

Original Paper

Extraterritorial Reference of China's Labor Market Flexibility

Adjustment

Gao Fuxia¹, Xu Xinpeng^{1*}, Huang Yunning¹ & Luo Lina²

¹ Department of International Finance and Trade School, Sichuan International Studies University, Chongqing, China

² Chongqing Southeast Hospital, Chongqing, China

* Corresponding author: Xu Xinpeng, E-mail: xinpengxu@cqu.edu.cn

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Abstract

China's labor market is facing a policy and legal dilemma of balanced flexibility and security adjustment. Under the condition of the continuous development of new economic conditions such as sharing economy and platform economy, the new employment pattern of the labor market presents new challenges to the current legal system. It is of great significance to optimize and perfect China's existing labor policies and regulations by studying the experience of representative countries such as the United States, Japan, and Germany in labor market regulation and drawing on their scientific adjustment model.

Keywords

the labor market, flexibility, foreign experience

1. Introduction

According to the World Bank statistics for 2009, the level of economic development and unemployment show a negative correlation with the level of labor market regulation in a country. Due to the different degrees of legal adjustment in the labor market, there are differences in the impact on a country's employment structure and economic behavior. The higher the degree of labor market regulation, the more rigid the labor market and the slower the level of economic development, which is also one of the reasons for the weak economic growth, high unemployment rate, and the slow adjustment of the country's industrial structure. The lack of flexibility in the labor market system directly restricts the free movement of labor in the market, the creative ability of enterprise jobs, the attractiveness of the state to foreign investment, etc. Thus, in various countries, labor market reform

has been put on the agenda and has begun to increase the level of allocation of labor market resources through a series of labor market policies, while reducing the level of employment protection, increasing the construction of social security systems and the flexibility of the labor market.

2. The Employment Protection System Represented by the United States and Britain

Judging from the main ways of employment protection in the world, there are four main types of current employment protection models: the first type is the lower protection type. Britain and the United States are typical representative countries; The second type is a relatively high level of social protection, typically represented by Denmark, Finland, the Netherlands, Belgium, Ireland, and other countries; The third type is to provide workers with higher employment protection, and the level of social protection is relatively low, of which Spain, Portugal, Greece, Japan, Italy and so on are typical representative countries; The fourth type is not only the high level of employment protection, but also the level of social protection remains high, with France and Germany as typical representative countries. (see Table 1 and Table 2 for details)

Table 1. Flexible Guarantee Types of Different European Countries

Country	Hierarchy	Executive body	Law performance	Character generalization	The balance characteristics
Italy	Industry	The social partners	Collective bargaining	Pay more attention to the “freelancer” community; enhancing training investment; enhance employability	Functional flexibility; Job security
Spain	Country	Governments, trade unions, and employers’ organizations	Social agreement	Advocate trilateral or even multilateral talks and improve labor protection for part-time workers	Internal quantity flexibility; Job security
Germany	Industry	The social partners	Collective bargaining	The union reached agreements with DaimlerChrysler and Siemens to extend working hours instead of job cuts	Internal quantity flexibility; Job security
Finland	Country	Trade unions and employers’	Time bill	Set up a “working time bank”: overtime and	Internal quantity

		organizations		holiday working time can be freely deposited in the form of vacation time and extra income. it has promoted flexibility in the Labor market	flexibility; Comprehensive security
Austria	Country	The government	Law	Part-time worker retirement scheme: allows female workers over the age of 50 and male workers over the age of 55 to reduce their working hours by 40% to 60% while maintaining the same income.	Internal quantity flexibility/Wage flexibility; Job security/Income security

Table 2. Reform of the Employment Protection Act

Country	Year	Type of work	Controls reflect	Flexibility embodiment
Finland	1991	Permanent workers		Change the period of notice from two months to about one to two weeks
	1996	Permanent workers		For workers with less than one year of service, the period of layoff notice will be shortened from two months to one month
	1985 1986	Temporary workers		The “unbinding” of fixed-term contracts
France	1986	Permanent workers		Deleted the clause that layoffs for economic reasons need to be approved by the government
	1989	Permanent workers	Large scale downsizing of employers needs corresponding buffer	

Country	Year	Type of work	Controls reflect	Flexibility embodiment
Germany	1990	Temporary workers	measures Strengthen the regulation of temporary workers and short-term contract workers	
	1993	Permanent workers	The terms of the social plan are guaranteed by law	
	1985	Temporary workers		Relaxed conditions for signing fixed-term contracts
	In the 1990s	Temporary workers		The length of service and re-signing conditions for fixed and temporary contracts have been relaxed
	1993	Permanent workers	Blue-collar workers and white-collar workers have the same legal notice time, which increases the average legal notice time of workers who have worked for more than 10 years	
South Korea	1996	Permanent workers		It raised the threshold for dismissal from five to ten employees
	1999	Permanent workers	The employment threshold for protection of improper dismissal is less than five employees	
	1998	Permanent workers		Layoff due to “management reasons” and the need for the enterprise’s business development is permitted
	1998	Temporary workers		There are fewer restrictions on

Country	Year	Type of work	Controls reflect	Flexibility embodiment
Portugal	1989	Permanent workers	Conditions for the use of fixed-term contract workers have been tightened	temporary employment Conditions for collective layoffs were further relaxed
	1991	workers		
	1984	Temporary workers		
Spain	1994	Permanent workers	The provision that allowed companies to adjust the number of employees according to their business status was abolished The wage allowance for wrongful dismissal was reduced from 45 days to 33 days Temporary workers are allowed A fixed-term contract may be signed without any objective reasons, and the contract shall employ no more than 5 employees Employers give priority to two of their employees, and the rest can be laid off	
	1997	Permanent workers		
	1993	Temporary workers		
	1997	Temporary workers		
	1993	Permanent workers		
The Swedish	1995 1997	Permanent workers	The principle of “first in, last out” is used again, but the possibility of changing the order of dismissal through collective bargaining increases	
Britain	1985	Permanent workers		The period of wrongful dismissal increased to two years

The United States	1988	Permanent workers	Enterprises with more than 100 employees need 60 days' notice of bankruptcy or layoff	
Belgium	In the 1990s	Temporary workers		
	1987	Temporary workers		The proportion of fixed-term contract workers increased
Italy	1997	Temporary workers		Temporary worker status is recognized during the probation period

Source: All the above data are from OECD. OECD Employment Outlook [R]. Paris, 1999.

In the early industrialized countries of the West, contract freedom was pursued in the field of the labor contract, which was the labor market practice under the guidance of liberal economic theory. The management has greater freedom in the exercise of the right of employment and dismissal. As some scholars have discussed, the management in the process of enterprise management, has a certain degree of internal management authority of the enterprise is taken for granted, the right to fire should be regarded as a kind of enterprise production and operation rights. But with the development of industrialization, the workers' awareness of labor rights, the development of trade union organizations, workers began to be less and less satisfied with their lives in a state of insecurity. For example, by introducing the French Labor Code, France has stipulated that a fixed-term labor contract may not exceed 18 months and that a fixed-term labor contract cannot be entered into without objective reasons.

3. The Labor Contract Adjustment and Change System Represented by German and French

3.1 Right to Change a Labor Contract

Germany and France are more stringent in the use of public law to adjust labor contract changes. Germany mainly adjusts the contracting power of the parties by contract, which adopts two main modes of adjustment: the legitimacy guarantee model and the self-determining model. German law holds that if the status of the contracting parties is too wide, the autonomy for the change of contract is made by a powerful party, so intervention through public law allows the parties concerned to seek a relative balance in a changing environment. At the same time, the social legitimacy of the terms of labor contract changes is reviewed, such as articles 2, 4, and 8 of the German Law on the Protection of the Termination of Labor Contracts, which clearly state that the conditions of the change should conform to social legitimacy, and list the relevant conditions and standards.

French labor law distinguishes between unilateral changes by employers. Different adjustments have been made to the change of labor contract and the change of labor conditions, for example, for the adjustment of labor conditions, the employer can make full use of its employment autonomy, under the premise of making small-scale adjustments to wages, working hours, etc., the labor contract has not changed substantially. Employees may not agree with the employer's change of working conditions and may resign, but must make clear their intention to resign. Otherwise, if the employer is prosecuted for unlawful dismissal after resigning, the judge generally does not recognize it, and the employee will not receive any compensation or compensation. In the case of changes in the labor contract itself, the French legal system is usually based on four criteria: first, look at the level of detail of the agreed terms, such as the agreement on the place of work, it must be clear under which conditions the employer can unilaterally change and account for the scope of the change, otherwise the changes are invalid.

Second, the terms of the change must be in good faith and the employer must not abuse the administrative power. For example, under changes at the workplace, an employer may be suspected of abusing internal management authority if it does not provide the worker with transportation facilities for changes in his or her work. Third, the agreed terms of change are strictly limited, not arbitrarily expand the interpretation. Fourth, if a worker violates labor discipline, he or she should accept the terms of the employer's post adjustment.

3.2 The Right to Choose the Form of a Labor Contract

There are three main ways to adjust the form of the labor contracts in the international market. One is to adopt a liberal model. Mainly representing countries and regions such as China's Macao and Hong Kong Special Administrative Region, Eastern countries such as Singapore, Europe, and the United States, Italy, the United Kingdom, Australia, and other typical countries; Such as China's Taiwan, France, Belgium, Indonesia, and other countries; Third, it is mainly written, oral as the exception mode. Such as Vietnam, Sweden, Russia, and other countries. For example, the Vietnamese Labor Code makes it clear in its article 28 that labor contracts should be signed in writing. However, for temporary work with shorter durations, such as temporary jobs of up to three months, written confirmation is not necessary if the parties to the labor relationship agree. The main reason for confirming the form of labor relations in writing is to give the written labor contract the function of evidence value. The reference to China is to clarify the evidence value of written labor contracts, not to make strict provisions on the form of non-fixed-term labor contracts, but to pass written documents, rosters, wage payment vouchers, unemployment registration information, separation certificates, and so on. As long as the relevant materials can prove the existence of labor relations, it is considered effective. However, for fixed-term labor contracts, it must be confirmed in writing, otherwise, it will also bear adverse consequences, mainly to prevent the moral risk of the subject of labor relations, save trial resources, and so on.

3.3 The Right to Agree on the Term of the Labor Contract

At present, there are three main types of legal adjustment on the duration of labor contracts. One is the model of free application and dismissal for just cause represented by the United Kingdom; Second, the free application and prohibition of the abuse of dismissal power represented by the United States; Third, France and Germany as the representative of the strict application, justifiable combination model. However, China's current adjustment mode is different from the above three, or it can be summarized as the fourth type of mode, which is based on the current labor contract term rules in China. Its characteristics are compared in the following table.

Table 3. Comparison of the Basic Characteristics of the Term Model of the Four Types of Labor Contract

type	Fixed-term contract		Unfixed term contracts	
	Suitable conditions	Termination conditions	Suitable conditions	Termination conditions
China's current model of adjustment	No requirements for the position	Resign unconditionally; Discharge is allowed for just cause	No requirements for the position	Resign unconditionally; Dismissal for just cause
Suggested mode for modification	No requirements for the position	The expiration of the time limit is the principle; Negotiations and statutory reasons are exceptions	No requirements for the position	Same as above
The British model	No requirements for the position	Same as above	No requirements for the position	Same as above
The American model	No requirements for the position	Same as above	No requirements for the position	Resign unconditionally; Abuse of termination power is prohibited
The French model	Temporary post	Same as above	No requirements for the position	Resign unconditionally; Dismissal for just cause

Therefore, the proposal to our country is to dismiss during the probationary period, enterprises need more autonomy, while the scope of application of dismissal protection is defined in the scope of non-fixed-term contracts, for economic compensation only applies to medium-and long-term labor relations, further increase in the constructive dismissal while refining the unfixed term dismissal related adjustment measures.

4. The Labor Relations Identification and Subject Classification Adjustment System Represented by Germany and Italy

The different subjects of labor relations are classified scientifically, and the adjustment mode of differentiation has been adopted by many countries in the world, and the legislative practice has been carried out. For example, Japan, the Netherlands, Italy, Switzerland, Germany, France, the United Kingdom, etc., through the design of their national civil codes or other labor legal systems, to achieve the adjustment of the classification of the subject of labor relations. The best representation is the German, Italian civil codes and Swiss debt laws that provide for this in more detail.

The first is Germany. German law adjusts labor relations according to the size of enterprises, the number of workers, and other factors. The main reason for Germany's classification adjustment is to play the leading role of small and medium-sized enterprises in the economy, and to cultivate the size of the country's middle-class development, through scientific calculation, the performance of the enterprise through the setting of a critical value of this criterion to adjust the scientific classification of enterprises. In the setting of critical values, the selection of parameters or indicator systems is very important. The basis of the threshold is mainly to look at the size of the number of workers in enterprises, some special groups such as part-time employment groups, apprentices, dispatchers, etc. are also considered within the scope of indicators, but also take into account the scale of production of enterprises and other conditions. The calculation of critical value is rational and gives a visual and quantifiable criterion for the classification of enterprises, and its calculation process is also the result of the interesting game of all parties.

As for the division of workers' identity, the mainstream opinion in Germany holds that the personality of labor relations should be regarded as the main basis for determining. Mainly from two aspects of the investigation, one is to see whether the employee joined the employer's organization, and the other is to see whether the work has been carried out under the command of the employer. According to these two major judgments, the focus is on the actual case of workers in the work content, location, duration, conditions, and other aspects of the situation under the command of the employer, supplemented by other elements of judgment, and finally concluded. About the classification of workers, German labor law adopts a three-way system that divides the group of workers into self-employed groups, similar groups of workers, and groups of standard employees. Similar groups of workers enjoy almost the same treatment in legislative protection because they are similar in nature and external form to standard employees. At the same time, different groups within, but also carried out a detailed decomposition.

The second is Switzerland. In the era of amending and perfecting its creditor's rights law in Switzerland, the construction of its labor legal system has become more perfect, and the labor market is in a benign state of development. Based on a full study of the labor market, the Swiss government has carried out a scientific classification for its domestic employees and employers by setting different standards, which provides different subjects with different means of adjustment, thus adjusting labor law to the subject of labor more precise. Switzerland established the legal system of employment contracts in 1911 and amended the debt law to a greater extent in 1917 when previous employment contracts were amended to labor contracts.

The third in Italy. In the first four chapters of its Civil Code, Part 5, on labor legislation, Italy has also made different classification adjustments to labor subjects and treated different objects differently. The law stipulates that the employment and employment relations should be divided into standard labor relations, traditional employment relations and characteristic employment relations not only from the point of view of the characteristics of the workers' "attributes"; From the perspective of employers, according to the scale, income, the number of workers and other factors to divide enterprises into general types of enterprises and agricultural enterprises, business owners and small business owners and other different types to distinguish, for some employment groups because of the particularity of their forms of employment, in the Civil Code, some of the special nature of the work of the group of workers divided into interns, domestic workers, and other special adjustment policies (Note 1).

5. Non-standard Employment System Represented by Japan

① In terms of the labor dispatch system. The legal adjustment of the labor dispatch system in foreign countries can be interpreted mainly from the next few aspects. The first is to lift the veil of labor dispatch. The condition is that if the employer or employing unit violates the relevant provisions of labor law, the relevant departments and legal systems may make the dispatching act labor-related; For example, article 54 of the Vietnamese Labor Code stipulates that the period of service of human resources intermediary services shall not exceed one year; Third, the standards applicable to labor dispatch contracts are strictly qualified. The German Law on Part-time Employment and Fixed-Term Contracts applies to labor dispatch, so it can also be inferred that labor dispatch must be temporary or temporary, while the Labor Dispatch Law stipulates that labor dispatch is not allowed in the construction industry; Article 42, paragraph 2, of the Japan Labor Dispatch Law, makes it clear that workers of a continuous nature of employment for more than 12 months shall be under an "obligation to make immediate employment efforts". Article 124-3 of the French Labor Code also states that the provisions of the dispatch contract prohibiting the dispatched enterprise from employing the dispatched workers are invalid. The Vietnamese Labor Law also makes it clear that workers may, if they wish, negotiate with the employer for the establishment of fixed or non-fixed-term labor contracts after the expiration of the employment service agreement provided by the relevant employment intermediary; Fifth, to promote the realization of the transformation of irregular employment contracts.

② In terms of non-standard workers. In the process of adjusting the flexibility of their labor market, western countries have put flexible employment, including but not limited to labor dispatch, part-time employment, etc., in the prominent position of adjustment, and make full use of their flexibility to stimulate the flexibility of the entire labor market. There are two common practices in Western countries: first, policy-led adjustment. The government has adopted the corresponding labor adjustment policy to realize the standardized, scientific, and orderly management of flexible employment, and the second is to enact relevant laws to ensure the effectiveness of the adjustment of flexible employment groups by the force of law.

6. The Flexibility and Security Balance Adjustment System, Represented by Denmark and the Netherlands

One of the most representative homes in the flexible security balance is Denmark and the other is the Netherlands. The flexible security model of the Danish labor market has its characteristics. First, the existence of this Anglo-Saxon free flexibility, refers to the enterprise can be following changes in the external environment and internal production structure adjustment at any time to hire or fire employees, if the reasons are reasonable, then it is not subject to any legal constraints and constraints; Of course, employees do not see their dismissal as a “flood beast”, because the country’s well-developed social security system can help them, when they lose their jobs, does not mean that they lose their source of income, the state through unemployment benefits and other means to ensure their income security. Denmark’s flexible security mode is also known as the “Golden Triangle” model (see figure below).

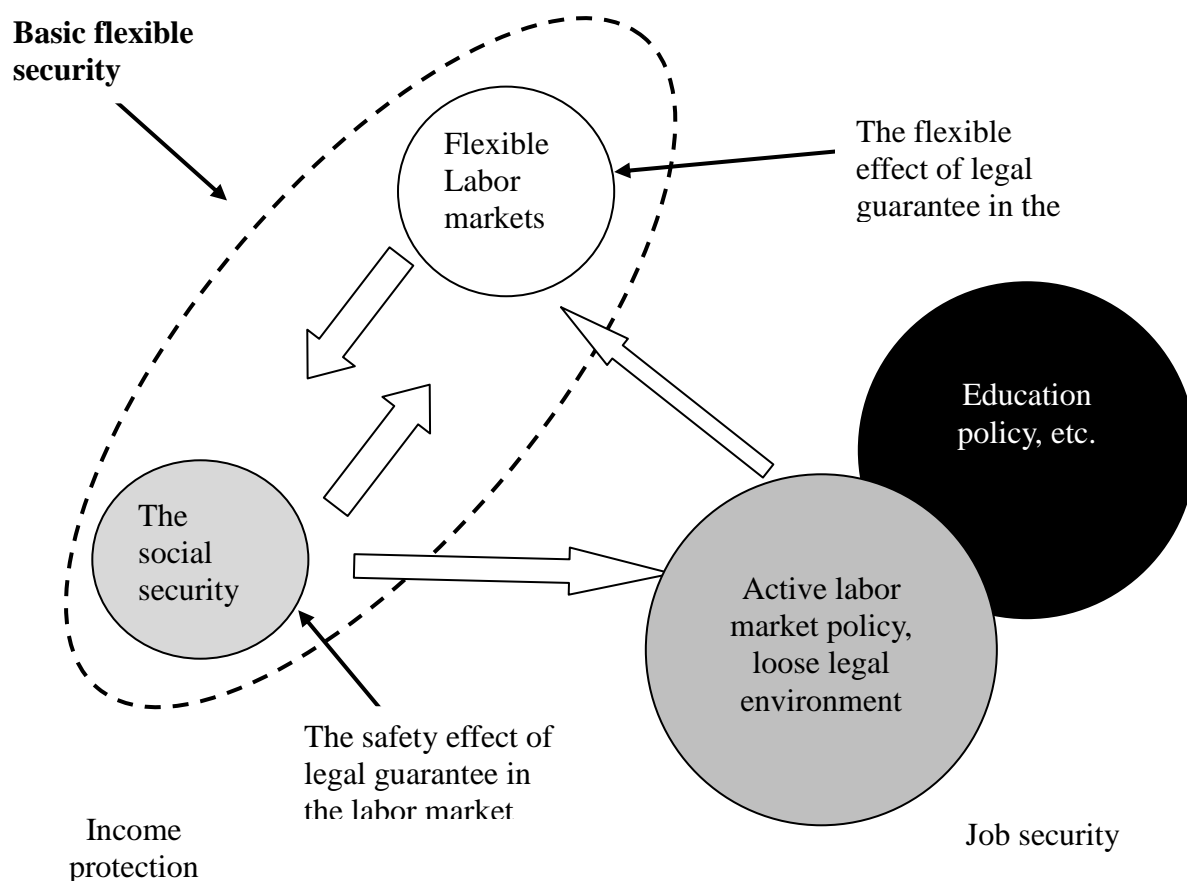


Figure 1. Danish "Golden Triangle Model"

Source: Per Kongshøj Madsen "The Danish Model of 'Flexicurity'-A paradise with some Snakes".

This model has three fulcrums, one is the flexible labor market of the country, which guarantees a high degree of flexibility, the other is the stable social security system, which guarantees security, and the third is the active labor market regulation policy, which guarantees the motivation. According to statistics, in the 1990s, at least a third of employees rotate from one workplace to another, and a quarter of them would be laid off and flowed into the social security net to protect their income through unemployment benefits. This part of the staff can be divided into two categories, one is a short break after looking for work, and the other is more than a certain period still unable to find a job if there is a problem with their ability, then to receive the country's skills upgrading training, otherwise can no longer receive unemployment benefits. The other is the "idler", who, if they are not keen enough to find work themselves, will be forced to stop receiving unemployment benefits and find a job. Through this structure, a virtuous circle is formed. One thing to mention here is that Denmark's social security system is perfect. Statistics show that low-income groups have a higher income substitution rate of their own when combined with the various subsidies associated with their jobs and combined with

Denmark's tax structure. For example, in some areas, the income substitution rate for ordinary workers is 70 percent, and for low-income groups, it is even 90 percent (Note 2). On the other hand, higher social security expenditure will increase economic costs, thereby increasing the cost of enterprises, leading to bankruptcy or production capacity decline, and ultimately not conducive to employment, but the trade unions believe that the labor market is too flexible, workers' rights and interests are more likely to be at risk, not conducive to security. Therefore, how to mobilize the enthusiasm of workers in production is one of the problems facing the Danish government.

The Netherlands has made adjustments to two laws on dismissal by management. For example, if a business wants to fire an employee, it needs to obtain a request from the Center for Work and Income for approval before it can go through the dismissal process, or if there must be some "serious cause" before it can apply to the District Court for a layoff. Therefore, this strict security model for employees has been fiercely criticized as a serious restriction on the development of enterprises, hindering economic development. There are strong calls from all sectors of society for the liberalization of labor market regulation. In the mid-1990s, Dutch government official Admeiker, minister of social affairs and employment, made an official interpretation of the flexible guarantee model. The core idea of the document is to revise the employment protection policy and abolish the more strict dismissal approval system in the past. The Netherlands focuses on strengthening labor market flexibility through external stimulus without relaxing labor security for temporary and vulnerable groups. The flexible security policy adopted by the Netherlands relies on social forces.

The achievements of flexible and safe labor market adjustment ideas: First, flexible and free labor market, effectively reduce the cost of labor market transactions, promote the reasonable flow of labor, not only facilitate the flexible employment of enterprises, but also in line with the trend of workers freely looking for work, whether from the scale point of view or the alternative point of view is conducive to promoting employment pressure, and the practical effect is better. Denmark and the Netherlands, for example, have the highest labor force participation rates in Europe, at more than 75 percent, while unemployment has fallen below 5 percent. The competitiveness of the two countries has also leaped to the forefront of the world. Flexible and secure labor market strategies, by combining the flexibility of employment and dismissal with the security of social security, have greatly promoted the flexibility and freedom of the labor market on the one hand, and active employment promotion policies for the protection of individuals on the other. Enterprises hire more workers, reduce unemployment and increase employment, while vocational training at the national level improves employee skills, employment opportunities increase, and functional flexibility; Income security minimizes worker risk, promotes labor mobility and structural changes, and increases quantitative flexibility; It has to be said that the Flexible and Security-oriented labor market policy in the Netherlands is one of the driving force behind the "Dutch miracle".

7. Experiences and Enlightenments of Foreign Expeditions

With the continuous development of the global economic model, the mode of labor is constantly changing, and its legal adjustment is also adjusting. The legal adjustment in the field of labor in western developed countries shows the following characteristics:

First, the specialization of labor legislation. The specialization of legislation is aimed at the recurring problems in the field of labor and is fine-tuned by special legislation. For example, concerning the mode of labor dispatch, Germany has introduced the Employee Transfer Act, through which labor is permitted dispatch, and the dispatch method, requirements, etc. are specified. Japan introduced the Japan Workers' Dispatch Law in 1985, and the labor dispatch began to be fine-tuned. Germany and Japan through a special form of legislation to the labor dispatch have made a detailed response, and the background is the dispatch abuse, workers' rights and interests have been violated more serious stage, therefore, the legislation began to send near-harsh provisions. With the development of the economy and the gradual standardization of dispatch forms, it is possible to "unbind" labor dispatch (Note 3).

Second, the labor legal system serves the economic development trend. With the increasing trend of economic globalization, the adjustment of domestic industrial institutions, enterprises face increased competition, to reduce costs, enterprises on the autonomy of employment calls are becoming more and more strong. At the same time, to increase the employment rate and give more workers access to work opportunities, the law began to adjust the mode of employment. One is to allow flexibility in the way of employment, especially the proportion of part-time workers increased. Germany increased from 100,000 flexible workers in 1980 to more than 900,000 in 2011, and article 8, paragraph 1, of the German Law on Part-time Employment and Fixed-Term Labor Contracts makes it clear that if full-time workers apply for part-time employment, the management should agree. The reason is that Germans believe that a full-time switch to part-time will free up more jobs, allow more workers to get jobs, reduce the country's pension burden, but also protect the flexible employment model of enterprises.

Third, we should have a clear understanding of the flexible security of China's labor market. From the perspective of the development of China's labor market and the institutional changes of legal adjustment, compared with the history of labor market changes in the early industrialized countries, there are both commonalities and characteristics. For example, the imperfection of labor legislation in our country is the reason for the inflexible labor market. At the same time, the new characteristics of labor relations in the new economic form also need the timely response of the legal system. According to the development of labor relations in developed countries, we can see that the general trend is from unconstrained free and flexible employment pattern to stable rigid employment model, in recent decades there has been a new flexible employment paradigm. China's labor market is also faced with the problem of insufficient flexibility, but due to the differences between the national conditions, China and foreign labor flexibility are different, one is the stability of China's labor relations, and the West than far from enough. The basis for moving from stability to flexibility is not solid, and secondly, the employment flexibility is insufficient, and the existing labor legal system cannot adapt well to the new

situation in the field of employment. Therefore, in the process of dealing with flexibility, we should not only absorb the foreign advanced experience but also learn the lessons of its adjustment. Combined with the actual situation of China's labor market, creatively realize the scientific adjustment of the labor legal system to labor market flexibility.

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Notes

Note 1. Italian Civil Code, Articles 2094, 2130-2134, 2222, 2239, 2240-2246, Translated by Fei Anling, Beijing: the China University of Political Science and Law Press, 2004, pp. 490, 499-500, 519, 523-524.

Note 2. Workin Denmark”, <http://www.workindenmark.dk/Unemployment>.

Note 3. Okunuki, Hifumi (27 September, 2015). “Legal Change Will Make Temp Purgatory Permanent for Many Japanese Workers”, The Japan Times. <http://www.Japan-times.co.jp/community/2015/09/27/issues/2018.01.29>