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## **Ineffective Legislation and the Shadow of Precarity: Investigating Dispatch Work in China**

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*Ineffective Legislation and the Shadow of Precarity: Investigating Dispatch Work in China*

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## 1. Introduction

In August of 2021, at the 10<sup>th</sup> meeting of the Central Committee for Financial and Economic Affairs, general secretary of the Communist Party of China Xi Jinping gave a speech in which he used the term ‘common prosperity’. What this supposedly meant, among other things and at least in his view, was that the significant inequality in income that threatened to polarize the rich and poor in China should be remedied, and that a public policy system should be established to “form a pattern of equitable distribution for all”<sup>1</sup> Of course, this speech took place in the middle of the Covid-19 pandemic; a turbulent and unpredictable time for all, let alone China, which maintained strict lockdowns until as late as December 2022, and hamstrung economic growth across the board (Reuters 23 Dec. 2021; Liang and Hoskins 17 Jan. 2023). Even so, China’s zero-tolerance Covid regime eventually had to end as it did everywhere else (Mao 7 Dec. 2022). As a consequence, many firms engaged in the production of Covid-related medical products saw their demand plummet almost immediately and so, in response, they began laying off workers on a large scale. Some of these layoffs sparked large-scale protests, such as at the Zybio plant in Chongqing and the Alltest Biotech factory in Hangzhou. As it turned out, most of the workers laid off during this wave of downsizing in medical supply factories across China belonged to the same category: that of ‘dispatch workers’. What they were protesting was not only the sudden termination of their labor agreement, but also massive wage arrears (CLB 2023a).

Indeed it seems that dispatch workers, as a category of laborers, have so far seen no benefit from the central government’s policy of common prosperity. They usually earn less than regular employees of a firm, even when working in similar positions; they receive little to no social security or benefits; and they have no job security whatsoever, being immediately

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<sup>1</sup> For the full speech, see <https://www.caixinglobal.com/2021-10-19/full-text-xi-jinpings-speech-on-boosting-common-prosperity-101788302.html>

dismissible by the companies they work for (Feng 2019; Huang 2017; Zhang 2021). Yet on paper it should not be so. The laws and regulations governing dispatch work in China, such as chapter V of the *Labour Contract Law* and the *Interim Provisions on Labor Dispatch*, demand that dispatch workers receive ‘equal pay for equal work’, and that the ‘labor standards of the State’ apply to them just as they do to ordinary employees.

This thesis seeks to demonstrate that dispatch workers in China do not benefit from the provisions in Chinese national law concerning dispatch work. This point will be proven over the course of four chapters. The first will establish what dispatch work is as a concept and will lay out its core characteristics, while also introducing the concept of ‘precarity’, which will serve as a tool by which this thesis situates Chinese dispatch work in the larger context of Chinese labor literature. Second, a literature review will show how dispatch work is discussed in academic sources on a global level and how it has been connected to patterns of precarity. Third, I will trace the rise of dispatch work in China against the backdrop of its post-war labor history, culminating in a comprehensive overview of the legal regime governing dispatch work today. In the fourth chapter I will use primary data in the form of reports from online non-profit organizations China Labor Bulletin and China Labor Watch, in combination with blog posts from Chinese social media network Douban, to prove that the legal provisions concerning dispatch work as laid out at the end of the third chapter are respected neither by companies using dispatch labor nor dispatch agencies, meaning the workers involved are treated unlawfully. The discussion chapter relates these findings back to the academic discussion around precarious labor and pushes forward the argument that Chinese dispatch work serves as a perfect case study to reinforce precarity theory. The conclusion summarizes and promotes avenues for further research by briefly exploring the political implications of this thesis’ findings.

## 2. Conceptual framework and literature review

This chapter is split into two parts. The conceptual framework introduces two concepts that are key to this thesis: ‘dispatch work’ and ‘precarity’. As will be seen, both require explicit definition at the outset before they can be analyzed at any level. The literature review discusses the relationship between dispatch work and precarity, while also providing a brief overview of the research into dispatch work done so far.

### 2.1 Conceptual framework

One of the challenges in analyzing and discussing dispatch work is that there is no singular definition, neither in academic literature nor among national or international labor regimes. The International Labor Organization (2009) defines dispatch work (or *temporary agency employment* in its own words) as including “employment where the worker is employed by the temporary work agency, and then hired out to perform his/her work at (and under the supervision of) the user company”. It also emphasizes that “there is no employment relationship between the temporary agency worker and the user company”, that “the agency pays the wages”, and that “flexibility for both worker and employer is a key feature of agency work”. (p.1) In Germany, dispatch work is often grouped together with other kinds of ‘atypical employment relations’ (*atypische Beschäftigungsverhältnis*), while in the US has no legal concept corresponding to ‘labor dispatch’ altogether; however, related concepts like “contingent employment” and “temporary help supply” encompass the same practices that are elsewhere called dispatch work (Pan 2016, 196-197).

What dispatch work exactly *is* can therefore be difficult to say. The first thing to know in understanding dispatch work as a concept is that ‘dispatch work’, ‘temporary agency employment’, and ‘agency work’ are merely different terms to describe the same employment structure. In relevant academic literature these various terms are sometimes used interchangeably; ‘dispatch’ just happens to be the term that is most commonly used when

describing this kind of labor in the Chinese context (for an example, see Feng 2009). With this in mind, we can turn to academic research for a clearer picture. In that realm, ‘dispatch work’ is identified by the existence of a triangular employment structure including a labor agency, user company, and dispatched worker. In essence, it works as follows:

A worker seeking employment is hired by a labor agency, at which point a formal employment relationship is established between the two, with all its associated legal rights and responsibilities (including benefits, social services, wages, etc.). However, the worker remains inactive without any hours, responsibilities or income until the agency is approached by a third party (the ‘user company’), which will ask the agency for temporary manpower to carry out one or more tasks that (for whatever reason) it does not want to use its own regular employees for. The agency then assigns (or ‘lends’, ‘farms out’, etc.) its worker to this user company to carry out the desired task(s). The user company remunerates the agency for ‘borrowing’ one of its employees, and the agency passes on a portion of this income to the worker as ‘wages’. (Zhang 2021, 556; Pan 2016, 195-198; Ho & Huang 2014, 977-978; Bronstein 2006, 207; Soltani et al. 2009, 1320, Fu 2016, 1-2).

The core characteristic of this employment structure is that at all times the worker remains officially and legally employed by the labor agency and *not* the user company; he or she is merely ‘dispatched’ there. Seeing as the worker is not an official employee of the user company, none of the legal rights, duties and obligations that normally follow an employer-employee relationship apply. Among other things (such as benefits owed, entitlement to bonuses, workplace safety requirements, social security services, etc.), this means the user company can dismiss the worker at any time for any reason without notice or explanation given. By the same token, the worker can also “quit” without any notice or reason given as well, at which point they again become available to their labor agency to dispatch to another user company. If the worker does not like the user company or the tasks they are asked to

perform there, they have no obligation to stay; if the user company is not satisfied with the worker's performance, it can 'get rid' of them immediately (Pan 2016, 195; Soltani et al. 2009, 1320). It should be noted, however, that the actual content and any other conditions of the work performed are not relevant to the identification of dispatch in concept. For the purposes of this thesis, and in keeping with the academic literature on the subject, 'dispatch work' refers simply to the triangular employment structure between worker, agency, and user company described above<sup>2</sup>.

To contextualize the position of dispatch work within current debates in labor studies, this thesis also explores the relationship between dispatch work and precarity. Along with the adjective 'precarious', 'precarity' has become a popular buzzword in global labor literature following a book written by Standing in 2011 on the rise of a new socio-economic class: the 'precariat' (Standing 2011; Smith & Pun 2018, 601; Munck 2013, 748). In that original source, Standing defines the precariat as a working class which lacks seven particular forms of 'labour-related security' which include, for example, 'income security', 'employment security', and 'labour market security' (Standing 2011, 17). For a description more straightforward and digestible than the absence of seven other independent concepts, we can look to authors who have since adopted the 'precariat' as a theoretical concept in their own work. For instance, Lee (2016) describes precarity as "habituation to expecting and living a life of unstable and unregulated labor" (317). 'Unregulated' is key here; lack of regulation seems part of what causes work to become 'precarious' in the first place. Standing's own original definition, too, leans in that direction: he likens the precariat to 'denizens', those with a more limited range of rights than 'citizens' (Standing 2011, 23). Other attempts to define

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<sup>2</sup> Seeing as a formal (contractual) relationship between worker and agency is key to this thesis's definition of dispatch work, any form of freelancing is not included even if three parties are involved. For instance, ride-hailing services like Didi Chuxing (滴滴出行) or food delivery services like Ele.me (饿了么), though extensively discussed in Chinese labor literature, are not relevant here.

precarious work, such as by Swider (2017), also emphasize the lack of employment protections but in addition associate the term with low wages, lack of benefits and lack of social welfare (25). Both Swider and Lee argue that precarity is something relative and must be conceptualized as something that cannot be compared across nations, but takes different shapes within each country's own labor market (Swider 2017, 25; Lee 2019, 137). Precarity, then, is a "relational struggle" rooted in the relationships between workers, employers and states unique to the nation in question (Lee 2019, 137).

This brings us to how precarity fits into labor literature about China specifically. Lee (2016), using precarity interchangeably with 'informality', argues that although the Chinese labor market is heavily regulated on paper due to extensive labor legislation, and workers should therefore enjoy a minimum level of income- and employment security, selective enforcement of laws by national and local authorities combined with workers' weak collective bargaining ability has left most Chinese laborers in a state of extreme instability (320-322). Standing himself eventually goes as far as grouping most of the Chinese labor force together into his precariat consisting of all those who work on any basis other than full-time, stable employment (Standing 2017). This use of the precariat concept has admittedly and rightfully come under fire for grouping too many separate categories of workers (such as part-time workers, temporary workers and the self-employed) into one amalgamated socio-economic class solely on the basis of insecure employment (Smith & Pun 2018, 600-601). This probably stems from the fact that Standing's original definition of the precariat is an inverse, being built on the *absence* of particular securities rather than a *presence* of its own key characteristics; as Munck (2013) puts it, "The precariat is defined more or less by what it is not—a mythical, stable working class with full social and political rights (...)" (751-752). As a result a huge variety of workers could theoretically be considered part of the precariat; this makes it difficult to convert precarity from a discursive concept to a practical analysis tool.



Given that precarity is still a controversial term in labor literature, it would be difficult to come to a universally agreeable definition. Even so, precarity in the sense of insecure employment due to a *de facto* unregulated labor market (as in Lee's cited description), combined with economic insecurity due to inferior income compared to stable and traditional employment (Standing 2017, 169; Swider 2017, 25), is still a useful concept to deploy for the purposes of this thesis. This definition includes the lack of regulation that is key to what makes precarious work 'precarious', as emphasized by Lee (2019), and also includes income and employment insecurity which are key characteristics of precarity as originally defined by Standing (2011). In addition this understanding of precarity also incorporates the relational aspect (in this case between traditional and non-traditional employees) introduced by Swider (2017). Armed with this definition, this thesis argues that dispatch work as it functions in China today on a day-by-day basis, is fundamentally precarious.

I will discuss in the next chapter how dispatch work as a form of employment has been observed in labor literature to show patterns of precarity, before looking at dispatch work in China specifically.

## 2.2 Literature review

The global discussion around dispatch work and its ethics goes back over 70 years; it was at one point outlawed by the International Labor Organization (namely in its 96<sup>th</sup> Convention, the 'Fee-Charging Employment Agencies Convention (Revised), 1949'). Specifically, the ILO took issue with employment agencies with a "view to profit", meaning those who act "(...) as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker." (Article 1 sub. a). In 1997 the ILO again published a convention concerning employments agencies (no. 181, Private

Employment Agencies Convention, 1997). This time its purpose was the exact opposite; it not only lifted the ban (Article 2 sub 3), but also suggested that governments should actively *promote* private employment agencies by having them cooperate with public employment services (Article 13 sub 1). Interestingly, among the countries who have ratified this new convention are many who at first supported the 1949 ban.<sup>3</sup>

Exactly why so many governments completely changed their minds about dispatch work between the 50's and 90's is a matter of academic debate, with key differences on who is considered responsible for getting the ban lifted and whose interests it serves; government, business, or workers? The preamble to the ILO's 1997 convention speaks of "(...) being aware of the importance of flexibility in the functioning of labour markets(...)", "considering the very different environment in which private employment agencies operate, when compared to the conditions prevailing when the [1949] Convention was adopted", and "recognizing the role which private employment agencies may play in a well-functioning labour market(...)". This could support Fu's theory that the rise of dispatch work is a product of the global hegemony of neoliberal economic policy. She argues that over the course of the second half of the 20<sup>th</sup> century, states' growing tendency to adopt pro-capital and pro-growth policies oblige them to allow new ways of cost-cutting for firms and employers to achieve ever greater profits; temporary agency workers are cheaper than regular employees and can be used more flexibly, therefore allowing labor agencies to operate with as little restriction as possible makes perfect sense. In short, the rapid growth of dispatch work is a matter of public policy and economic ideology first and foremost (Fu 2016, 4-6). Bronstein, on the other hand, argues that the rise of dispatch work from banned to broadly accepted is not at all a play by policymakers to serve some neoliberal agenda; rather, it is mostly a result of temporary labor

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<sup>3</sup> For the full text and ratification list of both the ILO's 1949 and 1997 conventions, see <https://www.ilo.org/dyn/normlex/en>

agencies ‘cleaning up their act’ on their own initiative by collaborating in professional associations and imposing an ethos on their industry (Bronstein 2006, 207-208).

Whatever the case may be, the global market size of private employment agencies increased tremendously following the 1997 ILO Convention. According to an ILO paper on the subject, in 1994 private employment agencies generated a total revenue of around \$75 billion worldwide; in 2007, that number had risen to \$341 billion. (ILO 2009, 11-25). In many places where this massive growth of dispatch work took place, it has not done so without controversy. In the UK, for instance, nobody could agree on how dispatch work compared to standard employment as recently as 2002, with some government bodies and unions reporting that agency workers earned more than regular employees in comparable positions, while others reported the exact opposite (Forde & Slater 2005, 250). Elsewhere, such as in Japan, public consensus strays further from the middle towards predominantly negative (Fu 2013, 29). This critical view of dispatch work is well exemplified in Fu’s fieldwork as a Japanese dispatch worker (*hakenshain*). She found that many of her dispatch colleagues expressed frustration with their employment status. Most of them complained about inferior salary when compared to regular employees of the user company they work at, as well as the possibility of sudden changes in working environment, such as could happen when their firm or department was shut down. Some of them had chosen dispatch work as a ‘solution’ to previous failure in achieving regular employment, while others expressed disappointment with the unwillingness of user companies and agency management to help them get ‘promoted’ to a regular position, despite feeling like they were *de facto* already given the same responsibilities (Fu 2013, 30-35). Similar work by Broschak and Davis-Blake (2006) at a US financial firm highlights how non-standard employees (including dispatch- and agency workers) are often treated poorly: agency workers were considered a threat to the job security and promotion prospects of standard employees, leading to discrimination and hostile treatment towards the former (387-

388). Bailey and de Ruyter (2016), too, report findings similar to those of Fu in their interviews with ex-employees of the MG Rover plant of Birmingham following the 2005 closure of the company. Some interviewees picked up dispatch work after being laid off; in virtually all these cases, they only did so because they had repeatedly failed to find standard employment with a regular contract similar to that of their old job, and considered agency work a desperate last resort. These respondents found agency work to offer lower wages and fewer to no benefits in spite of a workload similar to that of their old MG Rover jobs (56-63).

The image of dispatch work that arises from these studies, then, is that of an industry where workers are paid less than their workload should warrant, have no job security whatsoever, and face discrimination from their peers and supervisors alike. Employment by way of an agency is not an option that people voluntarily choose for, but a last resort when regular employment cannot be achieved. In the end, the supposed ‘flexibility’ that dispatch work offers is experienced as a hazard rather than a benefit by the workers themselves. Such is the view that dominates most of the academic literature on the subject, and it describes what makes dispatch work ‘precarious’. Workers enjoy little employment security as they change jobs frequently due to sudden dismissal or changes in work environment, and they generally earn less than those with a regular contract.

However, and as mentioned earlier, there exists no universally agreed upon explanation for exactly *why* dispatch work has over the last half century become such a popular form of labor in so many countries in spite of these associated poor working conditions. Perhaps the answer to that question should only be answered on a country-by-country basis, by taking into account the national political-economic conditions shaping the labor environment as dispatch work rose to prominence. In taking China as a case, the next chapter seeks to do exactly that.

### 3. Dispatch work in China

This chapter traces the history of the rise of dispatch work in China. It will delineate how dispatch work arose from previous labor market dynamics, starting with a description of the labor system set up following the end of the Civil War in the 1940's up to the current legal environment surrounding dispatch work. As will be seen, Chinese dispatch work has its own unique historical context independent of dispatch industries elsewhere in the world, and therefore warrants examination before the dysfunction of China's dispatch legislation is discussed.

### 3.1 The Iron Rice Bowl

The economic system established by China's communist regime following the end of the Civil War in the 1940's is often described as 'Soviet-style'. What this means exactly is best captured in the alternate definition 'command economy' (Naughton 1995), which refers to essentially the same system. Naughton describes a command economy as one in which resource allocation decisions are not made based on demand, supply and prices of goods and services, but on commands from economic planners in the administrative hierarchy. Under this system in both the Soviet Union and China many enterprises, and especially those related to heavy industry and military development, were publicly owned (i.e. state-owned), so that the output of these industries could be directly monitored and made to match the state's political goals of industrialization (26-29).

Where the Soviet Union and pre-reform China noticeably differed was in their labor economies; China maintained much stricter control of labor mobility as well as remuneration. As Bian (1994) describes, under the Maoist government of pre-reform China labor was considered a national resource rather than a private commodity. As such, in this period the overwhelming majority of workers (over 75% during the 50's, and as high as 88% in the 70's) found their jobs through direct state assignment rather than individual job seeking. Indeed,

workplaces were not even officially allowed to recruit workers without approval of a state labor agency (10; 51-52). Employees of state-owned enterprises (SOEs) were guaranteed lifelong employment, could not be fired by law and principle, generally stayed at the same company for their entire careers, and earned consistent, universal and frozen wages independent of output performance (Blecher 2002, 283; Naughton 1995, 44; Meng & Kidd 1997, 405). This kind of permanent employment is often referred to as the “iron rice bowl”<sup>4</sup>, and it constituted most employment up until the late 70’s (Kuruvilla et al. 2011; Chan & Selden 2019, 107; Bian 1994, 57).

### 3.2 The Reform Period and the first Labor Legislation

This all changed with the coming of large-scale economic reforms under the leadership of Deng Xiaoping starting in 1979. These reforms focused primarily on privatization of the economy, as well as attracting foreign investment. For instance, the government established so-called Special Economic Zones in coastal cities and areas like Shanghai and Guangdong, allowing foreign direct investment (FDI) to flow into business in these specific areas (Lincoln 2021, 225). The turn to privatization as expressed by the 1979 reforms essentially meant the end of state-owned enterprises’ status as virtually the only kind of business in China. In keeping with its aim to attract foreign investment, the Chinese government started a campaign to join the World Trade Organization (WTO) in 1986; however, in order to be eligible for membership, a dramatic overhaul to the structure and scale of state-owned enterprise was required (Chan & Peng 2011, 425-426). In 1993, the National People’s Congress introduced the *Company Law of the People’s Republic of China*<sup>5</sup>, which established and sanctioned the existence of a range of private enterprises (such as limited liability companies and joint stock

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<sup>4</sup> Known in Chinese as 铁饭碗 (*tiefanwan*).

<sup>5</sup> The full text of this law (up to its 2004 amendment) can be found at [http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content\\_1383787.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383787.htm)

limited companies) in which foreign investors were allowed to participate. Crucially, it also laid the legal foundation for the conversion of state-owned enterprises *into* one of these categories of private enterprise (e.g. Article 7 & Article 21). Consequently such transformation of state-owned business to private business, as well as sale and bankrupting of small-to-medium sized SOEs, took place on a large scale throughout the 90's (Huo 1995; Chan & Peng 2011, 425-426). The effect is that SOE's share in China's industrial output fell drastically: from 46.95% in 1993 to 18.05% in 2001. In that same period the share of private, foreign owned and joint venture firms (taken together) rose from 11.05% to 62.24% of national industrial output (Lee 2005, 4).

Some unfortunate casualties of the opening up of private enterprise were the employees of the SOEs that were shut down or underwent reorganization: between 1995 and 2003, approximately 54 million of them were laid off (Chan & Peng 2011, 426). In an attempt to support these workers the government established so-called 'reemployment service centers', which provided former SOE employees with job training and financial aid on a transitional basis, as well as assistance in connecting them with a new employer (Solinger 2002; 309, 315-316). These reemployment service centers constitute an early example in China of employment involving an intermediary third party, which somewhat resembles dispatch work both in structure and outcome for the worker.

As new legislation such as the *Company Law* diversified the types of businesses operating in China, so too did new legislation change the employment structure of workers *within* these businesses. In 1994 the *Labour Law of the People's Republic of China* was adopted by the National People's Congress, marking China's first comprehensive labor law since the start of the 70's reforms (Chan & Peng 2011, 427). According to its first article, it "is formulated (...) to protect the legitimate rights and interests of labourers" and "regulate labour relationship". Chapter III of the Labour Law explicitly mandates the conclusion of a labor contract

whenever a labor relationship is established between employer and employee (Article 16). It also provides the conditions for (and limitations of) the firing of employees (Article 23-26), conditions for mass lay-offs (Article 27), and notably, it explicitly permits fixed term and assignment-based contracts alongside non-fixed term (i.e. regular) employment (Article 20)<sup>6</sup>. These provisions signaled the introduction of a voluntary and contract-based labor market to replace the iron rice bowl system of state-assigned permanent employment.

In essence, the 1994 Labour Law describes a labor environment completely opposite to that of the command economy era. Whereas less than 15 years earlier the state maintained complete control over employment, now all that power was to be diffused to the individual discretion of (private) employers and employees. The former gained more autonomy over hiring and dismissal decisions, while the latter were given greater flexibility in employment options (Meng & Kidd 1997, 406). As Lee (2005, 9) puts it, “Employment is now a private contractual relationship and the state is a regulator of the labour market rather than an administrator of employment”.

### 3.3 Migrant workers

Scholars of the Chinese labor market seem to agree that the effect of these reforms on Chinese labor really started to come into sharp focus in the 1990’s. In particular they mention an explosion in number of rural-to-urban migrant workers as one of the standout features of the changing labor environment (Cai & Wang 2010, 79; Dong et al. 2010; Chan & Peng 2011, 429). While much literature from many disciplinary perspectives has been written on these labor migration flows, it would be beyond the scope of this thesis to discuss this phenomenon in great detail. Suffice it to say that the effects of the 1994 Labour Law, the need for cheap

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<sup>6</sup> The full text of this law can be found at [http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content\\_1383754.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383754.htm)



labor in manufacturing industries due to an export-led national growth strategy, and liberalizing reforms in China's household registration system allowed and incentivized many residents of rural provinces to migrate to urban areas for greater employment opportunities. Dong et al. (2010) provide some indication of exactly how many: between 1994 and 1995, 80 million rural laborers left for the cities; by the year 2000, almost 25% of rural households had at least one member working as a migrant worker in an urban center (30,34).

Like the laid-off SOE employees, these 90's migrant workers can also be found at the roots of what would later become the Chinese dispatch industry. Chan et al. (2010) describe how the central government's migration policy incentivized the rural provinces of Hunan and Guangxi to send villagers to work at factories in the industrial province of Guangdong. Interestingly, they discuss the specific mechanism by which this rural-to-urban labor migration was organized: usually, village applicants for urban factory work were screened by an official, state-run 'labor management office' beforehand, then transferred directly to the factories who in return compensated the labor office with management fees (49-50). This mechanism, like the aforementioned reemployment center, is not dissimilar from the triangular structure of company-agency-worker that characterizes dispatch work.

As a result of all the legislative reforms and the surging popularity of labor migration, by the year 2000 around 115.7 million of the approximately 231.5 million Chinese urban laborers were engaged in some form of private employment, including work in private enterprises and self-employment (China Statistical Yearbook 2002; Huang 2009, 407)<sup>7</sup>. This added up to a staggering 50 percent of the urban workforce. For many of these employees (including many labor migrants), dispatch work became the conduit by which they found their jobs outside of

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<sup>7</sup> 'Urban' in this context only refers to workers with urban *hukou* and migrants with rural *hukou* who work in the city for a minimum of 6 months a year. The method by which the approximate number of urban private workers is derived from the China Statistical Workbook here is described in Huang 2009 p. 407.

the state sector. As has been pointed out on several occasions throughout this chapter, labor *brokerage* has been a common theme in Chinese labor going back even to the 50's; first the state, then the reemployment centers and labor management offices connected workers with their employers. None of these intermediaries were 'dispatch agencies' as defined in this paper, however (given that these 'brokers' were never the *de jure* or *de facto* employers); those first appeared in the late 90's.

### 3.4 The Appearance of Labor Dispatch Agencies

As mentioned in the previous chapter, the ILO passed its Convention 181 on Private Employment Agencies in 1997. Although China has not completely ratified this convention, it did send a delegation to the ILO to inquire after the details of such private agencies (Feng 2009, 447). Around the same time, the central as well as local governments started to allow private dispatch agencies and foreign dispatch agencies to operate on the Chinese labor market (Feng 2009, 447; ILO 2014, 11). Among the first participants in dispatch work were many laid-off SOE employees who had previously been serviced by the reemployment centers; these were largely repurposed to serve as the remaining SOEs' own proprietary dispatch companies (Feng 2009, 445). Other target groups included migrant workers, fresh university graduates, and the otherwise unemployed (Chan and Selden 2019, 108). In contrast to the labor brokerage mechanisms discussed throughout this chapter so far, the employment structure of the 'private employment agencies' popping up at this time fits the concept of dispatch work perfectly: workers established a labor contract with the agency, in order to subsequently be dispatched to a user company to perform the actual work.

Exactly how popular dispatch work became after its introduction is difficult to express in numbers given that there are no accurate official statistics on Chinese dispatch workers, and estimations can vary wildly. For instance, the official estimation by the Chinese Ministry of

Human Resources and Social Security states there were 27 million dispatch workers in 2011, while the All-China Federation of Trade Unions (ACFTU) reported 60 million for the same year (ILO 2014, 8; ACFTU 2012). Meanwhile the numbers suggested by scholars could rise as high as 75 million (Kuruvilla et al. 2011, 2). Zhang (2011) demonstrates that regardless of exact statistics, in the manufacturing sector dispatch work had already become a prolific phenomenon within 10 years of its appearance on the labor market: by 2006, an estimated 80% of temporary workers in automobile assembly factories were agency workers; in at least one of China's largest iron and steel complexes, over half the production workers were dispatch workers (Zhang 2011, 117; Kuruvilla et al. 2011, 199).

Initially, dispatch agencies operated in a legal no-man's land. The 1994 *Labour Law* regulates the relationship between employer and employee, but it does not include any measures concerning dispatch work specifically. Dispatch agencies constituted a convenient way for user company to hire personnel without having to actually establish formal contracts with their workers as the *Labour Law* demands, seeing as the only contractual relationship is between the agency and the worker in question. As a result, user companies did not have to pay any social premiums or insurance for these employees either, which helped reduce labor costs (Feng 2009, 460). Using dispatch work as a legal loophole to avoid the financial ramifications of establishing regular contracts with workers was particularly popular among SOEs in the early 2000's, who set up their own dispatch agencies specifically to rehire their recently laid-off workers under worse employment conditions (Feng 2009, 445, 452; Sychenko et al. 2020, 32). For instance, according to Zhang (2014), in the mid-2000s many agency workers in Chinese (state-owned) automobile plants were paid only half to two-thirds of the wages granted to formal employees, even though they often had to carry out more physically demanding tasks (150). There was little hope of becoming a formal employee, either: in a 2012 survey by the ACFTU, 39.5% of dispatch workers surveyed had worked for

the same user company for more than 6 years, meaning they were never offered a regular contract (24).

3.5 The Labour Contract Law and the Interim Provisions

In order to alleviate the rampant inequality in wages and job security suffered by dispatch workers, the central government attempted to fill the regulatory void by dedicating a whole chapter to dispatch work in its 2008 *Labour Contract Law* (hereafter *LCL*)<sup>8</sup>. The *LCL*'s regulations concerning dispatch work are all contained in section 2 of chapter V which to this day constitutes the primary source of legislation on the Chinese dispatch industry. The most important principles laid down in this section are shown in Table 1.

**Table 1** Major principles on dispatch work in the 2008 *Labour Contract Law*.

Article	Principle
58	The formal employment relationship and labor contract in dispatch work exist between the dispatch agency and the dispatch worker, making the agency also the official employer.
58	Agencies should pay their dispatch workers a monthly wage not lower than the local minimum wage, even if they are not currently dispatched anywhere and have no actual work to do.
58	A minimum fixed-term of two years applies to the labor agreement signed between agency and worker.

<sup>8</sup> The full text of this law can be found at [http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content\\_1471106.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content_1471106.htm)

Most the provisions in this law concern traditional employment without an intermediary; those need not be discussed in detail here. Suffice it to say that the general purpose of the *LCL* is to ensure an actual realization of the 'equal pay for equal work' mandate that lay at the heart of the *Labour Law* (Huang 2014, 990).

- 60 Charging dispatched workers any fees is prohibited. This goes for both the dispatch agency as well as the user company.
- 60 Agencies may not pocket any remuneration that the user company might pay to the dispatched worker directly for whatever reason.
- 60 Agencies are obliged to inform workers to be dispatched of the content of the agreement between the agency and the user company.
- 62 User companies are obliged to “apply the labor standards of the State”, provide overtime pay and performance bonuses, provide welfare benefits “related to specific posts”, and provide the required training dispatched workers might need to carry out their job.
- 62 User companies may not “re-dispatch” dispatch workers to other employing units.
- 63 Dispatch workers “shall enjoy the right of equal pay for equal work” as the regular employees of the user company do.
- 66 Dispatch workers are “generally” to be used for temporary, auxiliary or substitute jobs.
- 67 User companies may not establish their own (in-house) labor dispatch agencies for the purpose of dispatching workers to their own (or subordinate) employing units.

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*Source:* Labour Contract Law of the People’s Republic of China, 2008.

[http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content\\_1471106.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content_1471106.htm)

One criticism that has been levied against this collection of rights for dispatch workers is that, although ideologically coherent, it lacks concrete and enforceable provisions that can be

supervised in practice (Zhang 2021, 562; Pan 2016, 192). Skeptics also noted that in contrast to the government’s expectations for a reduction of those hired by dispatch agencies, the number of dispatch workers only seemed to keep growing in the wake of the law’s adoption (Gallagher et al. 2015, 199; Cooke 2011, 197). Ironically, the explanation for this persistence in growth despite greater restriction is likely to be found in the consequences of the *LCL* itself. The new legislation obligated employers to provide their regular workforce with greater and more expensive benefits, such as open-ended contracts, expanded social premiums and insurance, as well as severance pay. As a result, alternative forms of hiring personnel that allowed firms to avoid these labor costs (or in this case deflecting them onto a dispatch agency) became more attractive (Gallagher et al. 2015, 217; Feng 2019, 89).

The adverse effect of the *LCL* on the popularity of dispatch work inspired legislators to start drafting an amendment only a few years after its passing; it came into effect in 2012. While the changes made to the provisions concerning dispatch work were not numerous, they are nonetheless significant in tightening restrictions. The two major changes introduced are shown in Table 2.

**Table 2** Revisions to dispatch provisions in the 2012 amendment of the *Labor Contract Law*

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Article	Revision
63	To reinforce the “right of equal pay for equal work”, the same method of determining pay must be used for dispatch workers who perform the same role as a user company’s own employees.
66	Dispatch workers are no longer <i>generally</i> to be used for temporary, auxiliary or substitute jobs, but <i>limited</i> to those categories. ‘Temporary’ refers to a period of less than six months, ‘auxiliary’ to services that are merely in support of the core

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business of the user company, and ‘substitute’ refers to a position in which the dispatched worker temporarily replaces an existing employee who is absent for full-time study, vacation or other reasons.

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*Source:* ILO 2014, 14-15; Chan & Selden 2019, 113.

In 2014, these amendments were in turn supplemented by the *Interim Provisions on Labor Dispatch* (hereafter *Interim Provisions*). While mostly reiterating the provisions regarding dispatch work in the amended *LCL* so that they constitute their own separate document, they do contain three crucial additions to the dispatch regime. These are contained in Table 3.

**Table 3** Principles introduced by the 2014 *Interim Provisions on Labor Dispatch*

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Article	Principle
4	The number of dispatched laborers in an employer’s workforce cannot exceed 10% of the total.
8	The dispatch agency holds responsibility for paying a dispatch worker’s benefits and social insurance premiums.
27	Employment practices with a name other than labor dispatching, such as ‘contracting’ or ‘outsourcing’, that have the same <i>form</i> as labor dispatching, shall still be dealt with in accordance with the regulations of the <i>Interim Provisions</i> .

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*Source:* ACTFU 2018.

[https://m.acftu.org/wjzl/flfg/202009/t20200907\\_313317.html?7OkeOa4k=qAqokAcPLjtPLjtPLbtWM9eUgrRyxteT0KwosZkcHnGqqkIk6G5EqAqqLG](https://m.acftu.org/wjzl/flfg/202009/t20200907_313317.html?7OkeOa4k=qAqokAcPLjtPLjtPLbtWM9eUgrRyxteT0KwosZkcHnGqqkIk6G5EqAqqLG)

Since the enactment of the *Interim Provisions* there has been no further legislation on dispatch work, therefore the provisions outlined in these three tables constitute the entire dispatch regime in China as of the moment of writing.

The dispatch industry rose to prominence in the chaotic labor environment of the 1990's caused by privatization, significant downsizing of state-owned enterprise, large-scale labor migration, and an entire legislative overhaul of the national employment system. In this time of turmoil, dispatch work arose as a convenient legal loophole for firms to circumvent some of the rising labor costs that accompanied these developments. However, the state has now caught up with them, and with the 2012 amendment of the *LCL* and the 2014 enactment of the *Interim Provisions* dispatch work has become just as well-regulated as any other form of employment. The actual implementation of these provisions into practice, however, remains questionable. Literature on the dispatch industry in China suggests that even now, dispatch workers do not enjoy equal treatment vis-à-vis their regular counterparts, even in comparable positions (Zhang 2021). In addition, the annual number of labor disputes involving dispatch work brought before Chinese courts has only kept increasing since the *Interim Provisions* were passed (Huang 2017, 357). This would suggest that dispatch work has remained a precarious affair regardless of updates to the regulatory regime. In order to determine whether or not dispatch workers in China actually benefit from the legal rights they have been granted, the next chapter draws on primary data to sketch the working conditions they have to deal with in today's labor environment.

#### 4.0 Methodology

The following chapter takes the legal dispatch regime as set out in the previous chapter as a benchmark, and investigates whether or not the reality of dispatch workers in China corresponds to these rights, principles and limitations that have been passed into law. In order



to accomplish this, the chapter draws on primary data in the form of reports published by China Labor Bulletin and China Labor Watch, as well as blog posts published on social media platform Douban by dispatch workers themselves.

China Labor Bulletin (hereafter referred to as CLB) is a civil society non-profit organization based in Hong Kong that focusses on Chinese labor relations and advocates for workplace equality in the name of the “emergent workers’ movement in China”. It was founded in 1994, and as part of its operations its staff regularly publishes articles concerning workers’ activism and protests on its website, along with research reports on key labor rights issues and quantitative data in the form of maps tracing strikes and workplace accidents across the mainland. Its resources are published with an audience of “policy makers, trade unionists, researchers, journalists and others (...)” in mind.<sup>9</sup>

China Labor Watch (CLW) is a New York-based non-profit organization that is similar to CLB in methodology, ideology and target audience, but publishes reports on workplace conditions in China’s manufacturing industry in particular. Since its founding in the year 2000 it has “collaborated with unions, labor organizations, and the media to conduct in-depth assessments of factories in China that produce toys, bikes, shoes, furniture, clothing, and electronics (...)”.<sup>10</sup>

Douban (豆瓣) is a Chinese-language social media platform where users can publish their own blog posts and articles. The website is divided into more than 600.000 user-generated ‘communities’ (小组), each with their own dedicated topic, where users can chat, discuss and share their opinions and experiences with little top-down control aside from voluntary

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<sup>9</sup> Information and quotations taken from CLB’s ‘About Us’ page hosted on its website. See <https://clb.org.hk/content/about-us>

<sup>10</sup> Information and quotations taken from CLW’s ‘About Us’ page hosted on its website. See <https://chinalaborwatch.org/about-clw/>

moderation by users who serve as a given community's administrator (组长). Users can also post articles on their own account independent of any community, in which case they are labeled 'diary' (日记) entries.<sup>11</sup> While Douban is by no means a widely acknowledged source of academic insight, there are numerous posts about dispatch work published in labor-related communities that can provide some window into the subjective experience of dispatch workers.

The method applied here is entirely qualitative and relies exclusively on documentary research. In the literature on Chinese dispatch work, documentary research has been used before as a means to investigate the experiences and struggles of Chinese dispatch workers. For instance, Huang (2017) examined how dispatch work functions as a legal category of labor by looking at case records of basic-level courts involving disputes related to labor dispatch (247). Even so, most authors referenced throughout this thesis who write about the realities of dispatch work and how it differs from regular employment rely (at least in part and to different extents) on fieldwork including interviews with dispatch workers, managerial personnel at user companies and dispatch agencies, trade union officials, local labor officials, and labor law scholars (see Feng 2019, 92; ILO 2014, 8; Zhang 2021, 560). Given the limited budget for this thesis, time constraints, and personal lack of Chinese language proficiency, neither fieldwork nor interviews were methods available to me. CLB reports, CLW reports and Douban posts about dispatch work were therefore chosen as documentary sources because they most closely approximate the subjects one could otherwise meet through interviews. CLB and CLW, being civil society organizations, have extensive knowledge of the legal framework surrounding dispatch work and how it is commonly violated by employers. In this sense, they are not unlike labor law scholars or trade union officials.

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<sup>11</sup> Information based on a combination of the text of Douban's 'About Douban' (关于豆瓣) page hosted on its website as well as my own observations. See <https://www.douban.com/about>

Douban posts, meanwhile, represent the voice of dispatch workers themselves; they express their perceived injustices, complaints, struggles and general experiences which serve as evidence for this thesis' claim that dispatch regulations are not respected. By employing these three datasets, I therefore aim to emulate as closely as possible the methodological precedents set by authors in this field using the means available.

The CLB and CLW sources referenced in the next chapter were gathered using the same mechanism. Both organizations have a website which hosts their respective reports and articles. Both have a search feature that allows users to dig up sources containing a specific term or key word<sup>12</sup>. To identify sources relevant to this research, I used the word 'dispatch' as a search term, after which I read and copied locally those articles which described some kind of labor conflict involving dispatch work, or reports into the working conditions of a specific company which mention dispatch work. For Douban, the process was similar. Douban also has a feature that allows one to look for posts in any community that contain a specific search term<sup>13</sup>. Seeing as Douban is a Chinese-language resource, I used '劳务派遣' (*laowupaiqian*: 'labor dispatch') here instead of 'dispatch'. When determining which posts among the search results I would use as reference, I more or less bookmarked a large amount of them at random, after which I would read them using a browser plugin for Chinese-to-English translation. Those posts I had bookmarked that ended up describing a reality discrepant with the principles established by the aforementioned labor legislation surrounding dispatch work (such as equal pay among dispatch workers and regular employees, illegal use of dispatch work by companies, etc.) I stored locally and used as reference.

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<sup>12</sup> For CLB, the search button can be found at its home page <https://clb.org.hk/en>; for CLW, it is located in the 'reports' section (<https://chinalaborwatch.org/reports/>)

<sup>13</sup> In fact, Douban actually has two separate search features: one that allows for filtering by keyword in any post in any community (as mentioned), and one advanced version that asks the user to specify whether the searched term is the name of a community, movie or book, among other categories. Using the second option seemed only to render relevant diary entries at the exclusion of community posts, so I opted for the former search feature, which can be found at <https://www.douban.com/group/explore>.

## 5.0 Analysis

In this chapter I identify recurrent trends, complaints, experiences, and points of conflict concerning dispatch work among the three datasets of CLB reports, CLW reports, and Douban posts. I aim to determine at which points the rights of dispatch workers are still not respected and which principles governing dispatch work are commonly violated. For ease of reading the chapter is therefore structured in the form of a (non-exhaustive) list.

### 5.1 Equal pay for equal work

Although it is difficult to find exact data comparing dispatch workers' salaries to those of regular employees in the same company, one trend surrounding dispatch work has emerged that is both easy to observe and clearly violates the 'equal pay for equal work' principle prescribed by Article 63 of the *LCL*. Namely, dispatch agencies have a habit of not paying their employees at all.

In light of the termination of China's Zero Covid policy earlier this year, CLB reports that medical equipment factories and manufacturing facilities (including Covid-19 test kits) have recently begun to lay off many of their workers due to reduced demand for Covid-19 related medical products. A large percentage of those laid off were reported to be dispatch workers, and in the wake of the lay-offs protests in a number of industrial cities (such as Chongqing and Hangzhou) broke out, revealing that many workers were still owed a significant amount of wages (CLB 2023a). In addition, these workers also did not receive the severance pay the *LCL* would ordinarily entitle them to, seeing as their labor contracts (if they had one at all) were with the dispatch agency and not the company (CLB 2023b). For dispatch workers in manufacturing plants, wage arrears are a common problem, occasionally sparking protests of impressive scale. According to CLW, in November of 2020 over a thousand dispatch workers at electronics multinational Foxconn gathered in front of their factory in Chengdu to protest,

claiming they were owed months of unpaid wages (CLW 2020a). Around a month later protests for the same cause broke out at Pegatron Shanghai and Pegatron Kunshan. (CLW 2020b).

The way Foxconn and its agencies avoid paying dispatch workers their owed wages are various, but generally involve some kind of simple deception. A worker approaching their agency to complain about unpaid wages is often met with excuses citing, for instance, poor communication with Foxconn about the actual hours worked, delayed payment from Foxconn to the agency so that the latter cannot pay its workers, workers having to work a full month before wages can be paid, and so on (CLW 2020a). The same tricks are used to deny dispatch workers their bonuses. The agencies through which Foxconn acquires its dispatch workforce promise the workers a reward for staying at the plant for a certain amount of consecutive days (55 days for Foxconn Chengdu), especially in peak production seasons. Yet when workers meet this threshold and ask for the promised rewards, the agencies again find excuses to avoid payment, usually also involving poor communication with Foxconn (CLW 2020a).

Even when employers do not fail to pay dispatch workers their wages outright, unequal remuneration between regular employees on the one hand and dispatch workers on the other is still common even with all the current legal provisions. One string of incidents extensively reported on by CLB are the 2017 protests at the FAW-Volkswagen factory in Changchun. In a saga that spanned nearly two years, hundreds of dispatch workers at a Volkswagen manufacturing plant literally protested for ‘equal pay for equal work’ by adapting it as their rallying slogan. By their own account they earned half as much as directly hired regular employees even though some of them had worked at the plant for over ten years (CLB 2017). In 2018 their protests eventually paid off in the sense that they were offered formal employment contracts by FAW-Volkswagen, but even then their salary was still lower than that of workers who had always been regular employees (CLB 2018).

Another grievance the FAW-Volkswagen protesters levied against their employers is that they did not receive the same medical insurance package that regular employees there enjoyed (CLB 2017). Indeed social insurance and benefits seems to be another area in which user companies and agencies scrimp on costs by treating dispatch workers unequally<sup>14</sup>. One Douban user, for instance, complains that in the SOE he is dispatched to only the government officials receive any benefits at all. Benefits are only occasionally distributed to other workers as “alms” (施舍) when there is a “surplus” (多余的) (Douban 2023a). The dispatch workers at Foxconn, meanwhile, receive no social insurance from either Foxconn itself or their dispatch agency (CLW 2019b, 20).

As mentioned, severance pay is also an issue in which dispatch workers feel they are treated unfairly. One Douban user complaining about being laid off without compensation even mentions the *Labor Contract Law* specifically. As she writes, the law mandates that an employee is given half a month’s pay if the contract is terminated during the probationary period. Being a dispatch worker, she was offered no such deal given that the contract was with her agency and not the company shutting down her work unit (Douban 2022a). For dispatch workers, the income missed out on due to sudden termination of the labor agreement can accumulate very quickly. One user, who works for a recruitment company, writes that it is common for dispatch workers brought on board to help with a particular project to be fired within days after joining the company simply because the project is suddenly discontinued, in which case they do not get any compensation for their work at all (Douban 2021a). Assuming the agency pays its workers local minimum wage when out of work (in accordance with Article 58 of the *LCL*), dispatch workers who suffer several of these kinds of dismissals in a row are left with only minimal income through no fault of their own.

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<sup>14</sup> Specifically this would constitute a violation of Article 8 of the *Interim Provisions* and Article 62 of the *LCL*.

Finally, even in cases where dispatch workers' wages do not seem inferior to those of regular employees on the face of it, employers still violate Article 63 of the amended *LCL* by applying different mechanisms for determining regular workers' pay vis-à-vis their dispatch peers. CLW found that in a Guangdong factory run by Dongguan Dongwong Electronics, regular workers could receive overtime wages (of approximately 1.5 times regular hourly wage) whereas dispatch workers in the same position were paid a flat hourly rate regardless of overtime put in<sup>15</sup>. Additionally, the agencies responsible for the dispatch workforce were found to apply a separate and complex wage system irrespective of hours worked that was meant to guarantee a minimum monthly income of 3600RMB; regular employees of Dongguan Dongwong doing the same work had no such system at all (CLW 2019a, 16). Occasionally dispatch workers also incur costs that don't affect regular employees. Neither dispatch agencies nor their user companies are permitted to charge dispatch workers any fees, according to Article 60 of the *LCL*. However, dispatch workers may be asked to pay for the medical examination fee conducted upon application for employment at the agency. If the applicant is not hired after all, they still have to pay for the test themselves; otherwise they would be reimbursed in the first month's salary. In a similar vein, applicants at dispatch agencies might be asked to hand over copies of their ID or photos, which they also have to pay for themselves (CLW 2019a, 8; CLW 2019b, 16; CLW 2020a).

Whether user companies and agencies refuse to pay dispatch workers their owed compensation outright, pay them less than regular employees, or apply different mechanisms for determining salary, the data presented here clearly shows that the slogan 'equal pay for equal work' does not at all represent the situation of Chinese dispatch workers today.

Companies like Foxconn and FAW-Volkswagen still regularly abuse the inherent opaqueness

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<sup>15</sup> This is arguably a violation of Article 62 of the *LCL* in itself, seeing as it obliges user companies to pay dispatch workers for overtime.

of dispatch work's triangular employment structure to cut labor costs in the form of wages and social premiums at the expense of the workers, and in some cases outright contradict the legal dispatch regime in doing so.

### 5.2 Restrictions on use of dispatch workers

Article 66 of the amended *LCL* as well as Chapter 2 of the *Interim Provisions* prescribe that dispatch workers can only be used for temporary, auxiliary or substitute<sup>16</sup> positions, while Article 4 of the *Interim Provisions* demands that dispatch workers may not constitute more than 10% of a given firm's total workforce. The data suggests that employers still regularly violate all of these provisions.

In terms of temporary positions, examples of dispatch workers being dispatched to the same user company for periods exceeding the 6 month limit as laid down in Article 3 of the *Interim Provisions* are not uncommon. These are easy to find on Douban: one user asking for advice on whether or not to change jobs mentions being dispatched to the same university for over two years straight (Douban 2021b); another dispatch worker at a university complains about the contract period being "only one year" (Douban 2021c); a third post has a user confidently explaining to others that in SOEs a dispatch agreement is always for one year (就是一年一签) (Douban 2021d).

Whether or not the user company and dispatch agency abide by the 'auxiliary' condition can vary depending on the type of business. In the manufacturing industry dispatch workers are basically never auxiliary given that they invariably perform tasks involving assembly of products on a conveyor belt, which constitute activities that are in fact part of the core

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<sup>16</sup> I could not find a single example of a dispatch worker in a substitute position in any of my three datasets, which is why this element is not mentioned again in the rest of this paragraph. In any case the lack of data on this point would suggest that using dispatch workers as a substitute for temporarily absent regular employees is not popular or common in the first place.



operations of such firms (CLB 2023a, CLW 2019a, CLW 2020a). Meanwhile in the service sector, schools or universities, and particularly in SOEs involved in public services, the situation of dispatch workers is generally quite the opposite. Many Douban posts about dispatch work consist of users dispatched to SOEs complaining that they are treated like “handymen” (打杂的) who are excluded from participating in the user company’s actual work (核心的), and are instead asked to do chores or cleaning (搞卫生). This kind of arrangement comes with its own hierarchical problems of dispatch workers feeling like they are treated as “third class citizens” (三等人) by managers and regular employees alike, but by and large they are not involved in the core business of their respective user companies (Douban 2023a, 2021d, 2022b). There are exceptions to be found, though. One post on Douban captures a particularly egregious example of dispatch work being used to fill a vacancy that is, in fact, crucial to daily business operations and not auxiliary at all. The user, who claims to have been dispatched to a state-owned security force, or ChengGuanJu (城管局, ‘urban management bureau’) for almost a year, describes being consistently assigned the most difficult tasks in the work unit despite earning the same salary as everyone else. His leaders (领导) eventually pressured him into participating in a competition for promotion given his perceived ‘work ability’ (工作能力), leading to the writer being elected as ‘deputy chief’ (副科长) of his unit. His salary, meanwhile, remained exactly the same (Douban 2022b). This particular case violates the restrictions on dispatch on two counts: leadership positions are by nature essential to proper operation of a work unit, while continued dispatch of almost a year is already in violation of the 6 month limit in the first place. Exactly this double violation of the temporary and auxiliary condition is also in part what sparked the FAW-Volkswagen protests; one of its leaders, Fu Tianbo, had been doing skilled soldering work crucial to production at the plant in addition to being employed on a dispatch basis for over a decade (CLB 2017).

When firms *do* adhere to either the temporary or auxiliary condition on use of dispatch, they often still break the rules by violating another limitation, namely the 10% cap on maximum share of dispatch workers in the total workforce. CLW reports that in 2018, Zhengzhou Foxconn's share of dispatch workers in the product assembly department rose as high as 55% of the workforce (49.000 out of 88.000). In August of 2019, that number hovered around 50% (CLW 2019b, 42). In Dongguang Dongwong, meanwhile, one assembly line was also found to consist of approximately 50% dispatch workers (CLW 2019a, 15).

Based on all the aforementioned it is clear that the hard restrictions placed on the maximum duration and permissible purposes of dispatch work as established by the *LCL*'s amendment and the *Interim Provisions* are not respected at all. Dispatch workers are continuously dispatched to the same user company for well past the 6 month limit, perform tasks that are essential to the daily operations of the firm, and in many cases constitute almost half the workforce regardless of the 10% cap. Even examples of user companies and agencies violating more than one of these restrictions at the same time are not uncommon.

### 5.3 In-house dispatch agencies

Even though Article 67 of the *LCL* forbids employers from establishing their own dispatch agencies for the purpose of dispatching workers to its own unit, in reality many large firms (especially in the manufacturing sector) *do* associate with dispatch agencies operating exclusively for them. For instance, as part of its 2019 investigation into the Foxconn factory in Zhengzhou, CLW reports that the plant cooperates with various dispatch agencies who publicly advertise themselves as "Direct Recruitment Center of Foxconn". When applying for employment at such an agency, the interview, subsequent physical checks and medical tests (mostly concerning proper functioning of hands and fingers) as well as administrative processing would all suggest that the interviewee is being hired by Foxconn directly.

Immediately after completion of the hiring process the worker is even given a Foxconn factory ID card by the dispatch agency directly, as the agencies are plugged in to the factory's management system (CLW 2019b, 14-16). Indeed the CLW report mentions one employee who was entirely under the impression he was applying for work at Foxconn itself, and realized he had approached a dispatch agency only after arriving at the interview site (CLW 2019b, 50). While Foxconn might not technically own these dispatch agencies as official subsidiary enterprises, in practice they are inseparably connected in their operations; these "Direct Recruitment Centers" don't dispatch their workers to any other company. Therefore they are essentially in-house dispatch agencies in all but name.

Another common example of an in-house dispatch agency is the kind that started as a re-employment service center in the wake of the 90's mass SOE lay-offs. In an interview by CLB with a dispatch worker at Lingyuan Iron & Steel Group in Liaoning Province, the interviewee describes being initially transferred to Lingyuan's own re-employment center in 1998, which evolved into a dispatch agency named Gangda Labour Services Company in 2002. The result is that today virtually all of Lingyuan's dispatch workforce comes from this one agency; it is effectively still owned by Lingyuan regardless of the rebranding (CLB 2009).

In both these examples it would be impossible to prove that these dispatch agencies 'belong' to their associated user companies of Foxconn and Lingyuan respectively in the legal context of ownership and subsidiaries. Likewise, it cannot definitively be said that the Direct Recruitment Center of Foxconn discussed here was 'established' by Foxconn in the sense of Article 67. Even so it is clear that the obvious intention behind Article 67, which would be to make dispatch agencies and user companies operate as businesses independent of one another, is not respected at least by large manufacturing enterprises.

#### 5.4 Agency as the lawful employer

Although Article 58 of the *LCL* makes the dispatch agency a worker's *de jure* employer, and therefore mandates that a labor contract is signed between these two parties in accordance with the other provisions of the *LCL* as well as those of the *Labour Law*, many dispatch workers in fact do not have a signed labor contract. For instance, CLB reports that among the dispatch workers in the nursing and hospital industry in Xinjiang, almost a quarter of them did not have a labor contract by the end of 2021 (CLB 2022). However, even when a dispatch worker has a signed contract with their agency, that does not necessarily mean that the agency plays its part as employer proper. Zhengzhou Foxconn has been paying the wages of the dispatch workers at its plants directly and in the same manner as its own regular employees since 2017. The agencies play no part in this even though the distribution of salary is legally supposed to be carried out by them, not the user company (CLW 2019b, 20). One Douban user describes a similar discrepancy in who actually handles remuneration. She writes that at one point her user company decided to get rid of her due to an influx of recent college graduates, but later they reconsidered and simply lowered her salary and benefits instead (“工资降低福利条件减少”) (Douban 2021e). Again, this scenario deviates significantly from the legal model in which the agency should be responsible for determining the amount of remuneration and benefits. Unilateral modification of these would suggest that in reality the user company is the *de facto* employer.

Another common trend which is not exactly in line with the principle of the agency being the employer is user companies recruiting potential new hires directly, but only on a dispatch basis. In this situation the agency assigns the worker to a user company only on paper and after the fact, because the user company and worker have *already* found each other and agreed to take on a labor relationship. Again there are numerous examples of this kind of

dispatch to be found on Douban. One user talks about being approached by an employer after uploading her CV to a talent market, only to be told she would be hired in the form of dispatch (以劳务派遣的形式招聘). If she agreed, she could start right away (就可以直接入职) (Douban 2022c). Another asks for advice on whether or not he should apply for the position of research assistant in a research center, because they apparently only recruit by way of labor dispatch (Douban 2023b). A third user writes about her experience working at the Academic Affairs Office of a university. Due to the limited job opportunities available to fresh graduates during the Covid pandemic, her university created a number of ‘management assistant’ positions students could apply for upon graduation to help fill the void somewhat. However, students would only be hired under the ‘labor dispatch system’ (劳务派遣制) (Douban 2021c).

As in the case of in-house dispatch agencies, this kind of dispatch-after-the-fact does not outright contradict the text of the law seeing as, after all, the formal labor relationship is eventually established between a dispatch agency on one hand and the worker on the other and that is all Article 58 of the *LCL* demands. However, considering that the provisions in that law were specifically created with the purpose that dispatch workers would not simply be treated like regular employees with lower labor costs, the scenario of a firm agreeing to hire a worker “on a dispatch basis” is undoubtedly against legislators’ intentions. Add to that the facts that some dispatch workers still work without a signed contract or are paid by the user company directly (with even the amount of pay itself at the user companies’ discretion), and it becomes clear that all too often dispatch agencies are still not the *de facto* employer in spite of all provisions demanding so.

## 6. Discussion

Even though the most recent piece of Chinese legislation concerning dispatch work was adopted almost a decade ago, the above chapter clearly shows that the legal rights of dispatch workers, the restrictions on permissible use of dispatch work, and the obligations for dispatch agencies and user companies involved are all regularly ignored even today. Dispatch workers receive unequal pay when compared to regular employees in the same firm (if they are paid at all), violating the ‘equal pay for equal work’ principle enshrined in the current legal dispatch regime. They are placed in positions that are crucial to firms’ daily operations and are dispatched to the same company for much longer than legally allowed. Finally, they invariably end up being entirely managed by the user companies rather than their dispatch agency, even though the latter would be the actual *de jure* employer. Recruitment, salary, social premiums, promotion, bonuses; these are all under the exclusive control of the user company, with the dispatch structure serving merely as a construct to cut labor costs and maintain a flexible workforce rather than separating the day-to-day activities of the workers so hired from those of regular workers.

Having served as evidence to this thesis’ claim that Chinese dispatch legislation is completely ineffective, it is now also interesting to contrast these analytical findings to how dispatch work is understood as a concept in the literature (as set out in the conceptual framework and literature review above). While the literature consistently references the triangular employment structure as a core characteristic of dispatch work, it does not much speak to the power relationship between the three parties. It only establishes their respective duties and obligations: the dispatch agency serves as a worker’s employer, the user company approaches the agency to ‘borrow’ the worker to carry out certain tasks for an agreed-upon duration, and afterwards the worker is dismissed and made available to the agency again to be dispatched to another user company (see Zhang 2021, 556; Pan 2016, 195-198; Ho & Huang 2014, 977-978). In the Chinese case, we can see that this blueprint of how dispatch work is supposed to

function has been warped by the fact that user companies have drawn most of the power and decision making in the process to themselves, at the expense of dispatch agencies. User companies tend to usurp the position of employer by paying workers directly (and as much as they themselves deem appropriate, irrespective of the agency's opinion) while also relying on the same dispatch workers for years on end. Worse, they deploy them in positions beyond auxiliary or temporary, giving them tasks identical to those of regular workers (such as conveyor belt assembly in manufacturing plants like Zhengzhou Foxconn and Dongguan Dongwong). When it comes to dispatch workers' employment the agencies might even end up being an afterthought, merely officiating a labor relationship that the user company and worker have already agreed upon before the agency was ever approached by either of the other two. Conceptually, the user company is understood to be a client of the agency, requesting its help in providing temporary labor; here, that client-provider relationship seems to be absent, as user companies find the dispatch workers themselves, pay them themselves, and keep them on as long as they like. Add to that dynamic those dispatch agencies who for all intents and purposes *belong* to one user company, such as the Direct Recruitment Centers of Foxconn, and the triangle starts to look more like a straight line between worker and user company, in practice not so different from a regular direct labor relationship.

This has implications for how dispatch work fits into the academic discussion of precarity. If agencies are marginalized and disempowered in the dispatch triangle, meaning the actual *de facto* labor relationship exists almost entirely between the user company and worker directly, and dispatch work is also *de facto* unregulated given that the relevant legislation is not respected by anyone involved, then dispatch work is just that: a *de facto* unregulated labor relationship between a worker and firm. Precarity is defined by exactly this lack of regulation in labor (Lee 2016, 317); the reality of low wages, poor working conditions and employment insecurity, as described throughout this thesis, are evident results.

Smith and Pun (2018) contest the idea that precarity is defined by one's employment status; they even argue that agency hiring is largely a management strategy for screening new recruits before eventually offering them a regular contract (so-called 'temp-to-perm') (602). They claim that when a given firm's economic situation becomes worse, both the dispatch and regular employees will be indiscriminately pushed out, meaning both types of workers are in the same boat as far as precarity is concerned (602-603). For this reason, they believe that "to isolate agency workers as a separate 'precariat' class makes no sense, and highlights the incoherent nature of the category" (603). However, this thesis' findings suggest that dispatch workers' situation is not at all comparable to that of regular workers; they do indeed maintain a status uniquely precarious not only because of inferior pay and conditions, but also for the fact that basically none of the legislation created to regulate their form of employment is in any way functional. Of course, this is not to deny that regular employees may or may not suffer from insecure employment as well depending on their particular contract and relationship with their employer, and that employers do not find ways to undermine their legal rights as well. The point is that the demonstrably dysfunctional regulatory framework surrounding Chinese dispatch work, which this thesis has indeed demonstrated to be dysfunctional, makes it the absolute perfect example of precarity. In other words, this thesis' findings contribute to the existing literature by supplying the theoretical idea of 'precarious work' with a concrete, real-life, localized and contemporary example of a category of labor that is completely consistent with the concept in every way.

## 7. Conclusion

This thesis has sought to demonstrate that dispatch workers in China are not actually affected by the legal provisions concerning dispatch work; they do not enjoy the rights they have been given nor do the user companies and dispatch agencies involved abide by their legal obligations and limitations. By first defining 'dispatch work' as a concept, describing how it



has been connected to the idea of precarity in relevant literature, and subsequently tracing its rise in China against the backdrop of Chinese labor history, it has given a concrete overview of how the dispatch industry works. Then, by comparing the principles and provisions contained in the current legal regime governing dispatch work against the experiences of workers themselves, it has shown that violations of these provisions are still incredibly common and that they are practically ineffectual on several key points, including ‘equal pay for equal work’ and the positions dispatch workers are allowed to occupy. In so doing, it has proven that dispatch work in China remains precarious regardless of the adoption of the *LCL* and *Interim Provisions*.

One big remaining question related to these findings that this thesis has not addressed, is exactly *why* the reality of dispatch work has seemingly remained unchanged following the introduction of these laws, especially considering the growing socio-economic inequality in China and the political concern it has generated. This question is large enough to warrant a thesis of its own, though over the course of this research some potential explanations have come to light that should briefly be touched on here. For one, it has become clear that employers have discovered a way to evade dispatch regulations that involves referring to the dispatch labor they use as ‘contracting’ or ‘outsourcing’<sup>17</sup> (Feng 2019, 97-100). In response to a proposal for cracking down on employers evading dispatch regulations through the outsourcing loophole, the Ministry of Human Resources and Social Security said they are aware of the problem, but rely on local governments to draw up counteracting measures before “the next step” (下一步) of national policy clarification will be considered (MHRSS 2015).

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<sup>17</sup> Article 27 of the *Interim Provisions* demands that all employment practices that are referred to as “contracting” or “outsourcing” (外包等名义), but in actuality have the same “form” (用工形式) as dispatch, are nonetheless subject to the *Interim Provisions*. This article seems to be a dead letter. See MHRSS 2015.

Lack of enforcement in general seems the likeliest explanation for why dispatch legislation remains ineffective. As Friedman argues, local governments in China operate by a “just-in-time” (JIT) labor model. Migrant workers are brought into the cities to perform labor in times of high demand, and are then expunged to peripheral small cities or hometowns when labor supply becomes excessive<sup>18</sup> (Friedman 2022, 35-40). This cyclical coming-and-going of migrant workers, who make up a large percentage of the dispatch workforce, gives local authorities little reason to care about their long-term welfare (financial or otherwise), seeing as they will likely leave their jurisdiction soon anyway (Zhang 2021, 557-558). In the center-local political dynamic, local governments are expected to both promote local economic growth and implement labor law (Feng 2019, 91; Cooke 2011, 200). Given these conditions, it is no surprise that they give priority to the former. The question of why dispatch legislation is ignored across the board is therefore likely connected to center-local political disharmony, with different levels of government having conflicting economic, social and legal priorities. The phenomenon of Chinese migrant labor, which this thesis has mostly left unaddressed, is likely key to this discussion. Deeper investigation into both the national and local political dynamics behind the regulation of dispatch work would likely lead to more insight into its non-enforcement.

Whatever Xi Jinping had in mind when he spoke of common prosperity before the Central Committee for Financial and Economic Affairs, dispatch workers have yet to see it materialize, for they are not yet prosperous nor on common footing with their regularly employed peers. Until the most basic principles at the heart of the *LCL* and *Interim Provisions* are actually enforced, dispatch workers actually receive equal pay for equal work, and user

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<sup>18</sup> The peak production season at manufacturing firms like Foxconn and Dongguan Dongwong coming with particularly high levels of dispatch hiring, as discussed earlier, exemplifies this model fairly well on a micro-level.

companies are actually held to the limitations placed upon dispatch work by law, there will continue to be fundamental inequality in the Chinese labor market.

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