

# *Study on the Legal Protection of Women's Equal Employment Rights under the "Three-Child" Policy*

**Bing Lu**

*Dalian Ocean University, Dalian, Liaoning, 116000, China*

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**Abstract:** China has entered the era of "three-child policy", the significance of which is to promote the sustainable development of the population, but it also further aggravates the possibility of women being treated differently in employment. More challenges and uncertainties brought to women by childbirth make women "afraid to give birth" and "unwilling to give birth", and the two rights and interests of reproductive rights and labor and employment rights are consistent, in order to break this situation, we also need to start from the protection of women's rights and interests and think about women's rights and interests. In order to break this situation, we also need to think about women's rights and interests from the perspective of safeguarding women's rights and interests, and create a safer and more reliable environment for women's childbirth and labor.

## **1. Introduction**

Protecting the equal rights of workers in employment is conducive to the enforcement of labor laws and the building of harmonious labor relations. However, the implementation of the "three-child policy" has once again pushed the protection of women's equal rights in employment into a difficult mode. The time cost of giving birth to and raising a child is mainly borne by women, while the economic cost is borne by both the employer and the family. However, as enterprises pursue economic profits and corporate development, they set a high threshold for women in recruitment or simply refuse to hire female workers. Therefore, there is a need for in-depth exploration and study of a system that guarantees women's right to equality in employment, so as to reduce the chances of women being discriminated against by gender in the workplace.

## **2. Three-child policy and women's equal employment**

### **2.1 China's demographic situation**

According to the national population data released by the National Bureau of Statistics in 2021, a total of 10.62 million people were born in 2021, with a birth rate of 7.52 per thousand, a record low since 1949. It can be seen that the growth rate of China's total population is slowing down, and the total fertility rate will drop to 1.3 in 2020, and the low fertility rate has become a real problem for China [1]. According to the national population data of 2021 released by the National Bureau of

Statistics: in 2021, a total of 10.62 million people were born in the country, and the birth rate was 7.52 per thousand, which was a record low since 1949. It can be seen that the total population growth rate in China is slowing down, and the total fertility rate will drop to 1.3 in 2020. Low fertility rate has become a real problem for China [1]. According to the seventh national census bulletin data, China's elderly population aged 60 and above has reached 264.02 million people, more than 18.7% of the total population, while the working-age population aged 15 to 59 is only 894.38 million, accounting for less than 63.4% of the total population. The labour force gap is gradually becoming larger, and the problem of unreasonable and unbalanced population ratio is becoming more and more prominent [2]. In order to promote the balanced development of the population and make up for the labour gap, from 2016, China began to officially implement the "comprehensive two-child" policy, and from May 2021, began to gradually implement the liberalization of the "three-child" policy. With the implementation of the three-child policy, the fertility and employment problems faced by women have become a hot topic in society. From May 2021, the "three-child" policy will be gradually liberalized. With the implementation of the three-child policy, the fertility and employment problems faced by women have become a hot topic in society.

## **2.2 Changes in the concept of childbearing**

With the progress of the times and the development of society, the improvement of people's cognitive level has caused a change in the family's concept of childbearing. In recent years, the fertility concepts of the reproductive age group have also changed, with a general shift towards fewer children and better parenthood. Huge economic burdens, women's increased education, awakening of the awareness of their rights, and women's concerns about career development have become the main constraints on childbearing. With regard to the protection of women's rights and interests in childbirth and employment, it is necessary to introduce relevant supporting legal measures to protect them. The much talked about issue of maternity leave has always been the core issue of the maternity policy, but usually the cost of maternity leave is entirely the responsibility of the enterprise, which not only fails to increase the enterprise's incentive to encourage childbirth, but also creates invisible employment discrimination by the enterprise, which intentionally avoids women of childbearing age when recruiting. On the other hand, whether mothers can get enough time for postpartum recovery, whether it leads to employment discrimination after returning to work, and whether both spouses have appropriate legal childcare time are all important factors for childbearing age groups to consider. Improvement of the maternity system and innovative supporting measures need to be put on the agenda.

## **2.3 Labor Rights and Maternity Protection**

The right to work is a basic human right, a necessary precondition for workers to realize their rights to survival and development, and an important means and indicator for guaranteeing women's economic independence, social status and family status. Whether the right to work can be realized not only affects the interests of workers, but also affects the healthy development of the labor market [3]. Reproductive right refers to the right of citizens to have children and to have access to information and services related to this, and the reproductive right of citizens is a basic human right. Reproductive rights and the right to labor and employment rights is the necessary basis for women's survival and development in society, in order to protect women's reproductive rights and the right to labor and employment should be further provided with institutional safeguards and related policy support.

## 2.4 Challenges to women's employment rights in the context of the "three-child" policy

In 2021, the Political Bureau of the Central Committee of the Communist Party of China (CPC) proposed in the Decision on Optimizing Reproductive Policy and Promoting Long-Term Balanced Development of Population that, in order to implement the spirit of the 19th Plenary Session of the 19th CPC National Congress, the CPC would optimize the reproductive policy and implement the policy that a couple may have three children (hereinafter referred to as the "three-child policy"), in order to promote the long-term balanced development of the population. This policy is an important national strategy to improve the demographic structure of China, scientifically grasp the laws of population development, and actively respond to the aging of China's population. The opening of the "three-child" policy makes women face greater challenges in the job market.

## 3. "Hidden discrimination" against women's employment due to economic benefits

With the improvement of legal protection and public awareness of equality between men and women, explicit discrimination against female workers in the workplace is gradually decreasing, but invisible discrimination is still numerous. Female workers are already at a disadvantage due to their physical characteristics, and the introduction of the "three-child" policy may make female workers face even more challenges in employment. The Labor Law of the People's Republic of China specifically establishes special labor protection for female workers, explicitly stipulating that female workers are prohibited from engaging in work during pregnancy and that employers should provide at least ninety days of maternity leave and other rights and interests, but this has invariably increased the cost of employment for employing enterprises at the practical level. In addition, if the maternity leave is too long, it will lead to a long-term disconnection between female workers and the workplace, affecting their competitiveness when they return to work, which is an opportunity cost that women have to pay for raising children. At present, the time and opportunity costs of raising children in Chinese families are mainly borne by women, who find it difficult to take care of a heavy workplace schedule while raising children. Because the current social environment is not friendly enough to women's childbearing, and the time and opportunity costs they have to pay for childbearing are too high, some women have to give up childbearing in exchange for the chance to succeed in their careers. This is one of the reasons for China's low fertility rate. Under the premise that male and female workers can provide the same labor value, enterprises have to consider the maternity cost that female workers have to bear if they give birth during their employment, which is greatly increased compared to the employment cost of male workers. Even if female job seekers are better than male job seekers in all aspects, some enterprises are still more willing to accept male job seekers, which results in "implicit discrimination" in hiring employees. "Hidden discrimination". At the same time, some organizations are unwilling to accept women, through the relevant restrictive conditions against women, raise the threshold of women's entry into the workforce, thus causing the actual effect of refusing women's entry into the workforce. At present, China has not set up any special laws against employment discrimination, and there is extra-legal space for employment discrimination, for example, employment discrimination by employers during the job-seeking period does not fall within the scope of labor inspection. The current situation of enterprises preferring male workers when hiring workers undoubtedly makes female job seekers face more uncertainty, which makes female workers' right to employment violated.

The 2022 government work report states, "resolutely prevent and correct employment discrimination on the basis of gender and age, and make efforts to solve the outstanding problems of infringing on the legitimate rights and interests of workers," which has attracted social attention. The problem of discrimination against women in employment has a long history, women face enormous pressure to give birth, women not only take on the role of motherhood but also existing

economic theories often ignore the value created by women, and in the actual operation of the economy, women also face more difficulties and pressure. Swedish author Caitlin Marshall's book - "Who Cooked Adam Smith's Dinner - The Story of Women and Economics", Marshall wrote in the book: "Why are women paid less? It's because women are less productive - women always have to interrupt their work for several years to have children and have to devote more time and energy to housework, so their occupational commitment is less than men's, and their pay is justifiably lower. But many economists offer a different view of this: women are burdened with more housework because they are paid less, and by keeping women at home to do housework due to the lower pay, the loss to the family as a whole is lower - it's as if they've entered into a circular loop. "

### **3.1 Restrictions on the career development of female workers**

The introduction of the "three-child policy" will affect the career advancement of female workers. The optimal age for women to have children is often a critical period for career development, and the average time it takes for a woman to have a child is about one year, so if a woman has three children, the cost of childbearing for women workers will increase dramatically. According to the statistical analysis based on the 2023 Gender Equality Research Data of Wisdomlink Recruitment in the "2023 Survey Report on the Status of Chinese Women's Workplace" released by Wisdomlink Research Institute, 23.2% of women are in the stage of marriage and childbearing, and passively lose their promotion, while only 10.7% of men do, which intuitively shows that women's chances of promotion are far fewer than men's. In addition, after giving birth to a child, female workers generally have less chance of career development than men do. In addition, female workers usually need some time to recover their bodies and adapt to work after giving birth.

In career development, gender puts an extra burden on women. According to a survey, 60% of Chinese women believe that their gender hinders career development. In China, 44% of women believe they are given fewer opportunities than men, and 34% believe they are paid less than men in similar jobs. Many people see discrimination against women of childbearing age as a rationalization; most companies want to maximize profits, female employees taking maternity leave to give birth will create staff vacancies, women taking care of their families will affect their work, and most bosses will prefer male employees [4]. Is it taken for granted that this is a choice made by enterprises to maximize profits and that women are discriminated against? If society only runs in response to economic needs, basic human rights will also be jeopardized. Women shouldn't lose career opportunities because of their motherhood roles; this is a social responsibility that companies should take on. This is the social responsibility of the enterprise. Because human beings are human beings first, and the means of production second.

### **3.2 Loopholes in the maternity insurance system for women**

In recent years, the legislation on maternity insurance system has gone through a process of development and improvement from scratch, and has initially formed a system of legal norms including national legislation and local legislation. However, there are still some problems and deficiencies in the existing legislation on maternity insurance system, which need to be further revised and improved. First, the coverage of China's maternity insurance system is insufficient. Secondly, the content and standards of treatment are not uniform; at present, legislation at the national level does not contain clear provisions, while local regulations vary, and there are also those that do not contain clear provisions on the subject [5]. Third, the main body of contributions is too single. Taking only the employer as the main body of maternity insurance contributions is not conducive to the sustainable operation of the maternity insurance fund. China's maternity insurance system mainly consists of employers paying maternity insurance for female workers, with the aim

of protecting the rights and interests of female workers during childbirth. As enterprises are the main contributors, there is a gap in the maternity insurance system's protection for informally employed women, and the requirement that maternity insurance for urban workers must be paid for by the employing organization makes it impossible for a large number of flexibly employed, freelance, and rural migrant workers who do not have an organization to participate in the maternity insurance system for urban workers, and they are unable to reimburse the costs of giving birth. [4] In the face of this employment pattern, the maternity protection system is not compatible with it, leaving women without maternity protection. In addition, the state gives the responsibility of maternity protection to the employing organization, which will lead to the phenomenon of contradiction between the presented policy protection and the reality of discrimination.

### **3.3 Lack of regulation of the childcare service sector**

The obstacles to women's career development caused by the difficulties of caring for preschool children increase the indirect costs of childbearing, and the implementation of the "three-child" policy will increase the pressure on women's childcare.[6] Good childcare services are also a major obstacle to the development of women's careers. Good public childcare services can help reduce the conflict between women's work and family, but China's current public childcare service system lacks relevant policy guidance and support from laws and regulations. China's current lack of clear legal norms for public childcare services has resulted in the mixed situation of childcare institutions, the irregularity of the relevant institutions, and the lack of formal and professional childcare services, which makes parents distrustful of childcare institutions, aggravates the burden of family upbringing, and is not conducive to women's career development. Some reports point out that there is currently a serious lack of childcare services for children under the age of 3 in China. If there is a lack of childcare, it is likely that one of the spouses will need to suspend work to take care of the children, yet more and more families need to rely on two incomes in order to cover their household expenses. Therefore, China needs to vigorously develop inclusive childcare services and increase the enrollment rate of infants and toddlers aged 0-3 to about 50 percent, which will help reduce the time and opportunity costs of raising children for women.

### **4. Enacting specialized anti-employment discrimination laws**

China has provided for equal employment in the Labor Law, Labor Contract Law, Law on the Protection of Women's Rights and Interests, Law on the Protection of Persons with Disabilities, Law on the Promotion of Employment and Special Provisions on the Labor Protection of Female Workers and Employees, among which the Special Provisions on the Labor Protection of Female Workers and Employees implemented in 2012 is the most focused and detailed. However, there are no more systematic legal provisions. At present, China has not formulated the Anti-Discrimination in Employment Act specifically for employment discrimination, and it is necessary to formulate a special law to regulate illegal behavior in the employment market, so as to improve the phenomenon of discrimination suffered by women in the workplace after the introduction of the "three-child" policy by means of clear and detailed legal provisions. The enactment of the Anti-Discrimination in Employment Act will enable women to have a law to follow when their equal employment rights are violated, and to defend their rights and interests through legal channels, as well as solving the real dilemma of difficult to defend their rights in labor disputes against gender discrimination [7]. In addition to explicitly stipulating the specific contents of the violation of women's equal employment rights and the legal responsibility of the employers, the Anti-discrimination in Employment Act should also clarify the remedies for the violation of equal employment rights. Through the enactment of the Anti-discrimination in Employment Act, which is

practicable in reality, the awareness of employers' responsibility and the illegality of employment discrimination in recruitment by employers will be raised.

#### **4.1. Strengthening men's awareness of their reproductive responsibilities and rights**

It is undeniable that in China's current marriage and family life, women are still the main bearers of child-rearing work, and it is a reality that women spend more energy and time on child-rearing. By improving women's development ability, it gradually narrows the gender gap caused by employment in the labor market, gives full play to the role of women in economic and social development, maximizes the release of gender dividends, and enhances gender equality in primary distribution. In terms of time support, only individual provinces have explored the implementation of parental leave, with insufficient policy coverage and no clear provisions on paternity leave quotas, making it easier to create a further imbalance between women's families and work. [8] Actively implementing the equal enjoyment of maternity leave by men and women or setting up shared parental leave is conducive to guaranteeing women's right to employment by protecting the rights of male workers and allowing them to spend more time on childcare, while at the same time narrowing the difference between men and women in terms of the cost of childbearing, and reducing the "implicit discrimination" triggered by the cost of production in enterprises.

#### **4.2. Improving the protection of the "three-child" policy**

Special protection programs have been set up for the wages, maternity leave, breastfeeding leave, and other rights and interests of female workers with "three children," in order to safeguard the equal employment rights of mothers with "three children. The government has introduced corresponding fiscal and tax policies to solve the problem of sharing the costs of childbirth. It is recommended that when calculating taxable income for enterprise income tax purposes, certain deductions be made for wages, maternity allowances, job vacancy filling expenses, and other related expenses paid by enterprises during the leave period of female workers during the maternity period. In addition, more alternative employment modes should be provided for women's childcare to realize flexible employment for women, and subsidies for women's entrepreneurship should be set up to encourage women's independent innovation and entrepreneurship [9]. It improved the rights protection service mechanism, solved the practical situation of women's rights protection, strictly supervised the gender discrimination behavior of employment units, implemented policy subsidies for female employees employed by employment units, increased incentives for women's employment, and implemented the special protection of female employees as a standard for evaluating the integrity level of enterprises.

#### **4.3. Improving the maternity insurance system for female workers**

The Government shares the maternity insurance fund with employers, reducing the cost of employment for enterprises. A universal maternity insurance system has been implemented, and enterprises that employ more than a certain percentage of female workers are given a certain degree of tax relief, financial subsidies and fund subsidies [10]. The government and units can provide free maternity medical insurance and one-time maternity subsidies, with the aim of protecting women's reproductive rights and the basic expenses during childbirth, and all women who give birth can enjoy them equally. This is to meet the different needs of different types of families and women with different levels of education and to reduce the burden on families. The provision of free maternity benefits and lump-sum payment of maternity benefits is aimed at protecting women's reproductive rights so that all women who give birth can benefit equally from them. There are

several feasible measures: first, to extend the scope of the existing maternity insurance scheme to all insured persons, so as to achieve "full coverage" of the employee population. The second is to support family insurance, so as to provide equal maternity allowance coverage for career spouses of male employees who are entitled to maternity allowance. The second is to ensure full coverage of post-natal care costs, and to continue to raise the level of prenatal care and hospitalization, so as to reduce the personal burden on pregnant women [11]. The third is to encourage and support regions with the means to utilize surpluses accumulated in medical insurance to expand the coverage of maternity care insurance, and to promote the inclusion of reproductive health and assisted reproductive technology in the coverage of individual medical insurance accounts and the reform of the outpatient coordination system.

## 5. Conclusions

With the shift in fertility policy, China is moving into a fertility-friendly society, but the relevant laws and policies still have limitations in protecting women's labor rights and interests. Therefore, it is necessary to further improve the relevant legal system, raise the level of judicial remedies, and set up a specialized anti-employment discrimination agency to enhance the efficiency of law enforcement, improve the supporting systems for childbirth, and work together to create a maternity-friendly society.

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