

China Trade Unions - Considerations for Employers Under New Amended Law

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China trade unions have in the past mostly been formed by blue-collar workers in traditional manufacturing and construction industries. Those working in newer types of low-paid work, such as “gig economy” workers, have mostly been overlooked by trade unions. A new amendment to China’s Trade Union Law seeks to rectify this - but it is unclear how much change it will bring. We look at how trade unions work in China, the main considerations and requirements for companies to accommodate trade unions under the law, and how the new amendments will impact workers’ rights in China.

Discussion on labor rights in China reached new heights in 2021 as the government introduced a new policy direction for the country, dubbed “common prosperity”. This drive to even the playing field in work and education in order to narrow China’s wealth gap has led to increased scrutiny of tech companies, in particular, as they employ hundreds of millions of “gig economy” workers - couriers, taxi drivers, food delivery drivers, and the like.

The criticism of these platforms comes in part from the All-China Federation of Trade Unions (ACFTU), China’s main government body overseeing the country’s trade unions. In July 2021, the ACFTU, along with other government bodies, released a set of [guidelines](#) (link in Chinese) on the protection of labor security rights and interests of workers in “new employment forms”. Despite their large numbers and relatively poor working conditions, gig workers have typically not been able to form unions, which have historically only been created for laborers in traditional industries, such as construction and manufacturing.

Now, a recent amendment to China’s Trade Union Law seeks to address this generational change in employment formats, ostensibly enabling gig workers to form unions. Although the amendments make it easier for gig workers to form unions on paper, it remains unclear how effective these unions will be in achieving real change in working conditions for the workers.

In this article, we provide an overview of how trade unions in China work and the obligations of companies before looking at the new amendments to the Trade Union Law to discuss their ability to effect change.

Note: For the purposes of this article, when referring to the activity between organizations and workers, we refer to all types of organizations in which a trade union can be established collectively as the “employer” and the workers that the trade unions represent as “employees”.

China Labor Unions - FAQs

How do trade unions work in China?

All trade unions formed under an employer must be registered with the All-China Federation for Trade Unions (ACFTU). The ACFTU is a government body that answers directly to the Central

Committee of the Communist Party of China (CPC).

There are several pieces of legislation that administer China's trade unions, including:

- The Trade Union Law of the People's Republic of China
- The Charter of China Trade Unions
- Provisions on Collective Contracts
- [Foreign Investment Law](#)
- Labor Contract Law

The Trade Union Law of the People's Republic of China defines the trade union as "a mass organization of the working class led by the Communist Party of China under which workers voluntarily come together. It is the bridge between the Communist Party of China and workers."

The main role of the trade union committees is to negotiate with the employers or institutions that carry out enterprise management on behalf of the employees. They are also tasked with signing "collective contracts" with the employers to safeguard their rights and interests.

Trade unions in China derive their funds from a number of different sources, including membership fees, employer contributions, income raised by affiliate institutions, and subsidies from the government.

Independent unions are not permitted under Chinese law.

Who do trade unions cover?

Ostensibly, employees in any company in China can join or form a trade union, as the Trade Union Law states that "any worker who derives their principal income from a company, professional unit, institution, or social organization is legally entitled to participate in and organize labor unions, regardless of their ethnicity, race, gender, occupation, religion, or educational level." No employer is permitted to prevent employees from unionizing.

However, trade unions are usually only established by blue-collar workers in traditional labor industries, such as construction and manufacturing.

Recent amendments to Trade Union Law have sought to expand the coverage of labor unions to include gig workers. The rise of the gig economy enabled through digital platforms has seen an increasing number of people working in low-paid service-oriented jobs, such as couriers or taxi drivers. Despite the often difficult working conditions, low wages, and uncertain position within the company (many gig workers are not formal employees of the company and therefore are not eligible for certain benefits, such as social security), workers have been unable to join or form trade unions.

The new amendment strengthens the rights of gig workers to form unions with the addition of a new clause that states: "Trade unions adapt to the development and changes in company organizational forms, workforce structure, labor relations, and employment formats, and protects the rights of laborers to join and organize trade unions in accordance with the law."

What's the difference between China trade unions and those in other countries?

Despite the existence of the ACFTU and the legal right for employees to unionize in China, the power of labor unions is relatively limited compared to that in some other countries. The most obvious difference is that trade unions in many other countries are independent, and therefore do not have to answer to the government or the company.

Trade unions in China also serve an important ideological purpose and are a tool for shoring up support for the CPC. As is stipulated in the Trade Union Law: “The trade union must adhere to the socialist way, the people’s democratic dictatorship, [and] the leadership of the Communist Party of China”.

The scope of activity permitted under China’s trade unions is also significantly more limited than in other countries. Organizing strikes and protests – a cornerstone of labor union activity in other countries – is not permitted.

The role of trade unions in China is to advocate on behalf of employees on an equal footing with the employer. The scope of responsibilities includes:

- Helping employees negotiate “collective contracts”.
- Submitting disputes between employers and employees to arbitration institutions.
- Investigating alleged violations of employees’ rights.
- Supervising the safety and sanitation of working facilities and providing opinions on improving working conditions.
- Making suggestions for improvement upon the discovery of dangerous working conditions and suggesting evacuation of employees when necessary.
- Helping employers carry out collective welfare undertakings for employees and ensuring wages, labor safety and hygiene, and social insurance.
- Providing support for employees in the event of arbitration of labor disputes.
- Providing legal services for the union and the employees (only county-level and above unions can provide these services).
- Conducting recreational cultural activities, technical education, and employee training, and organizing employees to carry out entertainment and sports activities

Employer obligations under the Trade Union Law

Trade union establishment

The *Foreign Investment Law* specifically stipulates that employees at foreign-invested enterprises (FIEs) are allowed to establish unions and engage in union activity. FIEs are therefore required to accommodate the activity of the trade union. No employer is permitted to prevent employees from unionizing.

The Trade Union Law requires trade unions with 25 or more members to establish what is called a “grassroots trade union committee” within the organization (that is, a private company, state-owned company, government body, or social organization). When a trade union has less than 25 members, they can choose to establish a trade union committee independently (that is, without the company taking initiative) or join up with other business units within the organization to form a committee.

If there is a relatively large number of female members, the trade union can also choose to set up a separate committee. The trade union committee must also elect a member to organize member activities.

Trade unions with over 200 members can appoint a full-time union chairman. The exact number of full-time union members appointed must be agreed upon between the company and the trade union.

Negotiation with trade unions on employee matters

Under China’s Labor Contract Law, in addition to the Trade Union Law, trade unions have the right to negotiate with the employer on matters that directly affect the employees, such as decisions on or

changes to remuneration, work hours, breaks and time off, workplace security and hygiene, insurance, training, and so on.

If an employer formulates any plans or makes any changes to any matters that directly impact the employees, then it must first submit the plan to the Worker's Congress or to all of the employees for deliberation and must be concluded through negotiation on equal footing with the trade union or another employee representative.

Accommodating trade union activities

Employers are required to respond to union inquiries and requests, and must also keep the union informed of any issues pertaining to the wellbeing of the employees.

When a trade union provides suggestions to the employer on matters related to employees' well-being, such as work safety and hygiene, the employer is required to make a serious effort to reach a solution and inform the union of the results of the case in writing.

Employers must also work with the trade union when it wishes to organize staff to carry out group "rationalized" suggestions and technological innovation activities or carry out any educational and recreational activities.

Enabling trade unions' oversight over layoffs and contract termination

In the event that an employer wishes to lay off over 25 employees or the equivalent to 10 percent of its workforce, it must provide the reason for the layoffs to the union at least 30 days in advance. The employer is required to listen to the union's feedback. The employer can only go ahead with the layoffs after the plan to fire the staff has been reported to the labor department.

If an employer wishes to unilaterally terminate an employment contract, it must first inform the trade union of the reason behind the termination (in writing). If the trade union finds that the employer has violated any laws and regulations or the terms of any other contracts, it can request another review of the case, which the employer must comply with. The employer is then required to review the trade union's position and inform the trade union of the findings of the review in writing.

Providing financial support to trade unions

The company must pay a monthly fee of 2 percent of the total monthly salary of all their employees to the union. This expense can be deducted prior to corporate income tax on the presentation of the Special Income Receipt for Trade Union Funds issued by trade union organizations. According to the Trade Union Law, the funds raised are mainly used for services for the employees and for union activities.

If the employer delays or refuses to pay trade union funds without justifiable reasons, the grassroots trade union or a higher-level trade union can submit a request to order payment to the local people's court. If the employer continues to fail on its fee obligations, the trade union can turn to a higher-level people's court.

Working with trade unions in signing collective contracts

Under China's Labor Contract Law, the employer and the employees are permitted to enter into a "collective contract", which outlines provisions on matters such as remuneration, work hours, social security, and more.

In this situation, trade unions can negotiate the contract with the employer on behalf of the employees. A draft version of the contract must be submitted to the trade union representative congress or to all the employees for deliberation before it is finalized and signed. The collective contract is then concluded between the union and the employer.

According to China's [Provisions of Collective Contracts](#) published in 2004, collective contracts can contain any number of provisions related to employees' rights and interests, which include (but are not limited to):

- Remuneration, working hours, breaks and time off, workplace safety and hygiene, professional training, social security, special protections for female employees and minors, rewards and penalties, layoffs (procedures, mechanisms, and compensation), management of labor contracts, etc.
- Contract term, procedures for changing or rescinding collective contracts, negotiation methods for handling disputes, and liabilities for breach of contract.

Liabilities of the employer under the Trade Union Law

Employers are liable for breaches of the Trade Union Law, including violations of the collective contract or violations of the employees' rights and interests.

If an employer breaches the terms of a collective contract or violates the rights of employees, then the trade union has the legal right to require the enterprise to take responsibility.

Disputes can also be resolved through submission to an arbitration institution and can ultimately be submitted to the people's court if the issue cannot be resolved through the arbitration institution. Trade unions also have the right to negotiate and request corrections from employers if they violate employees' rights, such as:

- Deducting or delaying payment of employee wages.
- Failure to provide labor safety and health conditions.
- Extending working hours at will.
- Infringing on the special rights and interests of female employees and juvenile employees.
- Other serious violations of the labor rights and interests of employees.

If the employer fails to make the requisite corrections, the trade union can take the case to the people's court.

Amendment to the Trade Union Law

In December 2021, the Standing Committee of the National People's Congress adopted the [Decision on Amending the Trade Union Law of the People's Republic of China](#), which took effect on January 1, 2022.

The changes adopted are relatively modest. As mentioned previously, one of the major additions is a clause mentioning "the development and changes in company organizational forms", which aims to strengthen the rights of gig workers to unionize.

Other changes to the Trade Union Law include the addition of "social organization" to the definition of the types of employers that can form unions. The broadening of the definition suggests that non-profit organizations, such as educational and cultural institutes and charities, can also form unions.

Another amendment states that a trade union representative must be present when an employer

holds a discussion related to working hours, breaks and time off, and the protection of female employees. Previously, the law only specified salaries, benefits, workplace safety and hygiene, and social security as discussion topics for which a union representative had to be present.

The amendment also appears to urge unions to have a greater role in advocating for worker training and education. Article 32 (Article 31 prior to the amendment) adds a clause requiring unions to “organize employees to carry out mass rationalized proposals, technological innovation, labor and skills competitions, conduct amateur cultural and technical learning and employee training, participate in vocational education and cultural and sports activities, and promote occupational safety and health education and labor protection work.”

Will the amendments bring about change?

The amendments to China’s Trade Union Law appear to take a positive step toward better worker representation at Chinese companies. However, the language is relatively vague, and without clear guidance on implementation, it is unclear whether it will prompt the formation of more labor unions among gig workers.

In addition, labor unions have not always been very effective in negotiating better wages and conditions for workers despite the law giving them the legal right to do so. The ACFTU has previously been criticized within China for its ineffectiveness and failure to adequately represent employees, which in some instances has led to illegal strikes and protests at companies that have already unionized.

It is also worth noting that some [tech companies had already formed unions](#) prior to the amendment of the Trade Union Law, suggesting that the incentives and pressure for companies to form unions is not coming from the legislation. The formation of these unions may have come as a response to a series of rulings cracking down on tech companies that were rolled out over the summer of 2021, including the guidelines released by the ACFTU on protecting the rights of gig workers. However, it remains unclear whether the unions have affected any change for the companies’ employees, or whether the formation has been merely symbolic.

Questions also remain over the rights of workers in other industries. Criticism over the working hours of white-collar employees has risen dramatically over the past few years and has only become sharper following a number of high-profile deaths at large tech companies. In August 2021, China’s top court ruled that the grueling [996 work schedule](#) common in large tech companies – where staff work from 9 am to 9 pm, six days a week – is illegal under Chinese law.

Although some large tech companies have taken measures to [improve the work-life balance](#) of their employees, many have been slow to implement changes, and cases of [overwork](#) have been reported as recently as February 2022. Even within the tech companies that have formed unions, it is unclear whether they will be representing both the gig workers and the tech workers as few details of the unions have been released to the public.

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