procedural fairness and conferring remedies through labor unions for those who have been unjustly dismissed. By contrast, the absence of local regulations in Wuxi may pose a greater challenge for employees seeking to contest wrongful dismissal.

Apart from offering more explicit directives for regional authorities, the Suzhou Regulations furnish supplementary safeguards for employees, which can yield broader societal and economic dividends. Specifically, mitigating the prospect of capricious or inequitable dismissal can cause greater stability in local labor markets, thereby promoting economic expansion and progress.[121] Also, it helps foster greater trust in local governance, since employees are more inclined to repose faith in municipal authorities that provide robust protections.[122]

In sum, local regulations that fortify employee protections through the refinement of national laws and the establishment of additional procedural requirements do make a difference, as can be seen by the higher winning rates in Suzhou, when compared to Wuxi.

The Suzhou regulations require the employer to grant the employee an opportunity to be heard before a dismissal decision is made.[123] This requirement is absent in Wuxi. This extra procedural protection in Suzhou has made a difference and resulted in higher winning rates in Suzhou (full win being 16.40 per cent and partial win being 11.40 per cent), when compared to Wuxi (full win being 11.50 per cent and partial win being 10.30 per cent).[124]

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[120] *See supra* Table 1.

[121] *See* Giuseppe Bertola, Tito Boeri & Sandrine Cazes, *Employment protection and labour market adjustment in OECD countries: Evolving institutions and variable enforcement*, EMPLOYMENT & TRAINING PAPERS 48, 154 (1999), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_120381.pdf.

[122] *See* Mary E Gallagher, *Mobilizing the law in China:"Informed disenchantment" and the development of legal consciousness*, 40 L. & SOC'Y REV. 783, 792 (2006).

[123] Summary of Seminar on Labor Dispute, *supra* note 43 ("An employer who dismisses an employee for serious breaches of internal regulations shall give the employee an opportunity to be heard to comply with basic due process requirements; if the employer cannot prove that the employee has been given an opportunity to be heard and the employee claims that the employer has unlawfully terminated the labor contract, the claim shall be upheld. Whether the employer has given the employee an opportunity to be heard shall be determined based on whether the employee's wrongful conduct is in a continuing status").

[124] *See supra* Table 1.

C. The Role of the Fairness Review

The court conducting a fairness review of the dismissal has a great bearing on the outcome. According to the SPC 2008 interpretation, the fairness review is an obligation rather than a discretion.[125] However, the courts in both cities did not, in many cases, conduct a substantive review of the fairness of the dismissal. Notably, in Suzhou, employees did not lose a case when there was a fairness review and the court found the dismissal to be unfair. On the other hand, Wuxi employees had a 50% chance of losing when there was a fairness review and the court found the dismissal to be unfair.[126] When conducting a fairness review, if the dismissal was fair, the employee is much more likely to lose[127]; if the dismissal was unfair, the employee is less likely to lose.[128] In the absence of a fairness review, almost half of the employees in both Suzhou and Wuxi lost.[129]

A fairness review allows the court to investigate the merits of the dismissal to ascertain whether it was fair or not, instead of confirming whether the employer's internal regulations have been seriously breached. For example, an employee, as provided under the internal regulations, may be considered to have seriously breached the internal regulations with one day of absence without notice or reason. However, if the court conducts a fairness review, it will very likely come to the view that the employee's breach is only trivial and the dismissal had been unfair, thereby ruling in favor of the employee. If no such review is conducted, the court would likely rubberstamp the dismissal decision of the employer. As such, the employee is far more likely to win if a fairness review is conducted.

D. The Opportunity to Be Heard – the Requirement of Due Process

The employer's power to establish internal regulations and impose penalties on employees acknowledges the inherent power imbalance between the parties in labor relations. Consequently, stringent requirements must be in place to safeguard the rights of employees, especially in the event of dismissal, against employer's powers. Different jurisdictions employ an array of methods to safeguard the rights of the employees. For example, the Polkey rule in English law stipulates that, in addition to justifying an employee's dismissal, the employer must also demonstrate that the procedures followed were fair.[130] In

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[125] Chan, *supra* note 1, at 307.

[126] *See supra* Table 1. Employee's success rate with whether the court conducted a substantive review of the dismissal to determine its fairness.

[127] *Id*. When dismissal was considered fair by the court, 93.7% of the Suzhou employees lost, compared to 96.2% in Wuxi.

[128] *Id*. When dismissal was considered unfair by the court, 0% of the Suzhou employees lost, compared to 50% in Wuxi.

[129] *Id*. The losing rate of the employee in Suzhou was 49.1%, and 55.9% in Wuxi.

[130] *See* Polkey v. AE Dayton Services Ltd [1987] UKHL 8, at 2.

Germany, the works council must be consulted before any dismissal.[131] The employer must inform the works council of the reasons for the dismissal.[132] A notice of dismissal given without consulting the works council is invalid.[133]

In contrast to the legal systems of the aforementioned countries, China lacks a provision that invalidates dismissal due to a breach of due process. Specifically, Article 43 of the LCL requires employers to notify labor unions of the reasons for unilateral dismissal in advance, albeit the union is merely entitled to "request" the employer to rectify the dismissal. Consequently, employers are solely obligated to "consider" the union's opinion and subsequently "communicate" the union of the outcome.[134] The procedural elements of dismissal in China are limited to notice to the employee or the labor union, or to pay financial compensation.[135] This means there is no mandatory regulation for procedures such as consultation. However, for dismissals under Article 39 of the LCL, employers are granted the authority to terminate employment contracts without the obligation to provide notice or compensation.

The issue of providing employees with the opportunity to be heard in cases of serious breach dismissal has sparked varied debates. One argument posits that the retrospective nature of the breach should be taken into consideration when the employer exercises their right to dismiss, and when the employee is given a chance to be heard. Neglecting this aspect could potentially complicate the case and render it challenging to decide.[136] Others contend that allowing employees to defend themselves would guarantee fair treatment and ensure dismissal decisions be justified.[137] Zhang believes that incorporating the opportunity for employees to be heard during the employer's dismissal procedure and providing them a chance to defend their actions against an alleged breach would facilitate

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[131] *See* Betriebsverfassungsgesetz [BetrVG] [Works Constitution Act], Sept. 25, 2001, BGBL. I at 2518, revised Sept. 16, 2022, BGBL, I at 1454, § 102(1), https://www.gesetze-im-internet.de/englisch_betrvg/index.html (Ger.).

[132] *Id*.

[133] *Id*.

[134] Labor Contract Law, art. 43.

[135] *See e.g*., *Id*. arts. 40–41, 43.

[136] Qian Wang (王倩), *Wo guo guo cuo jie gu zhi du de bu zu ji qi gai jin —— jian lun "lao dong he tong fa" di 39 tiao de xiu gai* (我国过错解雇制度的不足及其改进——兼论《劳动合同法》第 39 条的修改) [*Inadequacies of China's Breach Dismissal System and Its Improvement --Also on the Amendment of Article 39 of the "Labor Contract Law"*], HUADONG ZHENGFA DAXUE XUEBAO (华东政法大学学报) [J. EAST CHINA UNIV. POL. SCI. & L.], no.4, 2017, at 116, 122. Neither the LL nor the LCL provides a time limit for the employer to exercise the right to dismiss. Some employers may dismiss employees long after their wrongdoing has occurred, or even impose penalties several times, which not only threatens the stability of labor relations but also makes it more difficult to prove liability due to the loss of evidence and changes in personnel.

[137] Hui Xiong (熊晖) & Jiaxin Ge (葛嘉欣), *Wo guo jie gu cheng xu zhi jian tao ji wan shan* (我国解雇程序之检讨及完善) [*Review and Improvement of Dismissal Procedures in China],* ZHONGGUO LAODONG (中国劳动) [CHINA LABOR], no. 3, 2018, at 48; Dong Yan (闫冬), *Lun zheng dang jie gu shi you de ti xi fan shi* (论正当解雇事由的体系范式) [*On the Systematic Paradigm of Fair Cause of Dismissal*], FA XUE [LAW SCI.], no. 469, 2020, at 191 (2020).

a truthful discovery.[138] The Suzhou regulations prescribe that providing the opportunity for an employee to be heard is deemed an essential component of procedural fairness in dismissal.[139] Affording employees the opportunity to be heard promotes just and equitable dismissals, while affording greater protection to employees.

The notion of fairness or justice is crucial in promoting cooperation between employers and employees and improving productivity within the workplace.[140] Due process involves providing an opportunity to participate or appeal against a decision.[141] In other words, due process ensures that decisions are reasonable and legitimate. Dismissal decisions are most impactful on an employee.[142] While Suzhou considers the opportunity to be heard as a requirement of due process, it does not provide explicit guidelines on how the process should be conducted. The process can be divided into three key aspects. First, before the hearing, the employee should be informed of the reasons for the potential dismissal and should be allowed to seek the assistance of legal representatives.[143] The second aspect concerns the hearing itself, during which the employee should be provided with the chance to present arguments and counter the employer's reasons for dismissal.

The employee should be allowed to challenge the employer's factual findings and the application of internal regulations.[144]

Finally, it is important the employee is not subjected to any form of retaliation or additional penalties for exercising their right to be heard during the dismissal process. Due process would prove influential in this study. The availability of the right to be heard in Suzhou was critical to the outcome of the cases (where employees have a greater success rate) when compared to the lack of such right in Wuxi.[145] There are no empirical studies in the past on China's labor disputes that tests the importance of due process in determining the outcome of cases. This study fills an important gap in the literature.

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[138] Putian Zhang (张朴田), *Cheng jie jie gu : an li fen xi yu gui ze jian gou —— yi " lao dong he tong fa" di san shi jiu tiao di er kuan wei zhong xin* (惩戒解雇: 案例分析与规则建构——以《劳动合同法》第三十九条第二款为中心) [*Disciplinary Dismissal: Case Analysis and Rule Construction - Focusing on Article 39(2) of the "Labor Contract Law"*], FALV SHIYONG (法律适用) [J. L. APPLICATIONS], no.18, 2017, at 92, 95.

[139] Summary of Seminar on Labor Dispute, *supra* note 43.

[140] *See* Jerald Greenberg, *Organizational Justice: Yesterday, Today, and Tomorrow*, 16 J. MANAGEMENT 399, 401 (1990); Suzanne S. Masterson et al., *Integrating Justice and Social Exchange: The Differing Effects of Fair Procedures and Treatment on Work Relationships*, 43 ACAD. MGMT J. 738, 738 (2000).

[141] *See* Robert Folger et al., *A Due Process Metaphor for Performance Appraisal*, 14 RSCH. ORG. BEHAV. 129, 146 (1992).

[142] *See* Mark Harcourt et al., *Employment at Will Versus Just Cause Dismissal: Applying the Due Process Model of Procedural Justice*, 64 Lab. L.J. 67, 68 (2013).

[143] *See id.*

[144] *See* Stephen N. Subrin & A. Richard Dykstra, *Notice and the Right to Be Heard: The Significance of Old Friends* 9 HARV. C.R.-C.L. L.REV. 449, 471 (1974); *see also* Harcourt et al., *supra* note 142.

[145] *See supra* Table 1.

E. The Importance of Legal Clarity

The imperative role of the legislator is to ensure the manifestation of clarity,[146] precision, and unambiguity in the drafting of legislation, as such qualities bestow a sense of predictability upon the law and provide individuals with a clear understanding of the rights and obligations conferred by the law.[147] For judges, legal clarity influences their decisions.[148] For employers, the clarity of legal norms affects their ability to comply with the law.[149] For the parties to a labor relationship, the clarity of the law can serve as an incentive for the parties to voluntarily comply with its provisions.[150] The ambiguity of Article 39 (2) of the LCL has resulted in varying court decisions in comparable cases, indicating a lack of clarity in two key aspects.

Under the LCL, employers are granted the authority to terminate employment contracts without the obligation to provide notice or compensation if employees have seriously breached the internal regulations of the employer. First, the term "serious" remains undefined. Both the LCL and corresponding judicial interpretations have failed to establish clear criteria for determining what constitutes "serious" misconduct and how judicial authorities should evaluate it.[151] In the absence of a clear definition of "serious" within the context of Article 39 (2) of the LCL, courts have generally adopted various approaches to assess the severity of the misconduct in practice. These approaches include: (1) endorsing the definition of "serious" misconduct provided by the employer; (2) explicitly evaluating the seriousness of the employee's actions by comparing them to relevant laws and the internal regulations of the employer; and (3) considering the degree of seriousness based on ethical standards and professional requirements.[152] Different measurement methods have led to marked differences in verdicts on dismissal disputes across the region. Courts adopting the first approach of endorsing the employer's definition of "serious" misconduct tend to rule in favor of the employer, as they simply rubberstamp whatever the employer presents.[153] Courts that adopt the second and third

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[146] *See* Sinchit Lai, *Bid Rigging, a Faintly Discernible Enumeration under Article 13 of the Anti-Monopoly Law in China*, 12 U. PA. ASIAN L. REV. 244, 264 (2016).

[147] *See* Esther Majambere, *Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting*, 37 COMMONWEALTH L. BULL. 417, 419 (2011).

[148] *See* Richard M. Re, *Clarity Doctrines*, 86 THE UNIV. CHI. L. REV. 1497, 1510 (2019).

[149] *See* Virginia E Harper Ho, *From Contracts to Compliance: An Early Look at Implementation under China's New Labor Legislation*, 23 COLUM. J. ASIAN L. 33, 73 (2009).

[150] *See id.* at 72.

[151] *See* Dawn Hu & Fang Yang, s*upra* note 37.

[152] *Id.*; Tian Yan (阎天), *Laodong Guizhang Xingzhi Sanfenshuo: Yi Bili Yuanze Wei Jianyan Biaozhun* (劳动规章性质三分说: 以比例原则为检验标准) [*The Three-Dimensional Approach to the Nature of Labour Regulations: The Principle of Proportionality as a Test*], JIAODA FAXUE (交大法学) [SJTU L. REV.], no. 4, 2017, at 34.

[153] Xie Zengyi (谢增毅), *Laodongfa Shang Jingji Buchang de Shiyong Fanwei Ji Qi Xingzhi* (劳动法上经济补偿的适用范围及其性质) [*The Scope and Nature of Economic Compensation in Labor Law*], ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCI.], no. 4, 2011, at 103–13.

approaches tend to be more in favor of the employee as they conduct their own assessment of the seriousness of the breach as opposed to simply adopting whatever the employer says.

Second, the term "internal regulations" within the context of Article 39 (2) of the LCL lacks clarity, particularly regarding the grounds for which an employer's internal regulations may be invoked to justify employee dismissal. For instance, employers may stipulate that employees must not breach internal regulations without providing clear and specific definitions of such regulations. Consequently, employees may face dismissal for minor transgressions that are considered serious breaches of internal regulations.[154] Moreover, certain employers may include extraneous aspects of the labor contract performance as serious violations of internal regulations, which exceeds the scope of reasonable employee management.[155] The absence of legal clarity surrounding the interpretation and application of the LCL may erode the credibility of the law.

While the law ostensibly provides employers with autonomy to dismiss employees, the lack of legal clarity concerning the essential elements, procedures, and judgment criteria has resulted in instances of unjust and wrongful dismissals in practice.[156] For instance, the lack of definition or guidance as to what constitutes "seriousness" has led to diverging court decisions, leading to uncertainty. Given this lacuna, sometimes courts simply adopt the employer's definition of "serious breach", which usually results in the employee losing the case.

F. Influence of Ownership on Labor Disputes

Although dismissals can occur in organizations of various ownership types, the outcomes for employees in different types of organizations can vary significantly. The findings indicate that employees in state-owned organizations in Suzhou and Wuxi experienced a 100% loss rate, which was higher than that of employees in private and foreign firms.[157] However, this result contradicts a previous study of the author, which showed that courts

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[154] Shangyuan Zheng (郑尚元) & Yifei Wang (王艺非), *Yong ren dan wei lao dong gui zhang zhi du xing cheng li xing ji fa zhi zhong gou* (用人单位劳动规章制度形成理性及法制重构) [*Rationality and Legal Reconstruction of the Formation of Labour Regulations in Employers*], XIANDAI FAXUE (现代法学) [MODERN L. SCI.], no 6, 2013, at 72.

[155] For example, some employers' internal regulations include employees should respect their parents and commute to work by legal taxis. *See* Qian Wang, *supra* note 136, at 120.

[156] Putian Zhang, *supra* note 138; Jiayu Zhang (张家宇), *Lao dong gui zhang zhi du de si fa shen cha —— yi "lao dong he tong fa" di 39 tiao di er xiang wei zhong xin* (劳动规章制度的司法审查——以《劳动合同法》第 39 条第二项为中心) [*Judicial Review of Labor Rules and Regulations - Focusing on the Article 39(2) of the "Labor Contract Law"*] HEBEI FAXUE (河北法学) [HEBEI L. REV.], no.9, 2019, at 161, 164.

[157] *See supra* Table 2. In Suzhou, the loss rates of employees in non-listed private firms, listed private firms, and foreign firms were 67.1%, 100%, and 78.4% respectively. In Wuxi, the loss rates for employees in non-listed private firms, listed private firms, and foreign firms were 72.5%, 72.7%, and 89.2% respectively.

tended to be most lenient towards government employees and least favourable to employees of foreign firms.[158]

One possible explanation for this discrepancy could be the relatively small sample size in the current study, which only included 370 cases from the two cities regarding ownership statistics, compared to the 2054 cases in the previous study. Additionally, the relatively low frequency of state-owned organizations in these two cities (1.8% in Wuxi and 0.7% in Suzhou) possibly contributed to the observed differences. In contrast, non-listed (private) firms (59.4% in Suzhou and 64.2% in Wuxi) and foreign firms (37.0% in Suzhou and 28.0% in Wuxi) were more commonly represented in the current study. In addition, the previous study on the likelihood of employees winning cases in different ownership contexts was statistically significant,[159] while in this study it was not.[160]

While the present findings do not provide evidence to support the conclusion of the prior study that courts tend to show greater support towards government employees, it is still valuable to examine the variations in labor disputes across different ownership contexts. For instance, in the state sector, labor unions were ostensibly charged with safeguarding the welfare of employees and enhancing production, thereby mitigating the potential conflicts of interest between employees and managers.[161] In foreign firms, labor unions tended to prioritize safeguarding the welfare of employees. However, employers may have been reluctant to establish or may have sought to exert control over labor unions in these firms.[162] In essence, although the LL and the LCL specify the functions of labor unions in safeguarding employee interests, the actual roles that labor unions perform in practice may differ across different ownership contexts.

Moreover, labor disputes are linked to ownership factors and exhibit distinct features at various points in time. For instance, in the past, numerous state-owned enterprises have gone bankrupt, leading to the dismissal of numerous employees.[163] Accordingly, labor disputes revolving around dismissal and other related factors were most frequently in state-owned enterprises and less frequently in private enterprises.[164] Today, as this study has revealed, dismissals are transpiring with greater frequency in the private sector. The frequency of dismissals elicited concerns over equity of the action and

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[158] Chan, *supra* note 1, at 317.

[159] *Id.* at 315. Table 2 on page 315 has a P value of less than .001.

[160] P=0.774 in Suzhou. P=0.539 in Wuxi.

[161] *See* Bill Taylor, *Trade Unions and Social Capital in Transitional Communist States: The Case of China,* 33 POL'Y SCIS. 341, 351 (2000).

[162] *See id.*

[163] Jonathan Morris, Jackie Sheehan & John Hassard, *From Dependency to Defiance? Work-Unit Relationships in China's State Enterprise Reforms*, 38 J. MGMT. STUD. 697, 705 (2001).

[164] Jie Shen, *The Characteristics and Historical Development of Labour Disputes in China* (2008) 14 J. MGMT. HIST. 161, 168–69 (2008).

capability for financial restitution.[165] From the dataset of this study, labor disputes arising from state-owned enterprises accounted for 0.90 per cent of all cases, while disputes arising from non-listed private firms accounted for 64.20 per cent of all cases.[166] This implies that the occurrence of labor disputes is linked to the ownership structure and influenced by the historical context.

G. Other Observations

Apart from the key findings discussed above, there are five other important observations derived from the evidence: (1) the presence of a legal representative for employees does not have a direct impact on the success rate of the employee; (2) the three most frequently cited reasons as the primary grounds for dismissal did not necessarily translate to lower success rates for employees challenging their dismissal on these grounds; (3) despite Article 43 of the LCL requiring employers to notify labor unions before dismissing employees, the courts did not consistently rule against employers who failed to fulfil this obligation; (4) mandating notification to the relevant labor unions before dismissal is an important safeguard for employees; and (5) the research revealed a correlation between the outcome of court reviews of the lawfulness of dismissals and the success rate of employees.

First, the presence of a legal representative for employees does not appear to have a direct impact on the success rate of employees. In the absence of legal representatives, the success rates of employees in the two cities under consideration were not significantly lower than those with legal representatives present.[167] As an illustration, in Wuxi, despite 59.6% of employees opting for a professional attorney from a law firm, their likelihood of achieving a complete victory stood at a mere 7.5%, as opposed to 14.3% when the employee chose to represent themselves.[168] Nevertheless, in Suzhou, the presence of a law firm attorney resulted in the lowest rate of employee losses at 69.7%.[169] Likewise, there was no statistically significant evidence to suggest that the presence or absence of legal representatives for employers had any impact on the success rates of employees.[170] Despite Wuxi having a higher rate of legal representatives, employees experienced more losses.

Second, the three most common reasons for dismissal in both cities were absence without justification, irregular professional behaviour, and violation of security behaviour. Surprisingly, even though these reasons were frequently cited as the primary grounds for dismissal, it did not necessarily translate to

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[165] *Id.* (*Shen* states that "as economic reforms deepen termination of employment will be regarded as more acceptable; instead, unfair dismissals as well as issues regarding payment will mainly cause labour disputes in the future.").

[166] *See supra* Table 2.

[167] *See supra* Table 5.

[168] *See supra* Table 4.

[169] *Id*.

[170] *Id.*

lower success rates for employees challenging their dismissal on these grounds. For example, in Suzhou, the top three causes of dismissal that resulted in employee losses were absence without justification (84%), refusal to adjust their position (100%), and disobedience to work arrangements (84.6%). [171] Furthermore, despite irregular professional behaviour being one of the primary reasons for dismissal by employers in Wuxi, employees challenging their dismissal on this ground had the lowest rate of losses, at 58.5%.[172] Hence, the fact that courts tend to rule in favor of employers does not necessarily imply that the courts will decide against an employee based solely on the principal reason for dismissal provided by the employer.

Third, despite Article 43 of the LCL requiring employers to notify labor unions before dismissing employees, the courts did not consistently rule against employers who failed to fulfil this obligation. In Suzhou, 40.1% of dismissal cases were not subject to labor union notification, yet 32.7% of employees still experienced losses in their legal disputes.[173] In Wuxi, 22.2% of cases failed to notify the labor union and the employees' losing rate was 36.5%. [174] An underlying factor contributing to this outcome could be attributed to the provisions set forth in the Suzhou Regulations. These provisions dictate that the dismissal of an employee may be deemed lawful if the employer has notified the relevant labor union prior to the arbitration decision and has secured the latter's endorsement of the dismissal.[175]

Fourth, the legislation aims to safeguard the legal rights and interests of employees by mandating notification to the relevant labor unions. As dismissal signifies the cessation of labor relations, it may result in unemployment and profoundly impact the employees' livelihood. Therefore, it is imperative, both theoretically and practically, to impose stringent requirements on employers when exercising the right to unilaterally dismiss employees which can prevent arbitrary or capricious dismissals. On one hand, employers should notify the labor unions in advance of any proposed dismissals, granting them the opportunity to review and furnish feedback. On the other hand, despite the possibility of increased costs for the employer, the provision of advance notice can aid employees in preparing for and transitioning to new job opportunities.[176]

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[171] *See supra* Table 3.

[172] *Id*.

[173] *See supra* Table 1.

[174] *Id*.

[175] Summary of Seminar on Labor Dispute, *supra* note 43. This is a Suzhou regulation regarding how to fix a procedural defect, or how to meet the procedural requirement in other ways. The LCL requires the employer to notify the labor union before dismissing, and Suzhou provides other ways to meet this requirement. In case the employer did not notify labor union before dismissing, one method is that the employer can notify the labor union and get its approval before the arbitration; another method is making the dismissal causes known to all workers.

[176] Ping Yan, *What Did China's Labor Contract Law Do to Its Private Manufacturing Firms?*, 8 CHINA ECON. J. 158, 161 (2015).

Fifth, the research revealed a correlation between the outcome of court reviews of the lawfulness of dismissals and the success rate of employees. Specifically, in over fifty percent of cases reviewed by courts in Suzhou and Wuxi, the legality of the employer's internal regulations was called into question. When the court found the employer's internal regulations to be valid, the success rate for employees was notably low, with a 95% failure rate in Suzhou and a 94.3% failure rate in Wuxi. Conversely, when the employer's internal regulations were deemed unlawful, no employees were unsuccessful in their cases in Wuxi, and only 12.8% of employees lost their cases in Suzhou.

Lastly, our research revealed that the presence of a warning notice prior to dismissal had a discernible impact on an employee's success rate. Specifically, in both Suzhou (31.6%) and Wuxi (40.6%), less than half of the employees were provided with such prior warnings, yet the success rate was markedly higher in Suzhou (27.3%) compared to Wuxi (9.5%). However, when prior warning notices were not given, the loss rate was similar in both cities, with 71.9% in Suzhou and 69.8% in Wuxi.

H. Limitations of Research

This article is subject to several limitations while conducting its research. First, the study focused solely on two cities for comparison purposes. While these cities have good economic performance and a better rule of law in China, the small sample size of 374 cases limits the generalizability of the findings. Additionally, this study did not take into account the situation in less developed cities, which may have different local labor laws and regulations.

Second, this article did not consider the case of mediation and arbitration. According to Article 79 of the LL, labor disputes must be arbitrated before they can be brought to court.[177] Many cases are resolved at the arbitration stage, and a significant number of these cases are not disclosed. In fact, court cases represent only a small proportion of all labor disputes, with the majority of cases being resolved through arbitration by local labor dispute arbitration committees.[178] According to the China Statistical Yearbook 2021, the likelihood of an employee losing a labor dispute mediation and arbitration case is relatively low, with a probability not exceeding 15%.[179] In other words, the

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[177] Article 79 of the Labor Law provides that: "Once a labour dispute occurs, the parties involved can apply to the labour dispute mediation committee of their unit for mediation; if it can not be settled through mediation and one of the parties asks for arbitration, application can be filed to a labour dispute arbitration committee for arbitration. Any one of the parties involved in the case can also apply to a labour dispute arbitration committee for arbitration. The party that has objections to the ruling of the labour arbitration committee can bring the case to a peoples court."

Labor Law, art. 79; *see also* PETER C.H. CHAN, *MEDIATION IN CONTEMPORARY CHINESE CIVIL JUSTICE: A PROCEDURALIST DIACHRONIC PERSPECTIVE* 11 (2017).

[178] Philip CC Huang, *Dispatch Work in China: A Study from Case Records, Part I*, 43 MOD. CHINA 247, 248 (2017).

[179] *China Statistical Yearbook 2021*, NAT'L BUREAU STATS. CHINA, https://www.stats.gov.cn/sj/ndsj/2021/indexeh.htm (last visited Dec 3, 2022).

outcome of the arbitration was more favorable to the employee.[180] If employees are content with the outcome of the arbitration, they are less likely to resort to litigation. Conversely, those who receive an unfavorable outcome in arbitration are more prone to file a lawsuit, which could contribute to their subsequent defeat in court. This tendency could explain the perceived pro-employer stance of the courts. However, these conjectures are subject to further scrutiny. Additional empirical research is necessary to discern the level of employee safeguards offered by non-litigious mechanisms.

CONCLUSION

This study addresses the role of black-letter law in safeguarding labor rights in China and utilizes empirical evidence from two Chinese cities, Suzhou and Wuxi. This study proves that black-letter law (in this case, in the form of local regulations) does matter in labor rights protection in China. With stronger statutory protection afforded to employees in Suzhou (i.e. the procedure of an opportunity to be heard under the Suzhou Regulations), Suzhou employees win by a larger margin than their counterparts in Wuxi, who were not afforded this protection. Local regulation appears to be pivotal in labor rights protection in China. This is partly due to the fact that the LCL and other national statutes lack explicit provisions on key aspects of labor rights protection, resulting in difficulties in adjudication. We discuss the impact of imprecise language in Article 39(2) of the LCL, which pertains to serious violations of the employer's internal regulations by employees, leading to divergent practices in different regions.

This article highlights several other key points. First, previous studies have explored whether China's labor legislation system effectively protects employees, especially in cases where employees breached the employer's internal regulations. However, most of these studies focused on the fairness of dismissals and the validity of internal regulations, while providing limited discussion on whether employees are granted the opportunity to be heard before dismissal. Without the opportunity to be heard, many employees may be unable to appeal against unfair dismissal, violating certain rights. To address this gap, this article presents empirical evidence on protecting employees against dismissal for serious breaches of the employer's internal regulations, examining the importance of granting employees the opportunity to be heard. By enhancing the understanding of the opportunity to be heard, this article provides a valuable reference for future legislation and policy.

Second, this article provides a distinct exploration of affording employees the opportunity to be heard before dismissal through the application of both

[180] *See* Monique Garcia, *China's Labor Law Evolution: Towards a New Frontier*, 16 ILSA J. INT'L & COMP. L. 235, 251 (2009).

empirical and comparative methods. Our analysis of cases in Suzhou and Wuxi led us to conclude that employees should possess and utilize the right to express their views and arguments prior to dismissal. This not only safeguards their interests, but also to ensures due process. Given that dismissal represents a serious encroachment upon labor rights, affording employees the opportunity to be heard is an essential component of due process. This opportunity promotes procedural fairness in dismissals. Failure to provide employees with the opportunity to be heard during the dismissal process may result in a lack of clarity or omission of reasons for the dismissal, thereby resulting in an unjustifiable and inequitable outcome. Moreover, granting employees the opportunity to be heard may help to alleviate anxiety and resistance, reducing the likelihood of legal disputes arising.

Third, it is imperative to ensure the lucidity of labor legislation with regards to safeguarding labor rights. In China, safeguarding labor rights and interests is predominantly reliant on a robust labor legislation system. For instance, the legislation system prescribes the minimum wage for employees and standardizes working hours. Additionally, it necessitates employers to enter into labor contracts with their employees and outlines the mandatory terms of such agreements. However, the ambiguity in certain provisions has undermined the practical implementation of the law, particularly in instances of dismissal. For example, Article 39(2) of the LCL does not explicate the meaning of the term "serious", which may provide an opportunity for employers to misuse their power to dismiss employees without justifiable reasons. Clear labor legislation can provide direction to both employers and employees on issues relating to dismissal, thereby ensuring that the process is equitable and legitimate. Furthermore, it has been observed that employees in Suzhou, where the local regulations allow for an opportunity to be heard, have a higher success rate than those in Wuxi, where such an opportunity is not explicitly granted.

To conclude, lack of specificity in national legislation has resulted in differential protection of labor rights under different local rules. The local rules in Suzhou, which favor employees, have led to court decisions in their favor. To improve the protection of labor rights, the national legislation can be amended to provide greater clarity and detail, or mandate local authorities to enact explicit worker protection rules adapted to local circumstances. With respect to dismissal, employers' power to dismiss employees can be curtailed by ensuring that employees can be heard prior to dismissal, which can enhance the enforcement of labor legislation to ensure fairness and justice.