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Exploring the Equal Employment Rights of the Elderly in the Context of Aging

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Abstract

According to the forecast, if the population over 60 years old is defined as the elderly population, in 2024, China will have more than 300 million elderly people, and by 2052, they will exceed one-third of the total population, reaching as many as 520 million. The baby boom after the founding of New China means that China is bound to experience an era of massive and rapid aging of the population. Coupled with the serious imbalance of the intergenerational population ratio in China, the problem of population aging in China will be more serious and complicated than in other countries. Therefore, China must pay attention to the employment of the senior group. In light of numerous challenges, it is imperative for China to address the issue by prohibiting age as a factor in employment discrimination, defining clear criteria for identifying age-based discrimination in employment and enhancing legal remedies to ensure the employment rights of elderly individuals and to fully utilize China's demographic dividend.

Keywords

Older adults, age discrimination in employment, active aging, protection of rights and interests

1. The real-life dilemma of equal employment for older adults

1.1 The concept of older adults is difficult to define

In order to discuss the protection of equal employment rights for the elderly, the first question is what is an "elderly person" and how to define the concept of "elderly". There is no clear answer to this question in China or in other countries and regions. In China, people over 60 years old are considered to be elderly, because the retirement age in China is 60 years old, and they are entitled to pension benefits from the age of 60. The WHO has further subdivided people over 60 years old, and people aged 60 to 74 are called younger people, while those aged 75 are called "older people" (Zhang Zhonglin, 2020). Modern society should divide people according to the role they play in social participation, and it is not feasible to divide "elderly" by age. The concept of "elderly" is not feasible.

1.2 Inherent paranoia about the elderly is difficult to change

The setting of age is everywhere in the legal rules, and age often becomes an important characteristic to judge a person's identity in a kind of information screening kind. Since ancient times, age has been the oldest criterion for the division of labor, which has created a stereotype for employers that people's mental and physical strength will gradually decline with age, and their work efficiency will also gradually decrease. Secondly, the "post-metaphorical culture" of intergenerational culture in the information age further exacerbates this stereotype, which makes employers treat older job seekers differently (Dang Junwu, 2015). In fact, this practice is very unreasonable. In today's

advanced medical conditions, many older people are still energetic, and with the addition of work experience, many times ginger are still old.

In addition, there are some people who believe that older people are taking jobs from younger people by re-entering the workforce and delaying retirement (Yu Jhuhong, 2017). In fact, this argument has been proven wrong a long time ago. In fact, due to the differences between the elderly and young people in terms of skill level, experience, and education level, the number of jobs for the elderly and young people is not the relationship of retiring one to make up for the other, but rather these two types of labor force is a complementary relationship. For example, with the advantage of experience, some old employees of enterprises can be subsequently transferred to consulting and advisory positions, which can also effectively reduce the cost of employee training in enterprises while giving play to the residual energy of the elderly.

1.3 Deficiencies in the employment system for senior citizens

1.3.1 Lack of constraints on discrimination against older adults in re-employment

Currently, the legal status of re-employment for all retirees is not clearly defined in our labour laws. In order to cope with the ageing crisis, some countries with a seriously ageing population have introduced initiatives to prohibit differential treatment of elderly job seekers solely on the ground of age. For example, the Age Discrimination in Employment Act in the United States and the Employment Countermeasures Act in Japan require employers to provide equal employment opportunities regardless of age when recruiting employees. At present, employment discrimination on the basis of age has become the biggest obstacle to the re-employment of the elderly in China. The relevant elements of employment discrimination are stipulated in China's labour laws, but they do not deal with the age element. In practice, however, it is highly unlikely that a worker's claim of age discrimination in employment will be upheld by the courts, which are basically passive and non-interventionist in dealing with the issue of age discrimination.

1.3.2 Mismatch between the exit system of the senior working population and the national situation

Due to the relatively short period when China has just entered the aging society, there are considerable gaps and defects in our senior employed persons system, which is mainly reflected in the exit system of our senior employed persons. The background of the exit system for senior employed persons in China was formulated in the 1970s when the population was at the peak of childbirth. As the birth rate declined and the scale of higher education continued to expand, young people entered the labor market later and later, and premature retirement would cause a serious waste of human resources.

Although China's labour laws stipulate that workers have the right to equal employment and choice of occupation, it is not clear whether the elderly employed can enjoy these rights due to the existence of the retirement system. The current planning for adjusting the retirement age has also failed to keep pace with the ageing of the population structure. On the contrary, in the United States, the retirement age limit of 70 has been directly cancelled, changing from "mandatory retirement" to "voluntary retirement". Our country should also speed up the reform of the retirement system and accelerate the pace of adaptation to the ageing of society.

2. The positive nature of equal employment rights protection for the elderly

2.1 The inevitable requirement to protect basic human rights

Age discrimination against older people in employment has received widespread attention because of the fact that of the five elements covered by the right to equal employment, the most crucial is "qualification", and age discrimination is precisely the deprivation of the "qualification" of the right to equal employment (Irene Zhang, 2021). The legal basis for the prohibition of age discrimination in employment stems from our right to equality, which does not mean that all people should be treated equally, but that workers should not be excluded from employment on the basis of their age without a valid reason.

Unlike earlier societies, which attached importance to the right to equality, contemporary societies attach greater importance to economic rights, because the right to work is the source of personal property, and the right to employment, as a basic labour right, involves a person's fundamental interests. Paying attention to the employment and re-employment of older persons not only improves the instability of the rights of older persons and changes the stereotype of older persons as being in a low position of social "charity", but also strengthens people's belief in the State's

protection of basic human rights by reinforcing the process of respecting older persons on an equal footing.

2.2 The urgent need for human resource development in the context of aging

According to data released by the National Bureau of Statistics, China's population will experience negative growth for the first time in 2022. It is likely that the valuable gains accumulated by China's demographic dividend will gradually dissipate in the midst of continued negative population growth, and China's demographic security and social structure will be subject to a huge impact. Therefore, it is urgent to change the labour-intensive production mode and upgrade the industrial structure, and the development of the labour resources of the elderly population, whose proportion is gradually increasing, is a good strategy (Yang Songlin, 2022). Developing the market of elderly labour resources can not only improve the decent life of the elderly population, realize self-help pensions and let them integrate into society with more dignity but also reduce the financial burden of the state and find a new growth point for the sustained and rapid economic and social development of China.

2.3 The Way to Practice Active Aging

"Positive ageing" is different from "active ageing" in the traditional sense of the term, which refers to the participation of older persons in social affairs on the premise of ensuring their physical health. China has upgraded actively coping with population ageing to a national strategy, and from the perspective of its call for tapping the potential of the elderly and realising active ageing, it can be argued that China's strategy for actively coping with population ageing already contains many elements of "active ageing". Positive ageing is not only about the physical health of older persons, but also about their social participation, and among the various forms of social participation, employment participation is of great significance. Population ageing is not a burden on the State; the purpose of active ageing is to treat the ageing population as a huge reservoir of labour potential, to help older persons to age on their own in the process of self-fulfilment, to reduce the burden of ageing on the State, and to strengthen intergenerational solidarity while eliminating the problem of labour shortages in the post-demographic dividend era.

3. Specific paths to achieve equal access to privileges for the elderly

3.1 Accelerating the legal regulation of age discrimination in employment

3.1.1 Specify age as a prohibited element of discrimination

China's labour laws once included age as a prohibited element of discrimination, but it did not appear in official documents in the end, because age discrimination is highly hidden, unlike sex, colour, race, and gender discrimination, which are easy to identify and less harmful in comparison, and because of this, the law usually shows a tacit and permissive attitude towards the issue of age discrimination. However, our country is now mired in the problem of an ageing population, and age discrimination has become a factor hindering our economic and social development. If the labour resources of the ageing population are not released, it will bring a heavier shadow to our population, economy, and society. Therefore, this paper argues that the first step in solving the above problem is to directly express age as a prohibited discriminatory element in labour laws, so as to plug legal loopholes and promote social consensus on age discrimination in employment.

3.1.2 Establishing criteria for determining age discrimination in employment

Age discrimination in employment can be divided into differential treatment discrimination and differential impact discrimination, the most influential of which is differential treatment discrimination, which is also known as direct discrimination, the core of which is that employers use age as a reason for differential treatment, and according to international experience this discrimination will become more and more insidious. For example, from the U.S. domestic experience, in the future employers will circumvent the ban by designing individualized aptitude tests to terminate the employment of senior employees and hinder the job search needs of senior applicants (Wang Jian, 2022). Therefore, it is necessary to establish differential treatment discrimination in employment age discrimination. First, the "difference" in differential treatment discrimination must cause "significant adverse employment harm" to the right holder, for example, the incumbent suffers from demotion, salary reduction, or dismissal due to age, and the job applicant loses competitive opportunities due to age. Moreover, the unreasonable treatment must be justified. The "justification" here means that the purpose of achieving the job requirements is legitimate and the method is appropriate. Secondly, when determining age discrimination, it is necessary to consider whether there is an objective and

direct connection between age and work, and not to simply cut across the board. In summary, this paper believes that the criteria for determining age discrimination in China can be constructed in the following manner: first, there is no rationalization for the employer's differential treatment; second, the differential treatment has effectively harmed the rights and interests of the employment subject, causing significant adverse damage; third, there is a relationship between the two causing and being caused.

3.2 Rationalization of the delayed retirement system for the elderly working population

3.2.1 The battle over the rights and obligations of delayed retirement

The law provides that citizens have the right to rest, and in terms of specific formulations, retirement should be a right of the worker; in the 1970s, when China's birth rate was too high and labour supply exceeded demand, the State introduced a compulsory retirement system in order to allow young people to enter the labour market earlier, at which point retirement became an obligation. In the current situation of an ageing population with fewer children and an insufficient supply of labour, it should be stressed that retirement is an obligation, and as long as older persons have the will and the ability to continue working, they should be provided with employment opportunities.

3.2.2 The appropriate age for delayed retirement

China has the successful practical experience of "crossing the river by feeling the stones", but this paper thinks that it is not appropriate to apply this experience to active ageing. China has put forward a plan of "small-step adjustment and flexible implementation" for delayed retirement, but the pace of ageing will not be slowed down as a result. There is an urgent need for us to formulate a retirement deferral programme in light of the long-term situation of ageing. A reasonably delayed retirement programme should be conducive to the fulfilment of the workers' own values as well as providing opportunities for sustainable development for society and enterprises. In Japan, there are laws that provide for a life-long labour system and require enterprises to raise the retirement age to at least 65. In view of the special factor of family planning in our country, which will face an even more serious dilemma of ageing, the delayed retirement age for senior employment in our country should be at least 65 years old.

3.3 Optimize and improve legal remedies

The solution to the problem of employment discrimination cannot be properly solved by merely amending the relevant legal system, but also needs to rely on remedies and establish a complete legal remedy system to solve the problem so that their rights can be restored to the state where they have not been damaged. In this regard, the following remedies can be taken: first, behavioral remedies, including positive or negative injunctions issued by the court, requiring employers to take or not to take certain measures; second, economic remedies, including the payment of unpaid wages, compensatory damages, punitive damages, etc., of which the payment of interest is a necessary means; third, the provision of moral damages to compensate for the mental suffering suffered by workers; fourth, in litigation procedures, by optimizing the existing litigation procedures, employment discrimination disputes occurring in the field of labor relations and non-labor relations will be professionally heard by the civil trial court and the administrative trial court of the court, respectively. In addition, after an act of discrimination has occurred, the rights violator may choose to mitigate its liability by finding alternative employment opportunities for the violated person, unless no similar and sufficiently alternative job can be found.

4. Conclusion

China has elevated the active response to population aging to a national strategy, and the protection of the rights and interests of the elderly is one of the important initiatives. The complexity and seriousness of the re-employment of the elderly as part of the protection of the rights and interests of the elderly require attention. It directly affects whether they can equally enjoy the right to work and maintain economic independence, personal equality, and social integration. In the current context of an aging population and rapidly changing lifestyles, combating age discrimination in employment and supporting the continued participation of older people in the labor force is important for improving the economic situation of older people, adapting to the lifestyle of the digital age, and maintaining physical and mental health. However, the practice of the existing legal system shows the contradictions and trade-offs between social development and individual rights, which requires continuous improvement of the corresponding protection systems and measures, as well as raising the awareness of society at large about the elderly population and promoting the transformation of the concept of employment policies for the elderly in order to achieve a freer and more dignified

life for them.

References

Chen Wei. Negative population growth and aging trends in China [J]. Journal of Social Sciences, 2022(05):133-144.

Dang Junwu. The revolution of aging society—Risks and prospects for humanity [M]. Beijing: People's Publishing House, 2015:50.

Eileen. Legal regulation of anti-employment age discrimination in the context of aging [J]. Journal of Social Sciences of Jilin University, 2021, 61(04):36-44+234-235. DOI:10.15939/j.jujsse.2021.04.fx3.

Lu, Xiao-Ming. Protection of the rights and interests of the employed elderly in the perspective of active aging [J]. Law Forum, 2021, 36(04):120-128.

Wang Jian. The Prohibition of Age Discrimination in Employment for Older Workers: American Experience and Local Constructs [J]. Social Security Research, 2022(06):78-85.

Yang, Songlin. The dilemma of protecting the employment rights of the elderly in the context of population aging and the path of realizing it—An analysis based on 1159 adjudication documents [J]. Nanhai Jurisprudence, 2022, 6(04):87-99.

Yu Jhuhong. Employment promotion of senior workers in the context of aging [J]. Journal of Wuhan University (Philosophy and Social Science Edition), 2017(5):30-41.

Zhang Zhonglin. [WHO] UN announces new age classification criteria? Surprise! [EB/OL]. (2020-06-11) [2023-03-05]. https://www.sohu.com/a/401154703_777611.