Guide to Discrimination Law in the PRC

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General Introduction

There is no specific anti-discrimination law in the People’s Republic of China (PRC). However, certain general anti-discrimination provisions are included in various laws and regulations. This Guide gives a general overview of the anti-discrimination environment and it relates to employment matters in the PRC. It is not intended to be formal legal advice.

CONSTITUTION OF THE PRC

The Constitution of the PRC (the “PRC Constitution”), adopted on 4 December 1982 by the Fifth National People’s Congress of the PRC, contains certain provisions relating to equal employment opportunity.

Article 33 of the PRC Constitution stipulates that all citizens are equal before the law.

Article 48 of the PRC Constitution provides that women enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life. More specifically, it provides that the State must protect the rights and interests of women, apply the principle of equal pay for equal work and train and select cadres from among women as well.

EMPLOYMENT LAWS AND REGULATIONS OF THE PRC

Article 13 of the PRC Labour Law prescribes that employees or applicants for employment must not be discriminated against on the basis of nationality, race, gender, or religious belief.

Article 14 of the PRC Labour Law prescribes that females shall enjoy equal rights with males with respect to employment. It is against the law to refuse to hire a female employee because of her gender, or raise pre-conditions for her employment except for those jobs or positions that are unsuitable to females as prescribed by the State.
Chapter 3 of the PRC Employment Promotion Law prescribes that the employer shall offer equal employment opportunities, terms and conditions to each employee. This law expressly restricts any employment discrimination against women, ethnic minorities, disabled people, carriers of epidemic pathogens or rural workers.

Article 20 of the Employment Services and Management Regulations prescribes that no discrimination related items shall be included in the employer’s recruitment advertisement.

**Discrimination Against Women**

Aside from Article 48 of the PRC Constitution which stipulates gender equality in all spheres of life and the PRC Labour Law which outlaws discrimination at work, the Law on the Protection of the Rights and Interests of Women (2005) (the “Women Protection Law”) also specifically addresses the issue of women in the work place.

**THE WOMEN PROTECTION LAW**

Article 2 of the Women Protection Law stipulates that women enjoy the same rights as men in political, economic, cultural, social and family lives. Discrimination against women is prohibited.

Women’s equal right to work with men is set out in Article 22 of the Women Protection Law. In addition, Article 23 provides that gender should not constitute a basis for refusing to hire a woman, except for certain positions “unfit for women”. The employer is not allowed to enter into any agreement with the female employee restricting her from getting married or giving birth.

The principle of “equal pay for equal work” is stated in Article 24, which also includes a right to equal benefits and remuneration.
There must be no discrimination against women when it comes to promotion or skills assessment. Women’s safety and health should be protected; notably, women should be given special protection during menstruation, pregnancy, delivery and nursing. It is also prohibited to terminate women on the grounds of marriage, pregnancy, maternity leave or nursing.

The chapter on legal responsibility notably defines a woman’s right to request the government departments concerned to help them redress any infringement or to take legal proceedings in the People’s Court when their rights and interests are infringed upon.

The Women Protection Law outlaws sexual harassment in the PRC for the first time. Women now have the right to complain about harassment to their employers and to the “relevant department” of the government, and to bring civil suits against their harassers, even though the law is silent on how any damages should be calculated.

Disability Discrimination

INTRODUCTION

The Law of the People’s Republic of China on the Protection of Disabled Persons (the “Disabled Persons Protection Law”), which came into effect on 15 May 1991 and was amended on 24 April 2008, was formulated in accordance with the PRC Constitution to protect the lawful rights and interests of people with disabilities.

DEFINITION

A disabled person is defined as “one who suffers from abnormalities, the loss of a certain organ or function (psychologically, physiologically, or in anatomical structure), or the loss wholly or in part of the ability to engage in activities in a normal way”. A disabled person includes
those with “visual, hearing, speech, or physical disabilities; mental retardation; mental disorders; multiple disabilities; and/or other disabilities”. Criteria for classification of disabilities are established by the State Council.

COVERED ENTITIES

The State guarantees the rights of persons with disabilities to work. All levels of government are required to formulate plans for the employment of disabled persons. Preferential policies are to be adopted by such departments together with measures of support and protection, to help gradually popularise and rationalise employment of people with disabilities through multiple channels.

There is a quota system for the employment of people with disabilities. This applies to state organisations, public organisations, enterprises (including state-owned, private-owned and foreign investment), institutions, and urban and rural collective economic organisations. Such entities are required to employ “a certain proportion of disabled persons in appropriate types of jobs and posts”. The specific ratio may be determined at the provincial level. Enterprises or institutions where people with disabilities work are to ensure that they have appropriate working conditions and labour protection.

ACTIONS CONSIDERED DISCRIMINATORY

The Disabled Persons Protection Law stipulates in general that disabled persons enjoy equal rights with other citizens; that their rights and personal dignity are protected by law; and that discriminating against, insulting, or infringing upon the rights of people with disabilities is prohibited.

The State guarantees a disabled person a right to work. The Disabled Persons Protection Law declares that no discrimination shall be
practiced against disabled persons in recruitment, employment, status regularisation, promotion, determining technical or professional titles, remuneration, welfare, social insurance or in other respects.

Each employer shall provide for proper work conditions and labour protection in accordance with the disabled employees’ circumstances, and improve the work place, work equipment, and domestic installation according to actual needs.

The law restricts any entity or individual from forcing a disabled person to work by means of violence, menace or illegal detention.

ENFORCEMENT

The Disabled Persons Protection Law provides that if their lawful rights and interests are violated, disabled persons or their agents have the right to appeal to the competent authorities for disposition or to institute a lawsuit in a people’s court. If such rights and interests are infringed by government functionaries unlawfully neglecting their duties, the organisation to which the functionaries belong or their higher authorities will instruct the offenders to correct their wrongdoing or will subject them to administrative sanctions. Where property or other loss or damage is caused, compensation must be made or other civil liability must be borne.

Anyone who infringes the rights of a person or other lawful rights of people with disabilities by taking advantage of their disability, if it constitutes a crime, will be given a heavier punishment in conformity with the relevant provision(s) of the Criminal Law of PRC. Whoever publicly insults a disabled person, by violence or other means, will be investigated for criminal responsibility if the circumstances are serious or subject to administrative punishment if they are less serious.
No enterprise or institution is to deny employment to disabled graduates assigned by the State from institutions of higher learning, polytechnic schools, or technical schools solely on the ground of their disabilities. If denial of employment occurs, the disabled person may appeal to the departments concerned for disposition of the matter, and the relevant departments will instruct the enterprise or institution to accept said person.

Discrimination Against Carriers of Epidemic Pathogens

The PRC Employment Promotion Law and the Employment Services and Management Regulations provide that an employer cannot refuse to employ any applicant by reason of his/her being a carrier of any epidemic pathogens. However, before such carrier is medically verified as having recovered or the danger of infection having been excluded, he/she cannot be engaged in any of the following work:

- Work in which the employee may touch food that can be eaten immediately.
- Work in which the employee provides services to customers in public (e.g. in hotels, restaurants, cinemas, museums, stores, public traffics, etc.).
- Work related to food and drink, plastic surgery, or child care.
- Work related to cosmetic manufacturing.

CARRIERS OF HEPATITIS B PATHOGENS

An employer is restricted from forcing the job applicant to undergo any medical examination regarding Hepatitis B and having the Hepatitis B serology index as a standard medical examination for recruitment, unless the applied job falls within one of the categories described above.
The penalty for breach is a maximum fine of RMB1,000, plus compensation if the employee suffers any damage resulting from such breach.
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