

Abstract of Workplace Dispute Resolution in China

Zack, A. (2008). *Using mediation to resolve workplace disputes in China*. Unpublished manuscript, Harvard Law School, Cambridge, MA, Retrieved from [http://www.law.harvard.edu/programs/lwp/people/staffPapers/zack/Using_Mediation_to_resolve_workplace_Disputes_in_China\(Draft_6\).pdf?ie=UTF8&s=books&qid=1186783095&sr=8-1](http://www.law.harvard.edu/programs/lwp/people/staffPapers/zack/Using_Mediation_to_resolve_workplace_Disputes_in_China(Draft_6).pdf?ie=UTF8&s=books&qid=1186783095&sr=8-1)

Abstract:

In this article, the author presents several observations on how a private system of dispute resolution might proceed within existing Chinese law, and preferably with the participation and encouragement of Chinese institutions. As excerpted from the author:

“There are two credible routes for pursuing workplace fairness in factories where it is currently ignored or flaunted. The first is through promoting the workplace fairness norms of the International Labor Organization. This is not likely. A second and more actionable route for pursuing workplace fairness is through the Codes of Conduct promulgated by the brands and international groups seeking workplace fairness under programs of Corporate Social Responsibility. Most brands...have adopted Codes of Conduct assuring their often sophisticated consumers that they are sensitive to the requirements of workplace fairness and diligent in pursuing adherence to those standards among the myriad companies to which they contract out their product manufacture.

Nonetheless, in the absence of rigorous enforcement of national law by the host government, and particularly in the absence of trade union representation at the factory level, the pressure of CSR and of consumers, points toward strengthening the effectiveness of such systems as the most practicable means for bringing to light objectionable and actionable workplace excesses and for moving toward the international norms, at least until domestic regulatory enforcement catches up with the workplace needs.

The options include: First, institutionalize private mediation of claims of code violations as a way of enhancing the prospects of achieving workplace fairness. I would suggest the creation of an independent institution outside the corporation perhaps in an academic setting, staffed with trained, private mediators, Second, develop that independent institution with the participation of representatives from the Ministry of Labor, local labor bureaus, the local employers association, and the ACFTU as well as its local branch, free of control by the brand, at a law faculty, an NGO or some neutral facility, to which the challenge would be referred. Third, offer the ACFTU the option of participation in an advisory group to the independent institution, or as a source of some of the mediators, or preferably as advocate for the complaining workers. Fourth, encourage legislation making such mediated agreements enforceable in courts as binding agreements. Fifth, using the above as a model or experimental undertaking, in an effort to avoid economic strikes over statutory violation such as non-payment of wages or overtime or other issues becoming political strikes.”

The article concludes with ten suggestions, all of which could prove productive in enhancing workplace fairness.

To cite this abstract, use the following link:

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