

中國大陸勞動合同法之研究 —以勞動關係之調整為中心

摘 要

在市場經濟體制下，勞動力轉變成商品，使得勞動關係產生了新的變化，改革開放前的行政隸屬關係已被新的勞動關係所取代，然而在《勞動法》實施多年，不能解決新型態勞動關係的狀況下，又該如何解決此問題？中國大陸以法律作為調整勞動關係的方法之一，即能否透過法制化的手段，進行勞動立法，以調整勞動關係，解決現況的勞動爭議，並得到合理的調解？

本文將以《勞動合同法》對勞動關係之調整為核心問題，透過對歷次草案比較、各方博弈、法律比較、法律條文分析之方法，來探討本法的核心價值，探究本法將何去何從。對於勞動關係的調整，是否能在立法上達到規範勞資雙方權利義務的平衡點，並對中國大陸現有之勞資衝突的問題帶來和諧與改善。換言之，就是以《勞動合同法》為一現象，經由勞動關係的立法調整來解釋《勞動合同法》。為達此目的，設定下列命題加以分析討論：

- 1、改革開放後，勞動法制變革過程中，勞動合同制度如何演變，及對《勞動合同法》制訂之影響；
- 2、探討《勞動合同法》歷次草案中、各方利益博弈下勞動關係的立法調整；
- 3、探討《勞動合同法》如何進行勞動關係的立法調整；
- 4、勞動關係在《勞動法》與《勞動合同法》之差異比較，歸納出對勞動關係的修正。

關鍵字：勞動法、勞動合同法、勞動合同法實施條例、勞動合同、勞動關係

The Research of Labor Contract Law In Mainland China: Focusing on Adjusting of Labor Relations

Abstract

Under the market economy system, that the labor transforms into the commodity has made the labor relations have the new changes, and the administrative subordination relations before China's reform and opening up have been substituted by the new labor relations, however, the "Labor Law" has been implemented for many years, the new type of labor relations can not be solved yet ,in this situation ,how to solve this problem? Chinese mainland takes the law as one of the ways to adjust the labor relations, that is, whether can carry on the labor legislation through legal means, to adjust labor relations, resolve the present status of the labor dispute, and obtain the reasonable mediation?

This article will take "Labor Contract Law" on the adjustment of labor relations as the core issue, to explore the core value of this law and what it will go into ,by all previous draft comparison, all antagonism, all law comparison ,and methods of the law analysis. For the adjustment of labor relations, whether it can achieve the balanced point between the rights and obligations of both employers and employees in the legislative norms, and bring the harmony and the improvement for Mainland China's current conflict labor problems. In other words, this article will take "Labor Contract Law" as a phenomenon, to explain the "Labor Contract Law" through the adjustment of labor relations legislation In order to reach this purpose, this article sets the following propositions to be analyzed and discussed.

1st, after China's reform and opening up, the labor law transformation and its influence on the labor contract system evolvement and on making "Labor Contract Law ".

2nd, explore the legislative adjustment of labor relations under all previous draft in "Labor Contract Law" and all antagonism.

3rd, explore the "Labor Contract Law" on how to carry out the legislative adjustment of labor relations.

4th, compare with the differences between the "Labor Law" and "Labor Contract Law", and conclude the revision for the labor relations.

Key words: Labor Law, Labor Contract Law, Labor Contract Law implementation regulations, the labor contract, labor relations.