

**Report on the Implementation of Anti-Discrimination Employment Laws
(Women's Section)**

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Preface

In China, both in the public and private sectors, discrimination against women in recruitment and in the workplace is widespread. Women face unfair treatment when recruiting: many jobs are restricted to male applicants, interviewers often ask women about their marital status and family plans, men enjoy higher salaries and responsibilities and higher positions than women, and gender discrimination in the workplace is widespread. As a group of public interest lawyers whose mission is to promote employment equity, the Anti-Employment Discrimination Volunteer Lawyers Group has always paid attention to the employment discrimination and occupational discrimination suffered by women. In order to present the current status of the implementation of the existing laws on the protection of women's equal employment rights in China, we have studied the behavior and effects of the judiciary, the executive branch, the business sector, and civil society on the issue of women's employment rights in 2023 and 2024.

Chinese civil society organizations have been advocating for women's rights for decades, in part inspired by the United Nations Fourth World Conference on Women held in Beijing in 1995. In the years following the Beijing World Conference on Women, China's women's rights advocacy has made historic progress, as exemplified by the passage of the Anti-Domestic Violence Law of the People's Republic of China in 2015, as well as progress in legislation and judicial practice on the issue of gender equality in employment. However, since 2015, the scope of civil society involvement in women's rights has been significantly suppressed, and major women's rights groups have either closed down or had to scale back the scope and content of their work.

While the Chinese government represses civil society, changes in Chinese population policies have brought new challenges to women's right to employment. The Chinese government's decades-long "one-child" policy has come to an end, and women of childbearing age have the right to have three children, but how do you balance childcare and the workplace? This problem is even more prominent.

Starting from the shift to a two-child policy in 2016 and a three-child policy in 2021, the government has begun to implement support measures to create a "child-friendly" work environment. This necessarily requires the protection of women's rights in the workplace, particularly with regard to pregnancy and maternity leave. The prevalence of gender inequality in society and the reality of gender inequality means most of China's gender legislation falls only at the guidance level, and it is difficult to implement it. For example, at the national level, a number of laws, policies, and public education have been carried out to advocate the "elimination of gender discrimination in the workplace." However, in practice, women still face significant difficulties and gaps in job search, prevention and control of sexual harassment, job security during pregnancy and childbirth, equal pay for equal work, and anti-discrimination and rights protection.

Another significant gap is the gap between legal provisions protecting women in the workplace and the Chinese judiciary applying the law in cases of gender

discrimination in the workplace. Although laws and policies support women in filing lawsuits against employers, we have not observed sufficient progress in the field of practice. China's judiciary still lags behind in the application of the law in cases of employment discrimination against women. In this report, we analyse several representative cases that show that the judiciary has failed to consider the link between demotion, salary reduction and pregnancy and childbirth of women workers in cases of gender discrimination.

We have observed that the recent launch of the Supreme People's Procuratorate and the All-China Women's Federation may make some progress. The project provides a platform for women to access legal aid and guidance. But it is too early to assess whether this initiative will have an impact.

The government's interest in improving the working environment for women has provided greater scope for media coverage of gender discrimination in the workplace. We have noticed that media outlets such as The Paper and the Beijing News are reporting more and more cases of gender discrimination in the workplace. But these stories often follow the narrative of "positive progress by the government."

Research Methods:

Founded on April 29, 2016 by 32 lawyers from 14 provinces, the Anti-Employment Discrimination Volunteer Lawyers Group has provided legal aid to a number of cases of discrimination and gender discrimination over the past nine years. The Report on the Implementation of Anti-Discrimination Laws in Employment (Women's Edition) focuses on women's equal employment rights, and this series of reports will be followed by "Illness" and "Disability".

This report adopts a diversified research methodology to ensure the comprehensiveness of the data and the accuracy of the analysis.

First, the specific method

1. Media analysis: Consulted The Paper, The Beijing News, China Youth Daily and many other traditional media outlets from 2023 to 2024 to obtain the latest information on cases of gender employment discrimination, public opinion and policy implementation.

2. Research on legal and policy documents: Relevant laws, regulations, and local policy documents, including the Law of the People's Republic of China on the Protection of Women's Rights and Interests, the Civil Code, and the Special Provisions on the Labor Protection of Female Employees, were collected to analyze the regulation and implementation of gender employment discrimination.

3. Judicial case study: Consulted official legal databases such as the website of judgment documents, the website of the Supreme People's Procuratorate, and the website of the Women's Federation, and analyzed 2023, 2024 gender discrimination litigation cases, assessing the practical challenges of law enforcement and judicial remedies.

4. Business survey data: Referenced the “Survey Report on the Current Situation of Women's Workplaces in China,” released by Zhaopin.com, to obtain quantitative data on women's workplace status, salary differences, recruitment discrimination, etc.

5. Academic Research and Expert Opinions: Reading the research papers of relevant scholars, combining theoretical analysis and empirical research, to evaluate the effectiveness of current policies and the direction of improvement.

6. Social Survey and Public Opinions: Through the analysis of labor NGO reports, media reviews, public opinion, etc., to study the public's perception and attitude towards gender discrimination in the workplace.

7. Civil Society & Advocacy: Looked at Women's Rights advocacy actions in 2023 and 2024, including legal aid, policy advice, public interest litigation, and more, to explore their role and challenges in advancing gender equality.

The research method combines quantitative data analysis (e.g., investigation reports, judicial case statistics) and qualitative analysis (e.g., news reports, legal analysis, public opinion research) to ensure the breadth and depth of the research.

2. Limitations of research methods

1. Limitations of data access: Because gender employment discrimination is often implicit in the hiring and workplace environment, many companies will not acknowledge the existence of gender discrimination in public. While judicial cases provide specific legal precedents, studies may have underestimated the actual number of discrimination cases that occurred because many victims chose to settle privately or did not pursue legal proceedings.

2. Deficiencies in quantitative research: This report mainly relies on existing business surveys, but fails to conduct independent large-scale questionnaire surveys or enterprise surveys, which makes the data sources more indirect and may have the problems of timeliness or insufficient representativeness of data.

3. Limitations of legal and policy research: The implementation of laws and regulations often depends on the implementation of local governments, but this report fails to provide an in-depth analysis of the specific implementation of each province and city, which may lead to an incomplete assessment of the effectiveness of policies.

4. The bias between public opinion and media reports: Research methods that rely on media reports and social public opinion may lead to research being affected by news topics and public concerns, and some cases may be representative, but may not fully reflect the overall trend of society.

Main Body

1. Legal framework and national policy to combat gender discrimination in employment

“Employment discrimination” refers to the unfair treatment of job seekers or employees by employers based on factors unrelated to work in the process of recruitment, hiring, salary, promotion, dismissal, and other employment processes. These “non-work-related factors” usually include gender, age, ethnicity, household registration, physical disability, disease status (such as hepatitis B, AIDS, etc.), religious beliefs, marital status, sexual orientation, etc. The right to equality at the stage of job hunting is clearly stipulated in Chapter III of the Employment Promotion Act¹, while the right to equal employment after the establishment of labour relations is guaranteed by other sectoral laws, such as the Labour Code.

The International Labour Organization's Discrimination in Employment and Occupation Convention, 1958 (No. 111) defines “discrimination” as “any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national origin or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in respect of employment or occupation.”

With regard to employment discrimination against women, the United Nations Convention on the Elimination of All Forms of Discrimination against Women is an important achievement of the international community's efforts to combat gender discrimination.² There are many laws, regulations, rules and regulations regulating gender discrimination in employment in Chinese mainland, such as the principle protection of women's equal rights and interests in the Law on the Protection of Women's Rights and Interests in the Constitution.³ According to Zhaopin's “2024 China Women's Workplace Status Survey Report,” 48.8% of female respondents have been asked about their marital and childbearing status during interviews, a significant decrease from 61.1% in 2023. According to the report, the newly revised Law on the Protection of Rights and Interests of Women stipulates that “if an employer asks a

¹ Chapter III of the Employment Promotion Law of the People's Republic of China on Fair Employment Article 26 Employers recruiting personnel and employment intermediary organizations engaging in employment intermediary activities shall provide equal employment opportunities and fair employment conditions to workers, and shall not discriminate in employment.

Article 27: The state is to ensure that women enjoy labor rights equal to those of men. Employers must not refuse to hire women or raise the standards for hiring women on the grounds of sex, except for jobs or positions that are not suitable for women as provided by the state. When employing female employees, employers must not stipulate in the labor contract that restricts the marriage or childbirth of female employees.

² According to article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, gender discrimination means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, public or any other field”.

³ Article 48 of the Constitution of the People's Republic of China provides that “women in the People's Republic of China enjoy equal rights with men in all aspects of political, economic, cultural, social and family life”.

woman worker about her marriage and childbirth, the Human Resources and Social Security Bureau will order it to make corrections,” which has played a positive role in protecting the rights and interests of women workers.

The Civil Code⁴ and the Special Provisions on Labor Protection of Female Employees,⁵ etc., stipulate the specific obligations and legal responsibilities of employers for the equal employment rights of female employees. Even 30 provinces, municipalities and autonomous regions in Chinese mainland have established a “gender equality evaluation mechanism for laws and policies” to ensure that the concept of gender equality is implemented in local legislation, implementation and supervision. The Programme for the Development of Chinese Women (2021-2030) also clearly states that “equal employment will be promoted and gender discrimination in employment will be eliminated.”

In addition to laws and regulations, the ruling party's policies and plans have a profound and rapid impact on women's rights and interests. As the impact of the slowdown in Chinese population growth on economic development has become increasingly prominent, the Political Bureau of the CPC Central Committee held a meeting on May 31, 2021 and decided to implement the three-child policy and supporting measures. In August 2021, the Chinese National People's Congress passed a decision on amending the Population and Family Planning Law,⁶ and after Xi Jinping signed a presidential decree, the three-child policy was immediately officially implemented. Many employers are more reluctant to hire women of childbearing age because they are concerned that female employees may take three maternity leaves.

The State Council and relevant administrative departments have also introduced a number of policies and measures that are conducive to encouraging women in the workplace to have more children. For example, the Decision on Implementing the Comprehensive Two-Child Policy Reform and Improving the Management of Family Planning Services (2016) supports women to return to work after childbirth and encourages employers to provide flexible working hours for pregnant and lactating women. The "Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing the Birth Policy and Promoting the Long-term Balanced Development of the Population" calls for "improving the maternity leave and maternity insurance system", and the Ministry of Human Resources and Social Security, the State-owned Assets Supervision and Administration Commission, the All-China

⁴ Article 1010 of the Civil Code provides that if a person sexually harasses another person against his or her will by means of words, writing, images, physical behavior, etc., the victim has the right to request that the perpetrator bear civil liability in accordance with the law. State organs, enterprises, schools, and other such units shall employ reasonable measures such as prevention, acceptance of complaints, investigation and handling, to prevent and stop the use of authority, subordination, and so forth to carry out sexual harassment.

⁵ Article 5 of the Special Provisions on the Labor Protection of Female Employees prohibits employers from reducing their wages, dismissing them, or terminating labor or employment contracts with female employees because of their pregnancy, childbirth, or breastfeeding.

⁶ Article 18 of the Population and Family Planning Law (revised in 2021) The State advocates marriage and childbearing at appropriate age, and eugenics. A couple can have three children.

Women's Federation and other departments jointly issued the "Notice on Further Regulating Recruitment Practices and Promoting Women's Employment".(2019) explicitly prohibits six types of employment discrimination against women, stipulates that employers and human resource service agencies suspected of gender discrimination shall be ordered to make corrections, fines, revoke business licenses and other punishments, establish a multi-departmental joint interview mechanism, support and help women who have suffered employment discrimination to file lawsuits, and provide women with personalized career guidance and services, etc., to provide strong policy support for ensuring women's equal enjoyment of employment rights. The All-China Federation of Trade Unions (ACFTU)'s Guidance Manual for Promoting Gender Equality in the Workplace (2019) makes it mandatory for employers to comply with relevant laws and regulations to ensure the rights of women workers; the ACFTU, together with nine departments, issued the “Guiding Opinions on Strengthening and Promoting the Construction of Maternal and Child Facilities” (2016), proposing that by the end of 2020, all employers that should be equipped with maternal and infant facilities will basically build standardized maternal and infant facilities. According to the needs of female employees in different industries and types of units, local trade union female employee organizations provide safe, hygienic and private resting and breastfeeding places for female employees during special menstrual periods through project-based operation and socialization promotion.

II. Judicial Remedies

From the above information, it can be seen that in order to cope with the demographic crisis and economic crisis, China's legislature, executive branch and party leadership department have tried to create an equal and child-friendly employment environment for married women with children through laws, regulations and policies, so as to reduce women's fertility pressure, increase fertility motivation and slow down the arrival of the economic crisis. However, the effectiveness of the law depends not only on the existence of its words, but also on the enforcement and interpretation of the judicial system. Through judicial remedies, the courts apply and interpret the law in detail, so that the provisions of the law can be implemented in judicial practice. In the following, we will discuss cases on gender discrimination in employment and sexual harassment in the workplace on the website of the Judgments and Judgments website and the official website of the local court.

(1) Pregnancy discrimination

1.Niu Qian v. Life Insurance Company Beijing Branch over equal employment rights⁷

On December 1, 2015, Niu Qian signed a labor contract with Chinese Life Insurance Beijing Branch until December 31, 2020. On August 2, 2019, Niu Qian resigned due to personal reasons, and the employment relationship between the two parties was terminated. Around February 2018, Niu Qian and two or three other

⁷ (2023) Jing 03 Min Zhong No. 6015

employees in the department were given a salary cut, and Niu Qian believed that her work performance was no different from the past, so the cut was presumably because she was pregnant. After Niu Qian voluntarily resigned on August 2, 2019, in order not to affect her continued employment with other insurance companies, she did not immediately initiate arbitration or litigation against the Beijing branch of the life insurance company, and it was not until she successfully joined other companies that Niu Qian sued the Beijing branch of life insurance for violating her equal employment rights, and continued to appeal after losing the first instance, and the second-instance case was filed on March 21, 2023, and the second-instance judgment on June 28, 2023 rejected the lawsuit and upheld the original judgment.

In this case, Niu Qian believed that she was discriminated against because she was pregnant, but all the information on salary evaluation and management was in the possession of the company, and Niu Qian, as an employee, could not obtain it. The company argued for a pay cut on the grounds of poor profitability of the division. Niu Qian responded that there are 15 employees in the department, and only two or three employees have been cut in salary, so it should not be considered a general salary cut due to poor profitability.

Because Niu Qian sued on the grounds of "equal employment rights", the courts of first and second instance both found that the reversal of the burden of proof did not apply to the reason for the salary reduction, and Niu Qian failed to complete her burden of proof to prove that the salary reduction was due to pregnancy, so she lost the lawsuit.

2. Ms. Yan v. a company in Pudong, Shanghai⁸

According to the information in the "Arguments on the Case" column on the website of the Shanghai Higher People's Court on May 6, 2024, Ms. Yan received an offer from the defendant company in June 2023, informing her that she had successfully applied for the position of financial director, and the notice required Ms. Yan to provide a human chorionic promoting gonadal hormone test report (mainly used to detect whether you are pregnant). After receiving the offer letter, Ms. Yan agreed to join the company and submitted her resignation to the original company. However, when she found out that she was pregnant during the physical examination, Ms. Yan truthfully informed the new company of the result. A few days later, the new company said that Ms. Yan's position was cancelled due to planning adjustments. However, Ms. Yan found that the new company was still posting job postings for the position of financial director on other job boards. After several unsuccessful communications, Ms. Yan was unemployed. Ms. Yan then filed a lawsuit with the Shanghai Pudong New Area Court against the company for infringing on the equal employment rights of employees and maliciously terminating their jobs. The company argued that the employment notice was a template, did not know that it contained

⁸Shanghai High People's Court website: Arguments on the case, May 6, 2024

pregnancy testing, and that there was no employment discrimination, and that the position was cancelled due to the company's development needs.

The court held that the employment notice contained pregnancy testing in violation of the Law on the Protection of Women's Rights and Interests, and that the malicious cancellation of the employee's job after learning of pregnancy was an act of employment discrimination, and under the auspices of the court, the two parties reached a mediation agreement, and the company compensated Ms. Yan for related losses of more than 30,000 yuan.

(Note: This case was settled through mediation between the two parties, so there is no public judgment document online.)

(2) Birth discrimination

1. Qian v. A School in Chaoyang District, Beijing, over equal employment rights⁹

Before Qian gave birth to a child, she worked as an accountant in a school in Chaoyang District, and Zhu served as a cashier. In April 2022, Qian began to take maternity leave, and returned to school to continue working after the maternity leave in July 2022, and found that Zhu had taken her job as accountant. The school leaders believed that Qian did not have enough energy to devote herself to the work of the school after having children, and as there were no vacancies for accountants and cashiers in the school, only the position of asset manager, her salary was reduced to the minimum. Qian claimed that Zhu could not hold an accounting position without competition, and on September 2, 2022, the school temporarily organized an open recruitment for Zhu and Qian, allowing Qian and Zhu to participate in the competitive examination. The school's personnel department directly arranged for Zhu to come up with the exam questions, and then Zhu and Qian took the exam at the same time. On September 8, 2022, the school released the results of the competition, and Zhu was hired as an accountant. Qian then sued the court, claiming that the school had violated her right to equal employment.

In 2023, the court of first instance ruled that the fact that Qian felt she was treated unfairly because others cheated when she participated in the examination to compete for a position, cannot be equated with the violation of the right to employment equality in the legal sense. The court held that Qian failed to prove that the school violated her equal employment rights by combining the evidence of this case, the rules of daily life experience, and the legal provisions on equal employment rights, and the evidence was insufficient, and did not support Qian's claim.

The court of second instance held that the collusion between the school and Zhu had been investigated by the relevant departments of the school, and the relevant personnel were punished. The cheating in the competitive examination did not meet

⁹ (2023) Jing 03 Min Zhong No. 16351

the legal requirements of "discrimination," so the first-instance judgment was upheld and Qian's appeal request was rejected.

In this case, the courts of first and second instance attributed the infringement of the plaintiff's right to equal employment to cheating in the competitive examination for the accounting position, ignoring the important time point when the plaintiff was transferred to another position and reduced her salary immediately after taking maternity leave. Job transfers and salary reductions are made by employers, and it is difficult for employees to obtain relevant evidence. These actions undoubtedly make it more difficult for workers to prove that there is gender discrimination.

2. Ms. Li v. a real estate company¹⁰

According to the article "Small Cases and Big Truths" in the official WeChat platform column of the Supreme People's Court on June 2, 2023, "How will the court judge if a female employee is transferred to a job and reduced her salary after maternity leave?" According to the report, Ms. Li from Qidong City, Jiangsu Province was originally a sales manager of a real estate company, and the "Labor Contract" clearly stipulated the key contents such as the sales manager's job position and salary standard. In April 2022, Ms. Li began to take maternity leave, and when she returned to the company in September, she found that Ms. Li's position had been replaced by someone else, and the company verbally notified Ms. Li to serve as the deputy manager of the administrative department, and her salary was reduced from 15,000 yuan/month to less than 10,000 yuan. Ms. Li repeatedly negotiated with the company to no avail. Ms. Li applied to the Qidong Labor Arbitration Commission for arbitration, demanding that the company continue to perform the original labor contract and pay the difference in wages during the maternity leave. The company advocates that it is a legal right to operate independently by changing the positions of employees according to business needs. The Labor Arbitration Commission upheld Ms. Li's claim because Ms. Li's position and salary were clearly stipulated in the employment contract. The real estate company was dissatisfied with the ruling and filed a lawsuit with the Qidong Municipal Court. After the trial, the court held that the real estate company should continue to perform the "Labor Contract" and should not unilaterally change the position or reduce the labor remuneration. The Nantong Intermediate People's Court, the court of second instance, upheld the first-instance judgment.

The judgment in this case took place in 2022, and the judgment document has not been published online. However, it was published on the official WeChat public account of the Supreme Court, and it still has legal education and demonstration significance for the public.

(3) Cases of sexual harassment in the workplace

Sexual harassment of women in the workplace is essentially a sexist act in a power

¹⁰WeChat public account of the Supreme People's Court: How will the court judge if a female employee is transferred to a job and reduced her salary after maternity leave? June 2, 2023

asymmetry relationship, which violates the dignity and sense of security of the individual through unwelcome, sexually suggestive or gender-unequal behavior. Such behaviour is not only a physical and psychological assault on women, but also a reflection of gender inequality and abuse of power in the workplace. The harm of sexual harassment in the workplace to female employees is multifaceted, ranging from psychological and emotional effects to negative consequences for career and physical health. Women who experience sexual harassment may feel unable to focus on their work or fear for their safety, affecting their job performance and opportunities for advancement. As a result, they may miss out on career development opportunities and even face downgrading or being forced to leave their jobs.

When it comes to the progress of sexual harassment legislation, we have to mention the sexual harassment case of Xianzi v. Zhu Jun.¹¹ In 2014, during Xianzi's internship in the "Art Life" program group, Xianzi said that the famous CCTV host Zhu Jun molested and sexually harassed her through her clothes, and Zhu Jun did not stop his behavior until others entered the dressing room. In July 2018, Xianzi disclosed this experience through Xu Chao's Weibo account, and the topic of Zhu Jun's sexual harassment of Xianzi immediately rushed to the Weibo hot search list. However, Zhu Jun is a famous host of China Central Radio, and the relevant online content was quickly deleted.

On October 25, 2018, Xianzi's case against Zhu Jun was accepted by the Haidian District Court in Beijing. On January 18, 2019, Zhu Jun's request to the court to terminate the trial was rejected by the Haidian District Court. On December 2, 2020, Xianzi v. Zhu Jun was heard at the Haidian District Court, where a crowd of supporters gathered in front of the Haidian District Court, and foreign journalists who came to cover the incident were taken away by the police.¹²

On September 14, 2021, after a closed trial, the Beijing Haidian People's Court held that the evidence submitted by Xianzi was insufficient to prove that Zhu Jun had sexually harassed her, and rejected her claim in the first instance. After the trial, Xianzi read a statement to supporters outside the courthouse, saying that the judge did not give her an opportunity to elaborate on her allegations and did not allow the prosecution to pursue multiple requests for evidence.¹³

Although Xianzi lost the lawsuit, Zhu Jun almost faded out of the ranks of CCTV hosts after that. This case has also promoted the rapid development of the MeToo movement in China, allowing more women workers to understand sexual harassment in the workplace.

In February 2023, China's internet was once again ignited by the topic of sexual harassment in the workplace. On February 6, a female employee of the Shanghai branch

¹¹ (2018) Jing 0108 Min Chu No. 62412

¹² BBC Chinese: China's #MeToo draws attention again Two years after the alleged sexual harassment case of "famous" Zhu Jun opened, December 2, 2020

¹³ New York Times Chinese: Xianzi v. Zhu Jun Sexual Harassment Case Verdict, Court Ruling Case 'Insufficient Evidence', September 15, 2021

of Career Digital Technology Co., Ltd. publicly reported in the company with her real name that she was sexually harassed by Gu, the deputy director of the Suzhou branch. Then news appeared on the Internet about the resignation of the victim of sexual harassment at Cree Digital, and soon such an unfair result touched the anger of netizens. Netizens continue to come forward to prove that Gu was a habitual sexual harassment offender in the workplace.¹⁴ Deputy Director Gu is not a powerful and privileged person like Zhu Jun, which is one of the reasons why netizens' anger could not be deleted. According to the second-instance judgment of the dispute between Career Digital Technology (Suzhou) Co., Ltd. and Gu over recourse to labor remuneration,¹⁵ the labor relationship with Gu was terminated on February 8, 2023 because Gu seriously violated the company's rules and regulations and violated public order and good customs. Two days after the incident, the company terminated the employment relationship with the perpetrator of sexual harassment, and the main factor was the online crusade of netizens. It can be seen from this case that most netizens are repulsed and disgusted by workplace sexual harassment, and have compassion for the victims.

Compared with the internet-wide crusade against sexual harassment by Career Digital executives, on May 10, 2024, the trial of Wang Hui, the founder of Shanghai Honghui Fund, who was accused of sexually harassing Wang Ao by taking advantage of his position, was almost unknown to the public, and only a few online news reports surfaced briefly, such as CICC Online¹⁶ and Sohu News.¹⁷ According to online information, a judgment was rendered on July 19, 2024, rejecting the plaintiff Wang Ao's claim because the evidence presented by Wang Ao could not prove that Wang Hui forced sex against Wang Ao's will. The verdict in this case has not been made public, so it is not possible to discuss it further in this article.

In 2023 and 2024, a total of 33 judgments of sexual harassment cases that occurred in the workplace were published online. Because of the large number, it is impossible to display them one by one, and the cases can only be classified and described.

Twenty-nine of the cases occurred between colleagues within the employer company, 1 case occurred between employees with an external business relationship, and 3 cases occurred in the anchor brokerage relationship or partnership relationship. Of the 20 employers who took the initiative to dismiss the employees accused of sexual harassment, 13 of them were found by the court to have legally terminated the labor contract and did not need to pay economic compensation for the termination of the labor contract, and 7 were found by the court to have terminated the labor contract illegally because it was not sexual harassment or had not fulfilled the burden of proof, and was required to pay compensation to the employee for the illegal termination of the labor contract. Seven employers voluntarily terminated their labor contracts and defaulted on

¹⁴Xinming.com's WeChat public account: "Cree's female employee complained of sexual harassment by the leader: it is rumored that the leader once leaned into the front desk and said "Hello Xiang", February 12, 2023

¹⁵ (2024) Su 05 Min Zhong No. 11482

¹⁶ <http://fund.cnfol.com/jjjindongtai/20241108/31009425.shtml>

¹⁷ https://www.sohu.com/a/825567155_122051409

wages, work-related injury compensation, performance-based wages or year-end bonuses for employees suspected of sexual harassment.

For example, in the sexual harassment case of Liu XX (female) v. Fu XX (male),¹⁸ the defendant Fu repeatedly stroked the neck and shoulders of the plaintiff Liu XX, and even put his hand on the shoulder close to Liu's chest. "In order to protect the legitimate interests of the plaintiff (author's note: the harassed person), the court is requested to dismiss the plaintiff's claim in accordance with the law." Three of the accusers of sexual harassment claimed moral damages caused by sexual harassment, and in two of these cases, the court found that the sexual harassment claims were substantiated, and they were awarded 5,000¹⁹ yuan and 2,000 yuan²⁰ respectively for moral damages.

1. The court's criteria for determining sexual harassment

Generally, the court relies on the following three criteria when determining whether the conduct involved in the case is a sexual harassment as provided for in the first paragraph of Article 1010 of the Civil Code of the People's Republic of China²¹:

First, the behavior has a clear sexual orientation;

Second, the behavior exhibits the nature and intent of "sexual provocation";

Third, the defendant's conduct was clearly contrary to the plaintiff's will.

Most of the 33 cases of sexual harassment were²² verbal harassment sent through recording media such as WeChat and text messages, and such evidence of sexual harassment is easily admissible by the court. Physical contact with surveillance video²³ as evidence, touching or approaching sexual organs is also more likely to be found by the court to be sexual harassment. In the past, Chinese courts have been criticized for ignoring the evidentiary validity of witness testimony, but in this analysis, it was found that witness testimony²⁴ was accepted by the court as evidence to establish sexual harassment, and in some cases, the court²⁵ took the initiative to make a record of the interrogation of the female victim of sexual harassment, and used it as one of the pieces of evidence in the verdict. Regrettably, the court published the real names of the victims in the verdict.

In the labor dispute between Jiangmen Shengyao Trading Co., Ltd. (hereinafter referred to as Shengyao Company) v. Wen Xiaoping²⁶, Wen Xiaoping claimed that she was sexually harassed by a male colleague during work (touching her hands, touching her buttocks, putting his hands on her shoulders, secretly taking pictures, and driving

¹⁸ (2023) Chuan 0108 Min Chu No. 7852

¹⁹ (2023) Yu 0106 Min Chu No. 2168

²⁰ (2024) Yue 14 Min Zhong No. 654

²¹ (2023) Yu 0106 Min Chu No. 2168

²² (2024) Hu 01 Min Zhong No. 14573

²³ (2024) Yu 0102 Min Chu No. 3834, (2023) Yue 01 Min Zhong No. 34870, No. 34871

²⁴ (2024) Yu 0102 Min Chu No. 3834, (2023) Yue 01 Min Zhong No. 7464

²⁵ (2023) Ji 0791 Min Chu 322

²⁶ (2023) Yue 0784 Min Chu No. 278

behind her and tailgating her after the night shift) to report the situation to Shengyao Company, but Shengyao Company did not deal with it. Wen Xiaoping stated in her resignation report that the reason for her resignation was that “I, Wen Xiaoping, resigned, because the company had sexual harassment by male colleagues, which seriously affected my physical and mental health, so I quit!” She officially left her post on May 31, 2022. From the wording of the reason for the resignation, it can be seen that the sexual harassment in the workplace has had a serious impact on Wen Xiaoping's work and mental health, but Wen Xiaoping did not submit evidence to prove the sexual harassment in the lawsuit. She was subjected to serious sexual harassment such as direct physical contact and stalking, and it was difficult to meet the burden of proof without surveillance footage and witness testimony. In this case, Wen Xiaoping did not sign an employment contract with Shengyao Company, and claimed that the employment contract was not signed within one year of the establishment of the employment relationship, and the sexual harassment accuser could receive the maximum compensation: double wages for the duration of the employment relationship (6 and a half months).

Although some behaviors may be considered sexual harassment based on common sense, it is difficult for the court to recognize sexual harassment due to lack of evidence or direct verbal or physical contact. For example, in the case of Wang v. a company in Shanghai,²⁷ Wang and his female colleague booked a suite with two separate bedrooms, a common living room and a toilet when they were on a business trip, and they purchased alcoholic beverages at night. Sharing a suite with a male colleague on a business trip made the female colleague feel very uncomfortable and unsafe, and she repeatedly sent messages to her boyfriend to complain. The company also believed that the act of booking a suite on a business trip was very inappropriate and amounted to sexual harassment, so it terminated the labor contract with Wang. However, Wang asserted that he did not make any verbal or physical harassment of female colleagues during his business trip, and that staying in a suite should not be found to be sexual harassment. After the trial, the court found that Wang's behavior did not constitute sexual harassment, and the company should pay compensation for illegally terminating the labor contract.

In the tort liability dispute case of Zheng v. Song,²⁸ Song was Zheng's superior leader, and Song directly expressed his love to Zheng during working hours and in the workplace, and Song still talked to Zheng on the topic of the relationship between men and women after Zheng refused. The court found that "the recorded evidence provided by the plaintiff in this case only showed that the plaintiff and the defendant had a conversation about family responsibilities, the type of man she liked, social interactions, etc., and that there was no statement that the defendant had sexually suggested, sexually provoked, or was sexually violent against the plaintiff, and that there was no physical contact between the parties." Because the plaintiff failed to provide sufficient evidence to prove that the defendant had sexual harassment and that there was a legal causal

²⁷ (2023) Hu 0105 Min Chu No. 38601

²⁸ (2023) Liao 1122 Min Chu No. 3002

relationship between the plaintiff's depression and anxiety and the defendant's behavior, it should bear the legal consequences of failing to provide evidence.”

2. The boundary of the employer's right to terminate the labor contract

Whether words and deeds constitute sexual harassment is the key to such cases, and over-interpretation of certain words and actions of sexual harassment will infringe on the employee's employment rights and become an excuse for the employer to terminate the employment contract at will. In particular, in many cases, employers have defaulted on wages and work-related injury benefits to employees suspected of sexual harassment.

In the labor dispute between Ding Zhenhao and Qingdao Dean Automobile Shock Absorption System Co., Ltd. (hereinafter referred to as Dean Company),²⁹ Dean Company completed the burden of proof required for the termination of the labor contract. After receiving two report letters from female colleagues in the company, Dean Company confirmed that Ding Zhenhao sexually harassed female colleagues in violation of Article 3 of the company's "Labor Discipline and Punishment Regulations" based on video and other evidence. Accordingly, the decision was made to terminate the labor relationship with Ding Zhenhao. At the same time, Dean Company submitted evidence to prove that the "Labor Discipline and Punishment Regulations" was formulated by the workers' congress and that employees had been organized to study, and Ding Zhenhao also signed to confirm that he had read and understood the full text of the regulations. The court held that “it was not improper for Dean Company to convene an employee congress to terminate the labor contract relationship with Ding Zhenhao, and the court of first instance did not support Ding Zhenhao's claim for economic compensation from Dean Company.”

In the case of Liaoyang Hongrun Environmental Protection Technology Co., Ltd. v. Xu,³⁰ the court discussed the difference between sexual harassment and general immoral behavior (urinating and exposing genitals in front of the factory surveillance system, and the surveillance screen was presented in front of the female employee on duty). The court held that "it was improper to expel him from urinating anywhere, and Xu's behavior violated moral standards, and the defendant (and plaintiff in the case) Wanhe Company should criticize and educate him." Accordingly, the court found that the employer had terminated the labor contract in violation of the law and should pay the corresponding compensation.

In the case of Lu Cao Chuang v. Shanghai Gillette Co., Ltd.³¹, the court discussed that employers should be very cautious in using the punitive measure of “termination of employment contract.” The female colleague accuser of sexual harassment had a completely different understanding of the facts from Lu Caochuang, who was accused of sexual harassment. The female colleague thought he had given her a “hug” and was

²⁹ (2023) Lu 02 Min Zhong No. 3080

³⁰ (2023) Liao 10 Min Zhong No. 842

³¹ (2023) Hu 0115 Min Chu No. 16182

depressed as a result. Lu Caochuang claimed that he put his arm on the female colleague's shoulder in order to prevent him from falling. Based on the surveillance video and the testimony of eyewitnesses, the court denied that Lu Caochuang's behavior was sexual harassment, and therefore ruled that Shanghai Gillette Company had illegally terminated the labor contract and was required to pay compensation for the termination of the labor contract.

In the case of Guangxi Wuzhou Baichuan Culture Media Co., Ltd. (hereinafter referred to as Baichuan Company) v. Ouyang Gaobo,³² Baichuan Company dismissed Ouyang Gaobo on the grounds of sexual harassment, and at the same time owed Ouyang Gaobo more than 12,000 yuan in wages and 355 yuan in reimbursement. After the labor arbitration ruled that the sexual harassment asserted by Baichuan Company was not established, Baichuan Company was ordered to pay Ouyang Gaobo 8,000 yuan in compensation for illegally terminating the labor contract. Baichuan Company was dissatisfied with the labor arbitration result and filed a lawsuit with the court. After the trial, the court did not find that Ouyang Gaobo had sexual harassment, and ordered Baichuan Company to pay arrears of wages, reimbursement and compensation for illegal termination of the labor contract. However, the judgment in this case did not specifically describe which of the behaviors that Baichuan accused Ouyang Gaobo of being suspected of sexual harassment in the workplace.

In the second-instance judgment of the labor dispute between Guangzhou Jiarong Shoe Materials Co., Ltd. (Jiarong Company) and Gou,³³ Jiarong Company claimed that Gou had fought and brawled during the first-instance litigation, so the labor contract was terminated. However, after trial, the court of first instance did not recognize Gou's behavior as a fight, and the video evidence could only prove that Gou was pushed by others, so it determined that Jiarong Company illegally terminated the labor contract and needed to pay the corresponding compensation of more than 100,000 yuan for the termination of the labor contract. In the second instance, Jiarong Company changed the reason for terminating the labor contract because Gou had sexually harassed a female colleague. The court of second instance did not examine the new claim, rejected Jiarong's appeal, and upheld the original judgment. In addition, in this case, Gou was injured at work before the termination of the labor contract and was enjoying work-related injury insurance benefits, and Jiarong Company owed Gou a one-time disability employment subsidy, a salary of leave without pay, and hospitalization nursing expenses totaling more than 30,000 yuan.

3. The accused presumed the accuser's silence meant "no objection," which the court did not support

In the case of Wang v. Star River (Guangzhou) Property Management Co., Ltd.,³⁴ Wang asserted that although he had the excesses of hugging his female colleague after drinking, the female colleague still agreed to take a taxi home with him afterwards,

³² (2023) Gui 0405 Min Chu No. 549

³³ (2023) Yue 01 Min Zhong No. 28111

³⁴ (2023) Yue 01 Min Zhong Nos. 34870 and 34871

indicating that the female colleague had no objection to his behavior, so it should not be found to be sexual harassment. Based on the video information, the court found that the female colleague immediately pushed Wang away when Wang carried out the hugging behavior, which was a clear objection. The court found that Wang's behavior was sexual harassment, and the company had the right to terminate the labor contract in accordance with internal regulations.

Similarly, in the case of Wen (male) v. Zeng (female),³⁵ Wen sent Zeng "I'm waiting for you in the room" and indecent videos through WeChat, and Wen believed that Zeng did not explicitly object to the content of Wen's speech on WeChat, so it does not constitute sexual harassment. However, the court rejected the accusation's claim and found that the content sent by Wen through WeChat constituted sexual harassment.

4. Victims of sexual harassment who voluntarily resign can receive compensation for terminating the labor contract

In the case of Guicheng Self-study Examination Tutoring Station v. Liu Moumei, Nanhai District, Foshan City³⁶, Liu Moumei resigned because she was sexually harassed by the legal representative of the employer and could not continue to work. On the basis of Article 38 of the Labor Law³⁷, the court ordered the employer to pay Liu Moumei compensation for the termination of the labor contract.

5. Sexual harassment and sexual provocation

In the civil ruling on the special procedure for Guangzhou Zongyou Interactive Entertainment Network Technology Co., Ltd. (hereinafter referred to as Zongyou Company) and Liao's application for revocation of the arbitral award,³⁸ Zongyou Company found that there was a post on Baidu Tieba about a male employee Liao sending information about "opening a room" to female employee Wu Tingting, and the name of Zongyou Company was included in the title of the post. Zongyou Company fired Liao for this. Liao applied for labor arbitration, claiming that Liao and Wu

³⁵ (2024) Yue 14 Min Zhong No. 654

³⁶ (2024) Yue 0605 Min Chu No. 5367

³⁷ Article 38 of the Labor Law The employee may terminate the labor contract under any of the following circumstances:

(1) Failure to provide labor protection or working conditions in accordance with the provisions of the labor contract;

(2) Failure to pay labor remuneration in full and in a timely manner;

(3) Failing to pay social insurance premiums for workers in accordance with law;

(4) The rules and regulations of the employer violate the provisions of laws and regulations and harm the rights and interests of workers;

(5) The labor contract is invalid due to the circumstances provided for in the first paragraph of Article 26 of this Law;

(6) Other circumstances in which the labor contract may be terminated as provided by laws and administrative regulations.

If an employer forces an employee to work by means of violence, threats or illegal restriction of personal freedom, or if the employer violates rules and regulations and orders risky work that endangers the employee's personal safety, the employee may immediately terminate the labor contract without prior notice to the employer.

³⁸ (2023) Yue 01 Min Te No. 1530

Tingting were boyfriend and girlfriend in a developing relationship, and the screenshot of the message sent by Tieba was taken out of context and misleading, and was actually a joke between boyfriend and girlfriend. The Labor Arbitration Commission ruled that Zongyou Company should pay 18,500 yuan in compensation for illegal termination of the labor contract and more than 900 yuan in arrears of wages. After review, the court found that Zongyou Company did not fulfill the burden of proof in terminating the labor contract against him, and the evidence could not prove that Liao had sexually harassed anyone, so it rejected Zongyou's application for revocation of the ruling.

6.The evidentiary effect of witness testimony

Paragraph 3 of Article 90 of the Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings (revised in 2019) stipulates that "the testimony of a witness who has an interest in a party or its representative" shall not be used alone as the basis for determining the facts of a case. Among the 33 cases we collected and studied, the Guangzhou Intermediate People's Court found sexual harassment based on the witness testimony of two female workers who were victims of sexual harassment.

In the civil judgment of the second instance of the labor dispute between Zeng Qinghong and the Guangzhou Panyu Dashi Sanitation Department,³⁹ the judge of the first instance found that Zeng Qinghong's sexual harassment was established based on the testimony of two female workers from the Dashi Sanitation Department, and the court of second instance upheld the first instance court's determination of the facts of sexual harassment. The two female workers were both employees under the management of the defendant Dashi Sanitation Department, and their interests were self-evident.

Among them, the female worker Wang orally stated that Zeng Qinghong said to Wang during working hours, "Follow me, okay," and after Wang refused, he interfered with Wang's work and cursed Wang, saying she should be hit by a car and die. Wang presented a video of Zeng Qinghong harassing Wang during work in court, but the two parties did not cross-examine the video, and the court accepted the witness testimony evidence made by Wang, not the video content evidence. When another female worker, Song, testified in court, she also said that Zeng Qinghong had said to her during working hours, "Beauty, do you have a husband, and I will support you without a husband."

However, this case is not representative or instructive, and it is the only judgment in 33 cases that found sexual harassment based solely on the testimony of witnesses. And we can't ignore the special attribute of the Dashijie Sanitation Department as a branch of the government department.⁴⁰

(4) Analysis:

Based on the above case analysis, it is not difficult to see the following problems:

1.The cause of action of the "equal employment right dispute" increases the

³⁹ (2023) Yue 01 Min Zhong No. 7464

⁴⁰ <http://www.panyu.gov.cn/jgzy/zzfjdbsc/fzqrmzfsjdbsc/kscj/>

burden of proof on the employee

In December 2018, the Supreme People's Court issued the Notice of the Supreme People's Court on Increasing the Cause of Action in Civil Cases, which added the cause of action of “equal employment right disputes,” apparently out of the importance of equal employment rights of employees, but in practice, the burden of proof is borne by the employee.

As early as 20 years ago, the Supreme Court realized that it was difficult for employees to provide evidence to prove the reasons for dismissal and wage reduction by the employer, so Article 13 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (2001) clearly stipulates that “in labor dispute cases, if the employer dismisses, removes, dismisses, terminates the labor contract, reduces the labor remuneration, In the event of a labor dispute arising from a decision such as calculating the length of service of an employee, the employer shall bear the burden of proof. The relevant provisions of the Interpretation were not taken into account in Ms. Niu's lawsuit against the insurance company, because the Judicial Interpretation had lapsed in 2021, and the Supreme Court's Interpretation (I) on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (i.e., the New Judicial Interpretation on Labor Disputes) came into effect on January 1, 2021, although Article 44 retains the original provision of 2001, “due to the dismissal or termination of the labor contract made by the employer, The employer bears the burden of proof for labor disputes arising from decisions such as reducing labor remuneration and calculating the number of years of service of employees,” but “equal employment rights disputes” are “general personality rights disputes” under personality rights disputes. The rules for the allocation of the burden of proof in personality rights disputes are analogous to the relevant rules of general tort disputes, that is, the plaintiff needs to bear the preliminary burden of proof of the facts asserted by the plaintiff and needs to refute a series of counter-evidence put forward by the defendant. In other words, the reversal of the burden of proof rule in labor and personnel disputes cannot be applied to equal employment rights disputes. In other words, disputes over equal employment rights are not regarded by the courts as labor disputes, but rather personality rights disputes, resulting in no room for the new judicial interpretation of labor disputes to be applied.

For example, in the case of Qian v. a school in Chaoyang District,⁴¹ Beijing, when Ms. Qian returned to work after maternity leave, she found that her position had been replaced by Zhu, and the school did not hesitate to cheat in order to enable Zhu to continue to replace Qian's original position through legal procedures, and asked Zhu to come up with the exam questions, and then take the exam. Ms. Qian sued for equal employment rights disputes, and she had to bear the adverse consequences of failing to provide evidence, and it is conceivable that it is difficult for the employee to obtain the real reason for the employer's salary reduction and job transfer. Ms. Qian's case in Beijing is similar to that of Ms. Li v. a real estate company in Qidong, Jiangsu,

⁴¹ (2023) Jing 03 Min Zhong No. 16351

where Ms. Li filed a lawsuit in a labor contract dispute case, which made the court judgments in Beijing and Qidong very different, and the court in Beijing required Qian to provide evidence to prove that the school had gender discrimination, completely ignoring that the school's job transfer and salary reduction against Qian occurred after Qian's maternity leave. However, the Qidong court required the employer to restore Ms. Li's pre-maternity job and not arbitrarily transfer her post or reduce her salary. At the same time, it should also be noted that the defendant involved in the case is a school in Chaoyang District, Beijing, which is closer to the public authority. The company involved in Qidong is a commercial company, and the workers are more likely to obtain justice.

2. Witness testimony cannot be used as the basis for a verdict on its own, reducing the likelihood that a sexual harassment allegation will be substantiated

As mentioned above, the Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings (revised in 2019) stipulate that the testimony of witnesses who have an interest in a party or agent cannot be used alone as the basis for determining the facts of a case. However, in sexual harassment cases, witness testimony is often more important for the following reasons. First of all, sexual harassment cases often lack direct physical evidence because they involve factors such as privacy, personal feelings, and private occasions, and the victim and perpetrator are often the only ones who know, so witness testimony occupies an important position in the judgment of the case. Second, witness testimony can play a role in supplementing the facts of the case. Evidence in sexual harassment cases often relies on the testimony of the victim and possible witnesses. These witnesses may be colleagues who have seen or heard the victim being harassed. It is inevitable that there will be "interests" between them. At the same time, witness testimony can provide background information about the occurrence of harassment, the history of the interaction between the parties, and the reaction after the case, etc., to help the court understand the case more comprehensively.

The restrictive provisions on witness testimony in the Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings reduce the possibility that a judge can determine the establishment of sexual harassment based on the fact that the testimony of witnesses corroborates each other.

3. The court mediation system weakens the educational value of justice

This is the mediation of civil cases, economic dispute cases and minor criminal cases accepted by the court, and it is an intra-litigation mediation. For matrimonial cases, mediation within the litigation is a mandatory procedure.⁴² Many cases are resolved through mediation rather than informal litigation, which undermines the educational value of judicial decisions for employers. While mediation may provide a quicker resolution, it often leads to a compromise between the parties that may not adequately address the underlying issues of gender discrimination in the workplace. In

⁴²China's Central Government Portal: China's Mediation System

the case of Ms. Yan v. a company in Pudong, Shanghai, the court affirmed that the company's behavior of requiring employees to submit pregnancy test reports for physical examination and maliciously canceling jobs for pregnant women was employment discrimination on the basis of gender. However, mediation, as a necessary procedure before the court makes a judgment, makes the case closed with mediation by both parties, and the judgment cannot be made public online. As a result, the value of judicial adjudication to the educational value of "gender equality" for employers is diminished.

4. The financial, energetic, and mental burden of the lawsuit

In China, litigation is often costly and time-consuming, especially in cases involving gender discrimination in employment. Legal fees, travel expenses, and the time spent in the litigation process are often a huge burden for many women.

A woman said in China Youth Daily, as discussed below, that “the cost of defending her rights is too high.” This reflects a common problem: many women who experience discrimination in the workplace are often unable or unwilling to bear the burden of filing a lawsuit due to financial, energetic and emotional pressures. Delays in litigation, uncertainty about the outcome, and the need to deal with a justice system that may not fully support cases of gender equality or discrimination can make them abandon the pursuit of justice. For example, in the case of Niu Qian v. Life Insurance Company Beijing Branch,⁴³ Niu Qian's salary was reduced during her pregnancy, but she did not dare to immediately initiate any labor arbitration or litigation against the employer in order not to affect her continued employment with other companies.

5. The overall impact of justice on the right to equal employment

The combination of judicial intervention, inadequate enforcement of rights, and the financial and energetic and emotional burden of litigation creates a challenging environment in which the costs of defending workers' rights are high, employers' violations of the law are low, and women facing gender discrimination struggle to pursue fair adjudication. Even as the legal framework gradually improves to provide better protection for women, structural problems in China's judicial and political system continue to hamper practical judicial remedies. Under this system, many people abandon litigation because of the significant obstacles they face, resulting in gender discrimination not being effectively addressed.

To achieve a fundamental change in gender discrimination in the Chinese workplace, it is necessary not only to address the structural problems in the judicial system and reduce the cost of defending the rights of women workers, but also to strengthen the accountability mechanism for employers, provide more convenient judicial support, and increase the cost of violating the law for employers. Only in this way can a fairer working environment be truly created for women and their access to legal remedies in the face of employment discrimination can be effectively improved.

⁴³ (2023) Jing 03 Min Zhong No. 6015

6. Lack of Guiding Cases

At present, the Supreme Court has not released "Guiding Cases" related to women's employment discrimination, but there is one "Typical Case":⁴⁴ Guiding Case No. 181 related to sexual harassment in the workplace.⁴⁵ Guiding Case No. 181 clarifies that managers of employers shall take reasonable measures to deal with complaints from employees who have been sexually harassed. Otherwise, the employer has the right to terminate the labor contract with the manager. In the typical case, the court found that the refusal of a courier company to hire the plaintiff Deng as a courier because she was a woman constituted employment discrimination, and the court ordered the courier company to pay the plaintiff Deng 2,000 yuan for spiritual solace and 120 yuan in physical examination fees.

Guiding Cases and Typical Cases have different effects in judicial practice. Guiding Cases are binding on lower courts, and courts should refer to the main points of adjudication of Guiding Cases when adjudicating cases with similar facts to Guiding Cases that have already been released. Typical cases, on the other hand, do not have a clear binding force on the adjudication work of lower courts.

The Provisions of the Supreme People's Court on Work on Case Guidance (2010) clearly state that "the people's courts at all levels shall refer to the guiding cases issued by the Supreme People's Court when adjudicating similar cases," giving Guiding Cases binding force. The Supreme People's Court's Provisions "Detailed Rules for the Implementation of Work on Case Guidance" (2015) reiterates the requirements, content, selection methods, and release process of Guiding Cases, reiterating that "where a case being tried by a people's court at all levels is similar to a Guiding Case issued by the Supreme People's Court in terms of basic facts and application of law, the judgment shall be made with reference to the main points of the adjudication of the relevant Guiding Case."

Article 8 of the "Several Opinions on Regulating the Relationship between the Trial Operations of the People's Courts at the Higher and Lower Levels" stipulates that "the High People's Courts shall guide the trial operations of the people's courts at all levels and specialized people's courts within their jurisdiction through means such as hearing cases, formulating trial business documents, publishing reference cases, convening trial business meetings, and organizing training for judges" Typical cases are "reference cases" in this article. In contrast to the provisions on the explicit validity of Guiding Cases, Typical Cases do not clarify their effectiveness, and lower courts have the discretion to refer to them.

It can be seen that an important role of Guiding Cases is to provide uniform standards and references for the application of law to lower courts. When the Supreme Court does not issue Guiding Cases that explicitly address women's equal

⁴⁴ https://www.gov.cn/xinwen/2016-08/23/content_5101442.htm

⁴⁵ Guiding Case No. 181: Zheng v. Honeywell Automation Control (China) Co., Ltd., a labor contract dispute, discussed and passed by the Adjudication Committee of the Supreme People's Court, released on July 4, 2022

employment rights, it may lead to inconsistent standards applied by different regions and courts in handling similar cases. When hearing cases involving gender discrimination and equal treatment, local courts may make judgments based on different legal understandings and trial practices, resulting in inconsistent application of law.

This lack of uniformity may lead some local courts to be more conservative in their understanding of gender equality, ignoring the equal treatment that women are entitled to in the workplace. Elsewhere, courts may rely on more lenient criteria for determining cases of gender discrimination, resulting in very different outcomes for similar cases in different places. This inconsistency not only affects the fairness of cases, but also weakens the authority of the law and the guarantee of gender equality.

Cases in judicial practice have an important impact on the public's legal awareness and social cognition. The Guiding Cases issued by the Supreme Court can not only provide reference for the courts, but also send a clear legal signal to society. When cases related to gender equality and employment rights do not receive clear judicial guidance, the public and enterprises may misunderstand the application and obligations of the law, especially on the issue of gender discrimination.

3. Civil society organization action

Most of the gender discrimination lawsuits listed above are not available in the press, perhaps because there are no professional women's rights advocacy organizations to assist them in influencing litigation and no media reports. It is difficult to know whether the person concerned has used the method of complaining to the administrative department⁴⁶ or reporting gender discrimination in the enterprise to protect their equal employment rights.

In the “first case of gender employment discrimination” 13 years ago, more than 100 female college students from all over the country sent their joint letters to the Internal and Judicial Affairs Committee of the Beijing Municipal People's Congress and the Internal and Judicial Affairs Committee of the Standing Committee of the Haidian District People's Congress, calling on them to supervise the Haidian District Court's acceptance of the case. Under the continuous advocacy of non-profit organizations, lawyers and women legal scholars, during the trial on December 18, 2013, Giant School publicly apologized in court and reached a settlement with the plaintiff, paying the plaintiff 30,000 yuan as a “special fund to support women's equal

⁴⁶ For example, the Beijing Municipal Human Resources and Social Security Administrative Punishment Discretionary Benchmark Table (Part Involving the Law on the Protection of Women's Rights and Interests) (2023) clearly stipulates:

2. If an employer reduces the wages and benefits of female employees due to marriage, pregnancy, maternity leave, breastfeeding, etc., restricts female employees from being promoted, promoted, and evaluated for professional and technical titles and positions, dismisses female employees, unilaterally terminates labor (employment) contracts or service agreements, and may impose a fine of between 10,000 yuan and 50,000 yuan depending on different circumstances.

employment and anti-employment discrimination.” The damages in this case were quite high compared to typical cases of gender employment discrimination.

Since 2014, when the government escalated its crackdown on civil rights advocacy, lawyers, and academia, activism for gender equality has shrunk. There is currently very little official tolerance for CSOs' advocacy and lack of recognition of CSOs' reports of gender discrimination in employment and advocacy assistance.

In February 2023, the women's rights organization "Employment Gender Discrimination Monitoring Brigade" released the “2023 Research Report on Gender Discrimination in National Civil Service Recruitment.”⁴⁷ The report pointed out that a total of 17,655 positions will be recruited in the 2023 national examination, of which 10,993 positions have no gender preference, accounting for 62.72%; There were 6,662 positions with gender preference, accounting for 37.73%. Among the positions with gender preference, 3787 positions were preferred to men, accounting for 21.45%; There were 2,875 positions with a preference for women, accounting for 16.28%. There are 912 more jobs that prefer men than women, and the proportion is 5.17% higher.

The WeChat article that published the report was deleted immediately after it was published, either because the content of the article involved sensitive words and triggered the automatic review function of the WeChat platform, or it was possible that the official account that published the article had been noticed by the police or other relevant departments for a long time and was manually deleted by the official. On January 20, 2025, the WeChat official account “Sencha Group” of the Employment Gender Discrimination Monitoring Brigade was deleted and can no longer be updated.

The data included in the report reveals that despite the Chinese government's written and legal support for gender equality in the workplace, there is still a persistent gender bias in government civil service recruitment practices. The government's high level of control over official data, academia and the media has led to a suppressed public understanding of the extent of gender bias in government and the wider sector. While civil society scrutiny and reporting face government scrutiny, it remains an important source of public access to information.

4. Journalist investigation and independent research by commercial companies

The shrinkage of non-governmental gender equality advocacy organizations has affected the richness of media coverage. In 2023 and 2024, media reporters still published a lot of news reports on the promotion of gender equality, but most of the content was government-organized gender equality forums, public interest litigation by the procuratorate against "male only" job advertisements, and the release of new laws and regulations to promote gender equality in employment.

Against such a pale background, the China Youth Daily reporter's investigation and report on the plight of four working women is particularly vivid. The “2024 Survey Report on the Status of Women's Workplaces in China” released by

⁴⁷ <https://maifile.cn/est/d2446766020954/pdf>

Zhaopin.com, a recruitment website, does not shy away from the widespread gender discrimination and sexual harassment suffered by women, and at the same time calls on all sectors of society to work together to build a woman-friendly society.

(1) China Youth Daily: How to break invisible discrimination in the workplace⁴⁸

In February 2023, China Youth Daily reported on four cases of employment discrimination against women, including: asking women about marriage and family plans during interviews; Women who give birth to their second child are demoted, paid less and less responsible; and the difference in salary between two employees under the same job responsibilities, with male employees being paid significantly higher than female employees in the same position.

During the report, the reporter investigated and interviewed four cases of gender discrimination against women in the workplace. They are:

Interview process. Ma An'an, a 28-year-old job seeker, was asked during the interview whether she wanted to get married, and planned to have several children when she got married, and felt obvious gender discrimination.

Recruitment criteria. When Xiao Du was in charge of recruitment during their internship in the human resources department of a Fortune 500 company, they were instructed by their superiors to hire “all boys” and “women under 30 years old and men under 35 years old,” and Xiao Du was told to ask job seekers who were unmarried “if they plan to get married in the short term” and “married women, to ask if they want to be mothers in the short term.”

Demotion and salary reduction after childbirth. Wang Yifan was the director of the editorial department of a magazine before giving birth to her second child. After giving birth to her second child, the leaders transferred her to the office to be responsible for daily chores on the grounds of “mother of two children, heavy family burden.” She was no longer responsible for magazine editing, and her salary was reduced. Wang Yifan resigned and left the magazine. “I feel discriminated against because I have a second child. But I still won't go the path of litigation, because I may not be able to win the lawsuit, and the cost of defending my rights is high,” Wang Yifan said.

Men and women are paid unequal for equal work. Gao Jing, 45, works for an Internet company with the rank of director. A male director in the same position has a monthly salary of 7,000 yuan higher than Gao Jing's after tax. “The work content and KPI indicators of the two of us are exactly the same, my academic qualifications and graduation schools are better, and even I bring more clients than him.” Because the company's labor contract requires employees not to talk about their wages publicly, Gao Jing was unaware of such a big difference in pay between her and her colleagues. When she approached the leader to ask for a salary increase, the reason given by the leader was that the other party had worked for 3 more years.

⁴⁸ https://zqb.cyol.com/html/2023-02/28/nw.D110000zgqnb_20230228_1-07.htm

(2) Zhaopin's "2024 Survey Report on the Current Situation of Women's Workplaces in China".⁴⁹

Since 2018, Zhaopin.com has released the "Survey Report on the Current Situation of Chinese Women's Workplaces" every year. This is one of the main reports released by Zhaopin.com every year, which mainly explores the various challenges faced by Chinese women in the workplace, especially focusing on gender discrimination, pay gaps, and workplace promotions. The report usually covers women's employment status, difficulty in finding a job, pay gaps, and manifestations of gender discrimination in the workplace in different years.

According to the 2024 Survey Report on the Status of Women's Workplaces in China, the findings on women's employment discrimination can be summarized in the following aspects:

1. Gender discrimination persists in recruitment

Although China has made some progress in promoting gender equality, women still face varying degrees of gender discrimination in the job search process. For example, 54 percent of female respondents had experienced gender employment discrimination, compared to 6.6 percent of men. 48.8% of female respondents were asked directly by employers about gender-related personal issues (e.g., marital status, family planning, etc.) during the interview process. These behaviours undoubtedly limit women's career choices and room for development.

2. The pay gap

According to the report, women are generally paid 10% less than men in the same positions, especially in middle and senior management positions. The existence of the gender pay gap puts women at a disadvantage in terms of career advancement and income gain.

3. Career advancement is limited

Although women have shown strong work ability and execution in the workplace, due to gender discrimination (33.1% of female respondents have experienced problems of promotion and salary increase due to gender, and 9.2% of men have experienced gender discrimination that hinders promotion and salary increase) and family responsibility pressure (13.0% of female respondents who are in the stage of marriage and childbearing, and passively lose the opportunity for promotion, The same obstacle only occurred in 2.9% of male respondents), which limited their room for growth in the workplace.

4. Societal expectations and gender roles are solidified

Societal stereotypes about women's roles (e.g., "women should take on more family responsibilities") have influenced the workplace environment to some extent, resulting in some women taking on more informal or "ancillary" work (e.g., caring

⁴⁹ https://www.sohu.com/a/762432291_121864805

about the personal affairs of colleagues, taking on more social tasks, etc.) than men. 50.3% of female respondents are aware that the rigidity of women's roles (gender stereotypes) limits women's equal participation in the workplace.

5. Sexual harassment of women is common

47.6% of the female respondents have been "taken advantage" by colleagues or customers of the opposite sex in the workplace.

Zhaopin's report shows that despite the achievements and progress made by Chinese women in the workplace, gender discrimination is still widespread, affecting women's employment opportunities, career development and income levels. Eliminating gender discrimination in the workplace remains an urgent issue that requires the concerted efforts of the government, businesses and society as a whole to promote a more equitable and inclusive work environment.

5. Suggestions of NPC deputies on eliminating gender discrimination against women in employment⁵⁰

In recent years, NPC deputies and members of the Chinese People's Political Consultative Conference (CPPCC) have made full use of the opportunity of the "Two Sessions" held in March each year to propose legislation and other measures to eliminate gender discrimination. The proposals cover a wide range of areas, including issues such as recruitment, parental leave, and the establishment of channels within companies to report gender discrimination. For example, at the 2023 National People's Congress and the National People's Congress, Xia Wu Zhuoma, a deputy to the National People's Congress and an employee of the Tongren Water Supply Company in Qinghai Province, submitted a proposal on protecting women's right to work and eliminating gender discrimination against women in employment.

Xia Wu Zhuoma suggested that the first step is to integrate and supplement relevant laws and regulations around employment equality, workplace sexual harassment, and mother protection. Second, it is necessary to establish an effective labor market guidance and supervision mechanism and improve social security for women's employment. Third, it is necessary to establish and improve a social security system that is suited to the form of diversified and multi-level market employment. For example, maternity has been included in the scope of basic social insurance, and the degree of social security enjoyed by women in different forms of employment has been improved.

The Supreme Court replied to Xia Wu Zhuoma's suggestion, saying that in 2022, it conducted a centralized investigation on employment discrimination cases, including gender discrimination, and on the basis of strengthening communication and coordination with relevant departments, it intends to translate the rules of general application in typical cases and research results into judicial interpretations, judicial policies or judicial recommendations, so as to strengthen the protection of the legitimate

⁵⁰ <https://www.chinacourt.org/article/detail/2024/03/id/7850708.shtml>

rights and interests of female employees and other workers in accordance with the law.

6. Official Actions

In 2023 and 2024, official actions to promote women's equal employment will focus on public interest litigation from the procuratorate, the Women's Federation, the Human Resources and Social Security Bureau, trade unions, and the recommendations of the National People's Congress. In light of the actual situation in China, women's federations and trade unions are not independent non-governmental organizations but peripheral organizations belonging to the "party and government", so we will count their actions as official actions.

(1) Public interest litigation by the procuratorate against gender discrimination in employment

According to the White Paper on Public Interest Litigation Procuratorial Work (2023) released on March 9, 2024,⁵¹ procuratorial departments across the country filed and handled a total of 189,885 public interest litigation cases in 2023, of which 1490 were for protecting women's rights and interests. The white paper does not subdivide whether cases involving the protection of women's rights and interests and the construction of a barrier-free environment are anti-discrimination related cases. From the full text, anti-discrimination work is not a priority concern of the procuratorial department, and environmental public interest litigation, which is closely related to "Xi Jinping's thought on ecological civilization, cultural thought, thinking on strengthening the army, and economic thought" is the center of the procuratorate's work, and the current gender anti-discrimination work is still not one of Xi Jinping's thoughts.

In July 2021, after the unified deployment of the Supreme People's Procuratorate, the "Benefiting the Public" volunteer procuratorial cloud platform was officially launched on July 19, 2022 after two batches of pilots. Volunteers (any citizen can register as a volunteer and provide clues for public interest litigation online) can directly report to the procuratorate through the platform the public interest damage that occurs in various fields around them, and become the clues of the procuratorial department in handling cases; They can also participate in the procuratorial department's professional consultation and public hearings through the platform, and support and supervise the procuratorial work."⁵²

Take the anti-employment discrimination administrative public interest litigation of the Baohe District Procuratorate of Hefei City, Anhui Province as an example:

The Anhui Provincial Women's Federation and the Anhui Provincial Women Prosecutors Association jointly released the first of the top ten cases of protecting the rights and interests of women and children in accordance with the law: On March 10, 2023, the Baohe District Procuratorate of Hefei City, Anhui Province took the initiative

⁵¹ Supreme People's Procuratorate's White Paper on Public Interest Litigation Procuratorial Work (2023).

⁵² The website of the Supreme People's Procuratorate: The "Benefiting the Public" Volunteer Procuratorial Cloud Platform was officially launched, July 19, 2022

to find that the sales positions at a job fair were only for men, and on April 3, the Baohe District Procuratorate filed an administrative public interest lawsuit, and after investigation, it was found that the sales position did not belong to the "female taboo" post clearly stipulated in the law. On May 6, 2023, the Baohe District Procuratorate issued a procuratorial recommendation to the District Human Resources and Social Security Bureau, Urge them to investigate and deal with gender discrimination in the recruitment (hiring) and tenure of employers, and increase the degree of supervision and control of employers in their jurisdictions. Under the supervision of the administrative department, the relevant employers have removed the content of gender discrimination from the recruitment information, and the proportion of female employees has reached more than 40%. The Baohe District Procuratorate, together with the District Human Resources and Social Security Bureau and the District Women's Federation, held a rule of law lecture, and more than 50 enterprises in the area participated in the meeting and voluntarily signed the "Anti-Employment Discrimination Commitment."⁵³

The public interest litigation model of the procuratorate against the infringement of women's equal employment rights and interests through the "Benefiting the Public" procuratorial cloud platform is roughly as follows:

Step 1: Citizens provide information about gender discrimination in enterprises on the Yixin Public Procuratorate Cloud Platform as volunteers;

Step 2: The procuratorate where the enterprise involved is located verifies the authenticity of the information provided by the "volunteers";

Step 3: The procuratorate issues a procuratorial recommendation to the human resources and social security bureau where the enterprise is located, requiring the administrative department to perform its supervisory duties;

Step 4: After receiving the procuratorial suggestion, the administrative department investigates and verifies, supervises the units involved to rectify and clean up the recruitment information with gender discrimination within a time limit, and corrects the gender discrimination job requirements;

In the fifth step, some procuratorates, together with the local women's federation and the human resources and social security bureau, will jointly hold a legal seminar on gender equality in enterprises, and "advocate" enterprises to sign the "Anti-Employment Discrimination Commitment".

According to the search results of the keyword "Yixin for the public + employment discrimination", from 2023 to 2024, the procuratorates in other regions that have carried out such anti-employment discrimination administrative public interest litigation after collecting "clues provided by volunteers" through the Yixin Public Procuratorate Cloud

⁵³ Anhui Provincial People's Procuratorate website: [Typical Cases] The Provincial Women's Federation and the Provincial Association of Women Procurators jointly released the Top 10 Cases of Protecting the Rights and Interests of Women and Children in Accordance with Law, March 8, 2024

Platform are:

Guanyun County Procuratorate of Jiangsu Province⁵⁴, Fogang County Procuratorate of Guangdong Province⁵⁵, Yangzhong City Procuratorate of Jiangsu Province,⁵⁶ Fenghua District Procuratorate of Ningbo City, Zhejiang Province⁵⁷, Daoli Procuratorate of Heilongjiang Province,⁵⁸ De'an County Procuratorate of Jiangxi Province⁵⁹, Qilihe District Procuratorate of Lanzhou City⁶⁰, Gansu Province, the First Branch of Beijing Procuratorate⁶¹, Tongzhou District Procuratorate of Nantong, Jiangsu⁶², Yangpu Procuratorate of Shanghai⁶³.

One of the more interesting is a news from the official website of the Supreme People's Procuratorate under the "Do it in practice" column: In September 2021, volunteers of the Hangzhou Women's Federation "Benefiting the Public" provided a clue to the Municipal Procuratorate about gender discrimination in employment, and on September 7, 2021, the official WeChat public account of a street in Qiantang District issued an announcement on the open recruitment of village-level reserve cadres, with a total of 30 recruits, involving 20 villages, of which 12 villages are limited to recruiting only men, and the ratio of male to female positions is 22:7. The announcement has attracted the attention and discussion of netizens. After receiving clues about employment discrimination, the Qiantang District Procuratorate issued a pre-trial procuratorial recommendation to a certain street, recommending that it be rectified in a timely manner. On October 9, the relevant recruitment announcement was withdrawn, and at the same time, a certain sub-district decided to introduce the same number of posts for women on the part of the difference between the male and female ratio, so as to achieve the same gender ratio.⁶⁴

The Qiantang District Procuratorate of Hangzhou City issued a procuratorial suggestion on gender discrimination in the recruitment announcement of village-level

⁵⁴ Procuratorate Daily: Recruitment is limited to men? Say "No" to Employment Discrimination, May 15, 2024

⁵⁵ Procuratorate Daily-Justice.com: Fogang, Guangdong: "Big Data Empowerment+", "Benefit" to Protect "Her" Rights and Interests, November 21, 2023

⁵⁶ Jiangsu Procuratorate Online: Protecting People's Livelihood | Say No to Gender Discrimination in the Workplace, 2024-04-29

⁵⁷ 2023 Work Report of the People's Procuratorate of Fenghua District, Ningbo City

⁵⁸ Daoli People's Procuratorate website: "1+1+N" model to promote the protection of women's rights and interests in the public "procuratorial blue" escorts "her" rights, 2023-11-20

⁵⁹ Ping An Jiangxi Net: Jiangxi Provincial Procuratorate Fully Performs Procuratorial Public Interest Litigation Functions and Takes Good Care of Every Her, March 08, 2024

⁶⁰ The Paper: The People's Procuratorate of Qilihe District can actively perform its procuratorial functions and protect "her rights and interests" in the whole chain, 2024-06-15

⁶¹ Beijing Daily: Recruitment requirements are "men only" and "men are preferred"? 4 units in Beijing were placed on file for investigation, 2024-11-18

⁶² Procuratorate Daily-Justice Network: Are women required to take pregnancy tests when they enter the company? Procuratorate: File a case! 2024-07-16

⁶³ Sohu: Gender Discrimination in Recruitment Revealed: Legal Risks and Social Impacts of Differentiated Age Requirements for Men and Women, 2024-11-12

⁶⁴ Procuratorate Daily: Zhejiang: Public Interest Litigation Helps Protect Women's Equal Employment Rights and Interests, 2021-12-13

reserve cadres (commonly known as college student village officials) issued in the WeChat official account of a sub-district office, and finally reached a 1:1 ratio of male to female recruitment.

This is completely different from the effect of the public interest lawsuit mentioned above, in which the procuratorate asked the company to remove the male-only employment discrimination content in the job advertisement: the removal of male-only recruitment content by the company does not directly ensure that more women get employment opportunities, and the company can still favor male job applicants in recruitment and reject more female job applicants with equal ability. It is difficult to measure the impact of such public interest litigation in advancing women's equal employment rights. However, public interest litigation over the proportion of reserve cadres at the village level can directly ensure that an equal number of men and women have access to jobs.

(2) Local women's federations, human resources and social security bureaus, and federations of trade unions advocate that enterprises eliminate gender discrimination against women in employment⁶⁵

The Chinese media is increasingly reporting on the initiatives taken by the Women's Federation and local governments and administrative departments to prevent gender discrimination in the workplace. These measures are jointly implemented by local municipal and township women's federations, trade union federations, government social welfare departments and other institutions. Shanghai media "The Paper" reported that on April 8, 2024, the Mengyin County Human Resources and Social Security Bureau and the County People's Procuratorate held a symposium on eliminating gender discrimination in employment. The Women's Federation of Jinzhou City, Hebei Province, together with the Human Resources and Social Security Bureau and the Federation of Trade Unions, held a special meeting on "Eliminating Employment Discrimination and Safeguarding Women's Rights and Interests". According to the Jinju City Women's Federation, an employer was interviewed for sex-based discrimination in its job postings. The employer signed the "Anti-Employment Discrimination Commitment" on the spot. On April 17, 2024, the Women's Federation of Jize County, Handan City, Hebei Province, and the Human Resources and Social Security Bureau of Jize County jointly issued a proposal stating that employers should establish awareness of gender equality and create a good environment for fair employment. The Women's Federation of Wei County, Hebei Province, and the Labor and Social Security Service Center of Hongqi District, Xinxiang City, Henan Province, also issued public initiatives.

In February 2024, the Supreme People's Procuratorate and the All-China Federation of Trade Unions jointly issued a notice to promote the use of the "one letter, two letters" system to protect the rights and interests of workers. The "one letter, two

⁶⁵ https://www.thepaper.cn/newsdetail_forward_27065918

Recently, many places have advocated the elimination of gender discrimination in employment, and a unit has issued a "limited to men" interview

letters" system referred to is shorthand for the system in which trade unions and relevant units apply relevant documents to remind employers to implement labor laws and regulations or correct their illegal labor and employment behaviors. "One letter" refers to the labor union's labor law supervision reminder letter, and "two letters" refers to the trade union's labor law supervision opinion and the trade union's labor law supervision proposal. The system focuses on prevention at the source, and aims to resolve conflicts and disputes in labor relations at the grassroots level and in the bud through coordination and consultation.⁶⁶

These government-led or women's federation and union-led initiatives have many of the hallmarks of Chinese-style public awareness campaigns, such as mobilization and slogans that do not mention whether monitoring and accountability mechanisms will be implemented simultaneously to assess whether employers have made substantial progress in reducing gender discrimination in the workplace. The Women's Federation's initiative is not legally binding, and the human resources and social security bureaus, which have the power to impose fines, such as the Beijing Municipal Bureau of Human Resources and Social Security, have not been sufficiently mobilized to impose fines on enterprises that violate women's equal employment rights.

7. Suggestions for civil action

Civil society activism is a driving force for women's equal employment rights by stimulating social and government attention, providing practical support, changing cultural attitudes, and promoting policy change. In China's high-pressure policy environment, it is difficult for non-governmental organizations to promote women's equal employment rights, but there are still many opportunities to work. Through legal aid, online platforms, business cooperation, public opinion guidance, and focusing on specific groups, civil society organizations can promote social and cultural changes within the scope of policies, and gradually promote the realization of women's equal employment rights. Although progress may be slow, it can still improve the employment environment and treatment of women to a certain extent.

(1) The functions of rights protection public interest organizations are indispensable, and the form of work may change

Rights protection public interest organizations are the glue between the parties whose rights have been violated, scholars, journalists, and lawyers, and the judgment results are very different between impact litigation with the participation of public interest organizations and ordinary litigation without the participation of public interest organizations. As mentioned above, the Niu Qianqian case and the Qian case may have had different results if a public welfare organization had intervened. In the past, common practices in influencing litigation included both administrative reporting and judicial remedies, using the results of administrative penalties as evidence to prove the

⁶⁶ https://www.spp.gov.cn/spp/zdgz/202402/t20240222_644312.shtml

The Supreme People's Procuratorate and the All-China Federation of Trade Unions jointly issued a notice: Coordinate the use of the "one letter, two letters" system to protect the rights and interests of workers

existence of gender discrimination in enterprises, inviting experts to appear in court as legal experts and witnesses to express their opinions, and informing the media to trigger public discussion. With public and professional scrutiny, the courts often do not make hasty decisions.

At present, it is indeed very difficult to re-establish a rights protection non-profit organization in China, but other forms can be considered to continue to carry out the work of the non-profit organization. For example, we have cooperated with lawyers who specialize in labor disputes, established a labor dispute consulting company, and recruited law students who have not graduated to work part-time.

(2) Participate in gender equality assessment mechanisms for laws and policies at the city and county levels

Although the mechanism has been in place nationwide since 2013, it is difficult to assess how effective it is. There are many reasons for this, for example, the state has not yet issued corresponding institutional guidelines, and although some provinces and municipalities have exploratory experience (such as Hunan Province), it is difficult to comprehensively learn from the different legislative powers at the city and county levels and the differences in economic conditions. Second, the gender equality evaluation mechanism of laws and policies requires high professional competence and heavy workload of staff, and the lack of professionals and work experience in legislative evaluation are also important reasons. Last but not least, the public and NGOs are less aware of and involved in this mechanism.

After the revision of the Legislation Law, cities divided into districts have corresponding legislative powers, and local regulations have an increasing proportion in the legal system. If non-governmental public interest organizations can participate in the gender equality assessment mechanism and put forward requirements to protect women's equal employment rights and interests in the legislative process such as drafting, deliberation, and argumentation, they can save labor costs.

There is no doubt that this work is very legal and not all staff members of nonprofit organizations are competent. Therefore, it is best to find and train researchers with legal backgrounds to cooperate with lawyers and journalists. Full-time researchers are responsible for writing recommendations for gender equality assessments to be submitted by lawyers and journalists to local working committees on women and children and women's federations.

(3) Assist NPC deputies and CPPCC members to focus on the recommendations of the two sessions

It is recommended that civil society collect a list of deputies to the National People's Congress and members of the Chinese People's Political Consultative Conference (CPPCC) who are concerned about the right to equal employment in the next two years, and focus the opinions and suggestions of the two sessions on:

1. "When a woman returns to her original job after giving birth, the written consent

of the worker must be obtained for the transfer and salary reduction" rather than "returning to work".

2. Personal information must be protected when judicial documents are made public, and the first and last names of the parties to the workers should be hidden from the judgments related to labor disputes and equal employment rights, and the American practice should be learned (all men are named John Doe, and women are named Jane Doe), such as "Zhang San". At present, some judgments on the Internet of judgment documents have hidden the names of the parties and left their surnames, such as Zhang. There are also those who leave their full names, such as Niu Qian. This does not encourage women to defend their equal employment rights through judicial channels, and they are worried that leaving a record of litigation with employers will affect the future employment of other companies and the human resources department will find out.

The deputies to the National People's Congress who have submitted proposals related to gender discrimination in employment include Xia Wu Zhuoma, Wan Li⁶⁷ (Vice President of the All China Lawyers Association and President of the Yunnan Lawyers Association), Li Yalan⁶⁸ (Director of Heilongjiang Longdian Law Firm), Fang Yan⁶⁹ (Director of Beijing Jincheng Tongda & Neal (Xi'an) Law Firm), Nie Pengju⁷⁰ (Vice Chairman of Hunan Keli Motor Co., Ltd.), and Tan Lin⁷¹ (Former Vice President and Secretary of the Secretariat of the All-China Women's Federation). Members of the National Committee of the Chinese People's Political Consultative Conference are: Zhang Fan.⁷²

(4) Encourage women workers to use the "Benefiting the Public" procuratorial cloud platform to report gender discrimination in enterprises

At present, the public interest litigation against employment discrimination filed by local procuratorates through the clues of the Yixin Weigong cloud platform focuses on gender discrimination in recruitment advertisements, and public welfare organizations can produce small videos to disseminate how to use the Yixin Weigong platform to quickly report the unequal pay for equal work between men and women in their own enterprises, and the ongoing or already occurring gender discrimination

⁶⁷ Yunnan People's Congress website: [I should be a representative this year] Wan Li, deputy to the National People's Congress: Give full play to professional advantages, focus on social concerns, and light up the light of the rule of law, March 5, 2024

⁶⁸ Chinese National People's Congress website: Li Yalan, deputy to the National People's Congress: Improving the judicial relief model for gender discrimination in employment of female employees, March 9, 2022

⁶⁹ Legal Daily: Interviews can't avoid marriage or childbirth, how to solve female employment discrimination, April 11, 2023

⁷⁰ The Paper: Hidden discrimination against women in employment? NPC deputies' proposal: Define "discrimination" from a legal perspective, March 6, 2019

⁷¹ Tan Lin, a deputy to the National People's Congress of China Women's Daily, suggested: To support women's childbirth, we should use a good combination of punches, March 7, 2024

⁷² Southeast Net: Zhang Fan, member of the National Committee of the Chinese People's Political Consultative Conference, suggested: Comprehensively eliminate employment discrimination and promote full employment, 2022-03-08

behaviors such as salary cuts, job transfers, and forced resignation of female employees during pregnancy and childbirth. Female employees are encouraged to keep the screen recording of the whole process of using the Yixin Public Platform, and if they have not seen the procuratorate take action for a long time, they can still use it as evidence to seek help from the Women's Federation.

(5) Initiate the penalty mechanism in local regulations to punish enterprises for gender discrimination

For example, Beijing's Beijing Municipal Human Resources and Social Security Administrative Punishment Discretionary Benchmark Table (Involving the Law on the Protection of Women's Rights and Interests) stipulates that the Human Resources and Social Security Bureau has the right to impose fines ranging from 10,000 to 50,000 yuan. Local governments are financially constrained, and there is a strong incentive to impose fines. After a female employee encounters gender discrimination and infringement of equal employment rights by an enterprise, she may file a complaint or report to the Human Resources and Social Security Bureau and other relevant management departments, and request that the enterprise involved be fined. Administrative remedies are simpler and shorter than judicial remedies, which are a deterrent to enterprises. At the same time, the government should do a good job of keeping the whistleblower's personal information confidential, protect the whistleblower from retaliation by the enterprise, and at the same time not affect future job searches.

(6) Launched the campaign of "refusing to sign salary confidentiality agreements and making salaries public for men and women".

Unequal pay for men and women for equal work is a common form of gender discrimination encountered by white-collar workers, as reported by Gao Jing in a report by China Youth Daily. This discrimination is difficult to prove, and many women may not even be aware of it after years of work, because companies often require employees to sign salary confidentiality agreements. According to the court's judgment in the second-instance civil judgment of the 2020 trade secret infringement dispute between Beijing Health Beneficial Technology Co., Ltd. and Guan Xin⁷³, it can also be seen that the employee's salary does not belong to the company's trade secrets. The signing of a salary confidentiality agreement shall be an agreement between the two parties.

Wage secrecy is a common management method used by enterprises, which originated in the West, in the early days, in order to reduce the cost of hiring workers, the capitalists adopted a single negotiation with workers on their wages to determine the wages of workers; The purpose is to prevent workers from comparing their wages with each other, resulting in psychological imbalance and instability.⁷⁴ Most companies will require employees to sign a salary confidentiality agreement when they

⁷³ (2020) Jing 73 Min Zhong No. 356

⁷⁴ QIN Fei, TANG Chunhan. Analysis on the advantages and disadvantages of the secret salary system on the fine management of finance[J].Theory of Learning, 2013(18):2

join the company, and usually the company will also inform that this is to protect the harmonious relationship between employees and not compare. In fact, it provides space for enterprises to flexibly operate, and there is no need to explain the reasons for the salary of different employees in the same position. The disadvantages far outweigh the benefits for female employees, making each employee an isolated relationship and wary of each other, rather than a benign relationship of transparent and open competition.

Chinese factory workers have even overthrown this system of exploitation through strikes, often with collective contracts between factories and workers⁷⁵ to achieve equal pay for men and women, and wages in factories are largely open and transparent, and there is no psychological imbalance among workers. Women workers in factories experience even less gender discrimination in employment than white-collar women, because wages are largely open, and women workers are more willing to cooperate and fight together to negotiate with factories to increase the wages of all workers, rather than being separated from other women workers for the sake of privacy and forming isolated individuals. White-collar women workers refused to sign salary confidentiality agreements, and demanded that the salary composition of male and female employees in the same position be disclosed, so as to gradually eliminate the invisible discrimination of unequal pay between men and women for equal work.

We recognize that it is difficult for individual workers to refuse to sign a wage confidentiality agreement when asked by an enterprise, so the trade union, as a group organization formed by workers' free association, should assume this responsibility. Although the formalism of trade unions at all levels has been criticized by human rights organizations: for example, the China Labor Bulletin, which focuses on labor rights, has reported on a number of cases of labor rights being violated⁷⁶, pointing out that the formalism of trade unions cannot protect the legitimate rights of workers. According to the latest report on the rights protection service of the All-China Federation of Trade Unions⁷⁷ (March 2022) released by China Labor Bulletin, the Chinese government and the ruling party have realized that the bureaucracy of trade unions and repeated inaction in cases of damage to workers' rights and interests have detracted from the representation of trade unions to workers, and Xi Jinping has called on trade unions to change their work style in the form of speeches at symposiums several times since 2013. According to an investigation by China Labor Bulletin, the CGTU is still subject to a bureaucratic structure, unable to represent workers' interests, and is even unaware of more than half of the workers' rights protection incidents. However, human rights organizations working to protect workers' rights and interests have not given up urging

⁷⁵ Provisions on Collective Contracts of the Ministry of Human Resources and Social Security Article 3 The term "collective contract" as used in these Provisions refers to a written agreement signed through collective negotiation between an employer and its employees in accordance with the provisions of laws, regulations, and rules on matters such as labor remuneration, working hours, rest and vacation, labor safety and health, vocational training, insurance and benefits, etc.; The term "special collective contract" refers to a special written agreement signed between an employer and its employees on a certain content of collective negotiation in accordance with the provisions of laws, regulations, and rules.

⁷⁶ China Labor Newsletter website: "Observation and Promotion of Trade Union Reform" section

⁷⁷ China Labor Bulletin: Report on Trade Union Rights Protection Service, March 2022

trade unions to change their attitudes and actively defend the legitimate rights and interests of workers. For example, in 2019, the "Observation Report on the Reform of the All-China Federation of Trade Unions" released by China Labor Bulletin⁷⁸ observed that some changes have taken place in trade unions, such as: local trade unions have set up service centers and service hotlines to accept workers' inquiries and requests for help, and trade unions have begun to welcome workers to ask for help from the past; Trade unions actively organize migrant workers to join the union, or organize trade unions for different groups, such as the platform economy, in the hope of expanding the scope of membership and safeguarding the rights and interests of these workers.

Therefore, this paper argues that non-governmental organizations should still actively advocate and persuade local trade unions to include "workers have the right to refuse to sign wage confidentiality agreements" in the notice of workers' rights and interests, and require enterprises to issue the notice to newly hired workers.

⁷⁸ China Labor Bulletin: All-China Federation of Trade Unions Reform Observation Report, December 2019