

Studies on China's Legal Protection of Disabled People's Equal Employment Rights

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Abstract: The disabled group is an important part of society. As citizens, they should enjoy equal rights with the able-bodied, included the right to equal employment. Due to their intellectual, physical and psychological deficiencies, the disabled is often discriminated against in employment and face many problems, such as refusal to be hired by employers due to their physical condition, their ability to work being questioned and their lack of freedom in choosing their occupation. This paper will study and discuss those with impairments' rights to equality in the workplace. The paper is divided into four sections, namely, the current situation of people with disabilities in employment in China, the measures and policies that China has taken to protect the disabled people in employment, the issues with China's legislative safeguarding of disabled people's equality in work, and recommendations for safeguarding the employment rights of disabled people in China by linking to the extra-territorial laws, like the anti-discrimination system used by western countries.

Keywords: the disabled, equal right of employment, legal protection

1. Introduction

According to the Disabled People's Protection Act of the People's Republic of China, article 2, a person is deemed disabled if they are diminished in their ability to perform specific tasks properly and are impacted by the loss or abnormalities of an organ or function on a psychological, physiological, or human structure level [1]. As of 2022, there were more than 85 million disabled persons in China, representing 6.34% of the country's overall population and 260 million families [2]. It can be seen that disabled people are an important part of society. As citizens, persons with disabilities should enjoy basic rights equal to those of able-bodied persons, and the right to equal employment is one of them.

However, due to their physical and intellectual deficiencies, disabled people are weaker on working and labor ability than the able-bodied, so they are easily discriminated against and often face many difficulties and problems in employment, such as poor job stability, fewer chances of choosing their own position, and being doubted about their work ability, etc. In some recruitment website in China, some employers have listed in the recruitment conditions of not recruiting disabled workers conditions. This is a typical form of discriminatory behavior to the disabled group. To uphold the lawful rights and interests of disability-related groups in the workplace and other areas, China has issued the Disabled People's Protection Act of the People's Republic of China [1],

and a series of administrative regulations, such as the Regulations Governing the Hiring of People with Disabilities [3]. Article 38 of the Disabled People's Protection Act of the People's Republic of China clearly stipulates that in terms of employment, regularization of status, promotion, choice of technical and professional titles, pay for work, welfare, time off, and social insurances, etc., there may not be any discrimination against individuals with disabilities [1]. Additionally, China has implemented measures for the system of pro-rata employment for people with disabilities that are recognized internationally. Companies that fail to achieve the proportional placement of employees with disabilities are penalized with a guarantee of employment for the disabled [1]. Although China has made a series of measures to protect the right to employment equality for the disabled, in practice there are still problems such as incomplete laws, lack of specific relief procedures, and insufficient law enforcement. This paper is going to solve this problem by analyzing the current situation and problems faced by the disabled community in China, and by drawing on the anti-discrimination systems used in Western countries, such as the United States and Canada.

2. China's Policies for the Employment of the Disabled So Far

2.1. Clearly Stipulating That China Guarantees the Labor Rights of Disabled People

In order to safeguard disabled people from interference with their legitimate basic rights and interests, China's State Council promulgated the Disabled People's Protection Act of the People's Republic of China (hereinafter referred to as the Disabled People's Protection Act) on December 28, 1990 [1]. On May 1, 2007, the State Council also promulgated administrative regulations, the Regulations Governing the Hiring of People with Disabilities [3]. Articles 3 and 30 of the Disabled People's Protection Act, among other provisions, explicitly state that in all aspects of political, economic, cultural, social, and family life, people with disabilities are entitled to the same rights as other citizens who are able-bodied people [1]. The State Council guarantees the right of the disabled to work [1]. Chapter IV of the Disabled People's Protection Act stipulates that employers should protect and encourage the employment of disabled workers, rather than discriminate against them, and should not terminate the employment relationship due to disability when the physical condition of the worker with disabilities does not affect his or her work [1]. Without affecting the work, the disability also belongs to personal privacy, and the worker does not need to inform in advance. On October 10, 2019, Mr. Niu, who has a disability of missing his left thumb, went to work for a logistics company as a forklift worker. He submitted his forklift license within the validity period and passed the entry medical examination when he joined the company. On July 4, 2020, the logistics company terminated Niu's employment contract on the grounds that Mr. Niu concealed his disability card and did not accept the work arranged by the company. On July 10, 2020, Mr. Niu filed a lawsuit against the company and demanded that it pay compensation of 30,000 RMB for the termination of the employment contract. People's Court for the New Area of Shanghai held that Mr. Niu had provided a forklift license within the validity period and had passed the physical examination when he joined the company, and from the work situation, Mr. Niu's physical condition did not affect his work as a forklift worker. Therefore, a logistics company to hide the disabled person's certificate for the reason of termination of the contract cannot be established. On October 13, 2020, Labor and Human Resources Dispute Arbitration Commission ruled that a logistics company to pay Mr. Niu illegal termination of the labor contract compensation of 5860 yuan [4].

2.2. Establishing the System of Pro-Rata Employment for People with Disabilities

Although the State Council does not directly intervene in the recruitment of employees by employers, it does require, through the form of policies and regulations, that employers need to

ensure a certain proportion of disabled employees as a means of realizing employment diversion for disabled people. According to Article 33 of the Disabled People's Protection Act, the State Council must modify the system of pro-rata employment for people with disabilities [1]. Additionally, the state encourages firms to provide work for more than the share of people with impairments.[1]. This is a widely accepted policy for the employment of people with disabilities. Provinces have improved their local administrative rules and policies in compliance with the Disabled People's Protection Act at the same time. To encourage and advance the employment of the disabled, Lianyungang City in Jiangsu Province has developed Regulations on the Proportional Arrangement of Employment for Persons with Disabilities in Jiangsu Province and implemented a project to support disabled employment. According to statistics, in 2008, Lianyungang City placed a total number of 2,270 people with disabilities in employment. Among these, 150 were placed proportionally, 1,320 centrally, 340 transferred, 360 flexibly, and 100 were self-employed and supported in starting their own businesses [5].

2.3. Collecting the Disability Employment Guarantee Fund

In order to actively implement the provisions on proportional placement of people with disabilities' jobs, on September 9, 2015, China's Ministry of Finance promulgated the Measures for the Administration of Security Deposits for the Employment of People with Disabilities (hereinafter referred to as "the Measures") [6]. The Measures mandate that organizations, groups, enterprises, and institutions as well as urban and rural collective economic organizations pay security deposits for individuals with disabilities if they fail to make arrangements for the employment of individuals with disabilities in proportion to a predetermined number of individuals with disabilities [6]. Organs, groups, enterprises, institutions, and urban and rural collective economic organizations that are covered by the collecting of the security deposit but do not have employment rules that follow the ratios specified by the governments of the provinces, autonomous regions, and municipalities that are under the Central Government [6]. According to the yearly number of disabled workers in the deficit and the average annual income of workers in the region in the previous year, they are obligated to pay special funds for the employment of individuals with disabilities [6]. The money will be used to pay for vocational training for people with disabilities, to reward organizations that have increased the percentage of disabled people employed and those that have made noteworthy contributions to facilitating the employment of disabled people, as well as to support collective and for-profit employment of people with disabilities, among other things [6].

3. Problems in Safeguarding China's Employment of Disabled People

3.1. Insufficient Legislative Guarantees

The number of laws protecting the equality in disabled people's employment is few and specific provisions are inadequate. At present, there is only one law, the Disabled People's Protection Act of the People's Republic of China [1], and one administrative regulation, the Regulations Governing the Hiring of People with Disabilities [3]. The particular rules of the legislation that are currently in place prohibiting discriminating against people with disabilities in the workplace are inadequate and lack operationalization [2]. Many of the legal provisions are of an advocacy and promotional nature and lack specific implementing regulations. Many important concepts relating to the employment of people with disabilities did not be mentioned in the relevant laws, such as the definition and scope of the disabled workers [7]. Employment discrimination is an important factor affecting the disabled people's employment. However, it is not explicitly mentioned in the laws, and it is only mentioned in the Disabled People's Protection Act [1] and the Regulations Governing the Hiring of People with Disabilities [3], which lacks the connotation of discrimination in the disabled people's

employment and the provisions on what constitutes discrimination in employment of people with disabilities, which makes it difficult to determine whether or not people with disabilities have been discriminated against in the employment process, and there is a great deal of controversy over this [7].

The legal responsibility of the disabled in the event of employment discrimination is also not clearly defined in the relevant laws. Article 64 of the Disabled People's Protection Act states that when someone discriminates a disabled person in the workplace or any other environment, the proper responsible authority must demand correction, and the disabled worker may bring a case to the court [1]. The determination of legal responsibility for discriminatory behaviors that infringe on the employment rights of persons with disabilities is too general. For example, how the infringement of employment rights and discrimination against persons with disabilities of varying levels of severity should be pursued, and whether the infringer should be held administratively, civilly or criminally liable, and so on. These issues are not clearly defined in the law. This makes it difficult for the judiciary to make judgments and decisions on the issue of responsibility and culpability for violating the employment rights of people with disabilities, which also makes it challenging for law enforcement organizations to make choices during the course of law enforcement [8].

3.2. Inadequate Legal Remedies for Infringement of Rights

Insufficient legal aid options for people with disabilities. Using legal assistance for the disabled as an illustration, although Article 60 of the Disabled People's Protection Act stipulates that A disabled person may receive legal aid or judicial assistance from a local legal aid group or the people's court, when he truly needs it due to financial difficulty or for any other cause [1]. However, in reality, there is a lack of specific regulations, such as how the judicial authorities can provide legal aid to persons with disabilities, and how to provide specific and targeted assistance to people with disabilities of different types and with different levels of judicially assessed disability. The lack of specific legal provisions makes the legal aid system a mere formality and makes it difficult to implement and enforce.

Because it is spelled forth in the Law on the Protection of the Disabled the issue of legal responsibility is relatively vague, and that the judicial authorities have not formed a unified standard when making judgments, the judiciary lacks specificity in judging cases of employment discrimination against the disabled people, and the legal interpretations of the cases of discrimination in employment are also very vague. For the definition of discrimination in employment, The Convention on Discrimination in Respect of Employment and Occupation (Convention No. 111), which was adopted by the International Labor Conference in 1958, states in Article 1 that "discrimination" is defined as the following for the purposes of this Convention: (1) any preference or exclusion based on socioeconomic background, national origin, political viewpoint, or any of the following: race, color, sex, or religion; (2) Any other distinction, exclusion, or preference that the affected members may decide, after consulting with the appropriate employers' and workers' organizations, where applicable, and other relevant bodies, will have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (3) Any additional distinctions, exclusions, or advantages that undermine or decrease equality of opportunity or treatment in the workplace; Distinctions, exclusions, or favors that have the effect of nullifying or reducing equality of opportunity or treatment in employment or occupation. Article 2: Any differentiation, exclusion, or preference based on the requirements of a particular employment is not permitted to be a definition of discrimination [9]." On January 12, 2006, China ratified Convention No. 111, but in Chinese cases, the judiciary has not formed a uniform standard for judgments, recriminations, and legal interpretations when there is workplace discrimination. In the

case of Mr. Niu mentioned above, the judicial authorities did not make a judgment or interpretation of the company's discrimination against the disabled in employment, but rather relegated the status of the disabled to the personal privacy of the citizens, and made a judgment that Mr. Niu's status of the disabled belonged to the personal privacy of the disabled, and that the logistic company's dismissal of the labor relationship because Mr. Niu hid his status as a disabled person was not justified. In addition, for the logistics company because of the cow's disabled status of employment discrimination, the judiciary only cited the principle of the relevant laws and regulations, did not make too much explanation [4]. This reflects the judicial authorities for the relevant cases have not formed a unified trial standard.

3.3. Insufficient Law Enforcement

Even if the state has established a number of laws and laws to safeguard the interests and fundamental rights of the disabled, many of them are overly idealistic. There is a lack of attention to the protection of the disabled in practice, which leads to the fact that many of the laws have not been well enforced. For example, the law stipulates that the blind can participate in civil service exams but there is no special paper for the blind group.

Although the system of pro-rata employment for people with disabilities has slowed down the employment discrimination problem of the disabled in China, there are still many employers who do not implement this provision, not only refusing to recruit disabled workers because they think that disabled workers will damage the image of the company, but also repeatedly failing to obey the requirement of the system of pro-rata employment for people with disabilities. Some employers have even requested in the recruitment conditions that they do not recruit disabled workers when they are recruiting employees.

The national tax authorities are not sufficiently strong in collecting and supervising the Disability Employment Guarantee Fund. Some employers defaulted on the payment of the Disability Employment Guarantee Fund and did not recruit enough disabled employees. At the beginning of 2005, The Food Industry Co., Ltd. of Cao County, Heze City, Shandong Province should pay the annual employment security fund of 39,600 yuan to the disabled People's Federation of Cao County according to law. However, within the prescribed period, the company neither fulfilled the obligation to pay the security funds, nor applied to the court to annex or file a lawsuit. After the decision came into effect, the Cao County Disabled People's Joint Association applied to the court for compulsory enforcement. In the end, the enterprise paid a total of 75,240 yuan in security fees and late fees [10].

4. Suggestions for Legal Protection of Equal Employment of the Disabled

4.1. Drawing on the Anti-Discrimination System Outside the Region and Improving the Relevant Laws and Regulations

China should give higher legal importance to the equal employment rights of disabled people. The State should more actively improve and perfect legal systems related to the employment of disabled people, and make some principle-oriented legal provisions more specific and practical. The State can use the Disabled People's Protection Act as the basis for the introduction and improvement of a series of supporting legal systems for the legal protection of disabled people, so as to make the legal protection system for disabled people more comprehensive, specific and complete. In terms of legal systems and institutions, China can learn from the relevant laws enacted and introduced in the western countries. Take the United States as an example, the U.S. has implemented a system of anti-discrimination against disabilities as the core, starting from the legal system and then continuously improving and completing the relevant laws and regulations that affect the equality of

employment of people with disabilities or do not take into account the provisions of the relevant laws and regulations. This policy has made the provisions on disabled people in the Americans with Disabilities Act very specific and comprehensive, and highly operational [10]. The Americans with Disabilities Act, for instance, mandates that new building in public spaces and commercial enterprises be accessible to people with disabilities, as do most improvements to buildings, stores, hotels, restaurants, and medical boilers [11]. In addition, the Americans with Disabilities Act lists a number of specific measures that are inexpensive and easy to implement: installing wheelchair ramps, installing grab bars in bathrooms, lowering the height of paper towel holders, rearranging the location of furniture, widening entrances, installing more accessible parking spaces, and so on [11]. The Americans with Disabilities Act contains clear and comprehensive provisions on employment discrimination against people with disabilities [11]. Furthermore, the relevant provisions of the legislation are highly precise, not only to establish relevant provisions, identify specific prohibited activities, and take into consideration the reality of many scenarios involving people with disabilities, but also listed some very specific remedies to prescribe [11]. For instance, the Americans with Disabilities Act stipulates that buses on new fixed-route services must be accessible to persons with disabilities, for example, by means of seat lifting and lowering devices [11]. People with disabilities who are unable to use fixed-route bus services must be provided with auxiliary services such as fully equipped vans [11]. It is clear that the anti-discrimination system in employment has improved the relevant rules and regulations, and these improvements are highly thorough, complete, and precise. China can learn from this approach, which plays an instructive and leading role in China's equal employment rights for the disabled.

4.2. Improving Legal Remedies for the Disabled

Judicial organs should add or improve procedures according to the relevant regulations and systems, so that the aggrieved group of the disabled can seek legal help and safeguard their legitimate rights and interests. Judicial organs can build a barrier-free judicial environment [12]. Exclusive channels for registering and legal consultations could be set up for people with disabilities in order to help the disabled whose rights and interests have been infringed upon to seek help and express their claims more quickly and effectively. Since different groups of disabled people have different needs, the judicial organs can set up different channels for legal aid and registering for different kinds of people with disabilities. For example, recruiting specialized sign language interpreters in the deaf-mute channel to give sign language legal literacy to the deaf-mute group and to understand their demands. In the blind passageway, microphones and stereos should be placed to make it easier for the blind to receive legal advice and assistance more clearly through hearing. Volunteers or staff can be assigned to stand guard at the entrance to the passageway to help and guide different groups of people with disabilities find the window for their own situation more easily and efficiently. In addition, a legal pamphlet can be placed at the window of the access for the disabled, in which common cases of discrimination are listed and people with disabilities who have been discriminated against are taught how to find legal assistance and protect themselves with the law. In the blind passageway, brochures written in Braille are specially designed so that the blind can better understand the relevant contents.

4.3. Supplement and Publish Official Typical Cases

The Judiciary and the Government should publish more typical cases on official websites for reference and adjudication. Currently, the only official cases published are the Ten typical cases of the Supreme People's Court and the People's China Disabled Persons' Federation [4]. Beyond that, the author was unable to find sufficient and authoritative guidance cases and data on major legal

case websites and databases. This makes it difficult for regional courts to make uniform judgments on the same kind of cases, and also prevents the public from having a practical understanding of this social phenomenon. The government and the judiciary should continue to add and publish typical cases, so that the employment discrimination of the disabled group can receive more social attention. This will not only alleviate employment discrimination against people with disabilities by employers but will also enable persons with disabilities who have been discriminated to understand their situation and use legal weapons to protect their right to equal employment.

4.4. Strengthening Law Enforcement

Law enforcement agencies should increase the efforts in enforcing the law and supervising the Disability Employment Guarantee Fund. They should be more meticulous in enforcing the law, down to the last detail. Social or governmental authorities can set up a local association for the protection of employment discrimination against disabled people. The association can set up a 24-hour hotline so that disabled people who have been discriminated can seek and get help in a timely manner. The association can also hold regular lectures through the media or offline to publicize the difficulties faced by the disabled in employment and to popularize relevant legal knowledge, so as to draw society's attention to the equality in employment of people with disabilities. This will help the able-bodied to understand the real and current situation of employment of the disabled group, avoid possible invisible discrimination against the disabled group in time, give more care to disabled people, and assist those with disabilities in learning how to defend their deserved rights and interests by using the law.

5. Conclusion

This paper mainly researches the current employment situation of the disabled group and the safeguarding of disabled workers' equal rights in China. Also, this paper puts forward relevant suggestions with reference to the extraterritorial cases. After the relevant laws are further introduced and improved, it is hoped that formal equality can be put into practice. The disabled community is also hoped to receive more attention from society, which will hopefully ensure that the legitimate rights and interests of all disadvantaged groups with impairments are protected.

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