

The Relationship Between Employment Non-Discrimination Laws and Women's Salary: A Comparative Study of China and the United States

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Abstract. As a disadvantaged group in the job market, women's average salary and employment opportunities in the workplace are less than those of men. There are constant calls for equality in the workplace. Employment Non-Discrimination Laws emerged to help women obtain better employment opportunities and salary levels. This article discusses the relationship between Employment Non-Discrimination Laws and the average salary of women in China and the United States; uses women's average salary as the main data and research object and explores its relationship with legislation. Employment Non-Discrimination laws are not the only factor that affects women's average wages, so a comparative approach is used in this article. This article selects China and the United States as the objects of comparative study because they are currently the two largest economies in the world. At the end of the article, this article puts forward prospects and improvements on how to legislate women's salary levels and provide more protection in society in the future.

Keywords: Employment; Gender; Discrimination; Salary.

1. Introduction

Recently, the law enforcement of Employment Non-Discrimination cases has been rising. In June 2023, Yan applied to a company as a Financial Officer and got the offer. The company then acquired Yan for an HCG (Human chorionic gonadotropin, used to determine pregnancy) level test. Yan gave the test result, which indicated that she was pregnant, and then refused the position because of the reason for "position changing". Yan later sued the company in court for alleged employment discrimination. On April 2, 2024, The court sentenced that the company had engaged in employment discrimination and required the company to compensate Yan. The two parties settled, and the company paid more than 30,000 yuan in compensation to Yan [1]. Yan's case is a sign that the term Employment Non-Discrimination is now applying to law enforcement in China. Although Yan gets her compensation, she still loses that position and it takes time for her to go through the legislative process. During the process, she could not handle the process, her pregnancy, and finding a new job at the same time. She had to give up on finding a new position. The average salary of a Financial Officer as an entry is about 500000 yuan annually in Shanghai. But Yan was just paid 30000 yuan as compensation, not reaching the salary of one month of an average financial officer in Shanghai. In total, the income of Yan still decreased by a large number, which comes from 10 months of legislative process during her pregnancy. This raises the question, do the Employment Non-Discrimination Laws raise the income of women, does it provide enough protection on the term of Employment for women and other vulnerable groups for employment? The average salary as an indicator, could show how much the income of women has risen. The relationship between Employment Non-Discrimination Laws and women's average salary can answer that question.

2. Definition and Legislation

2.1. Definition From Current Legislation

According to the Chinese Constitution and the Labor Laws, Employment Discrimination is defined as differential treatment or exclusion based on race, color, religion, political opinion, nationality, social origin, learning style, gender, household registration, disability or physical health status, age, height, language, etc. without legally legitimate purpose or reason, or provide preferential measures.

According to the U.S. Equal Employment Opportunity Commission (EEOC), Employment discrimination includes unfair treatment and harassment because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older), or genetic information; Denial of a reasonable workplace change that you need because of your religious beliefs or disability; Improper questions about or disclosure of your genetic information or medical information; Retaliation because you complained about job discrimination or assisted with a job discrimination proceeding, such as an investigation or lawsuit.

From the perspective of international law, employment discrimination, and the labor legislation of the International Labor Organization precede the establishment of international human rights standards. In 1958, the International Labor Organization adopted the Employment and Occupational Discrimination Convention (No. 111) defined "discrimination" as any distinction, exclusion, or preference made on the basis of race, color, sex, religion, political opinion, national extraction, or social origin. Any distinction, exclusion, or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination. For the purpose of this Recommendation, the employment and occupation of the terms include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

2.2. Employment Non-Discrimination Laws In China

Employment Non-Discrimination Laws have been legislative planned for a long time in Chinese law, on the 12th National People's Congress, the draft of Employment Non-Discrimination Laws was proposed. The specific laws are still in the process of legislation, however, as a legal term, Employment Non-Discrimination has been taking effect.

Article 42 of the Chinese Constitution stipulates Citizens of the People's Republic of China have the right and duty to work. It also stipulates in Articles 12 to 14 of Chapter 2 of the Labor Law that workers shall not be discriminated against in employment because of their nationality, race, gender, or religious beliefs. Article 13 regulates Women enjoy equal employment rights as men. When recruiting employees, except for types of work or positions that are not suitable for women as stipulated by the state, women may not be refused to be hired or the recruitment standards for women shall be raised on the basis of gender. Article 14 points out that where there are special provisions in laws and regulations regarding the employment of disabled persons, ethnic minority personnel, and retired servicemen, such provisions shall prevail.

2.3. Employment Non-Discrimination Laws In The United States

In the United States, there is also not a law set specifically called Employment Non-Discrimination laws. The purpose of federal prohibitions on discrimination has always been to protect federal employees. At the constitutional level, the Fifth and Fourteenth Amendments to the U.S. Constitution limit the power of federal and state governments to discriminate. The Fifth Amendment explicitly requires that the federal government shall not deprive an individual of "life, liberty, or property" without due process of law. It also contains an implicit guarantee that the Fourteenth Amendment expressly prohibits states from violating individuals' rights to due process and equal protection. In the context of employment, these constitutional provisions would limit the right of state and federal governments to discriminate in employment practices that treat employees, former employees, or applicants for employment unequally based on group membership (such as race or sex). Due process

protections require that government employees be given a fair procedural process before being fired if the firing relates to a "liberty" (such as the right to free speech) or a property interest. Employment discrimination or harassment in the private sector is not unconstitutional because the federal and most state constitutions do not expressly give their respective governments the authority to enact civil rights laws that apply to the private sector. The federal government's power to regulate private business, including civil rights laws, stems from its power to regulate all commerce among the states. Some state constitutions do explicitly provide some protection from discrimination in public and private employment, such as Article I of the California Constitution.

California Constitution Chapter 1, Section 8 indicates a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin. And Section 31 shows that the State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

2.4. Comparative Analysis

The biggest legislative difference between China and the United States is just like other legal differences between the two countries. In China, although local legal provisions exist, laws are dictated by the central government. As a federal country, the United States has different legislation at the federal level and at the state level. As far as anti-employment discrimination laws are concerned, basically, all state laws are involved to a greater or lesser extent, with California being the most involved. However, at the federal level, federal laws against employment discrimination only cover federal government employees.

However, although legal provisions against employment discrimination have existed in Chinese labor law for a long time, there are relatively few relevant cases. For a long time, China's labor laws as a whole have been in a state of "selective enforcement", and the same is naturally true for laws and regulations related to employment discrimination. In recent years, as law enforcement has become increasingly strict and labor arbitration awareness has become more widespread among the public, employment discrimination-related cases have begun to increase.

In contrast, in the United States, there are many more related cases, including people suing the federal government, people suing private companies, and companies suing individuals for alleged employment discrimination [2,3].

3. The Pattern of Change in Women's Average Narrow Salary

3.1. The Reason to Choose Salary As the Indicator

The main reason people work is to earn income, in addition to other reasons such as self-actualization and learning skills. Income from work is often paid in the form of wages. Therefore, the amount of wages can be used to judge whether workers have received reasonable remuneration, or whether they are protected by employment discrimination laws. The reason why the average is used instead of the median commonly used in general economic statistics is because the reason why the median is used in economic statistics is to eliminate the influence of a small number of extremely high-income earners on the average. When defining whether employment discrimination laws adequately protect women, whether women have enough extremely high earners like other genders also needs to be taken into consideration. Because employment discrimination not only exists in the job search process but also widely exists in the workplace and promotion process [4]. On the other hand, by comparing the difference between median and mean wages, one can also get a sense of the extent to which there are differences between women and other genders in high and very high-paying jobs. The reason why income is not selected as the indicator but salary is because income also includes asset income, which is not the category of employment discrimination.

3.2. Comparison of the Change Of Women's Salary

In the United States, research by the Pew Research Center indicates that "The gender gap in pay has remained relatively stable in the United States over the past 20 years or so [5]." Back in 1982, Women's wages were only 65% of men's wages, and men's wages were one-half higher than women's. By 2002, the gap had narrowed to women earning 80% of men's wages [6]. In other words, men earned a quarter more than women. The wage gap between men and women has shrunk by just half. From 2002 to 2022, women's salary share increased from 80% to 82% of men's, with almost no change.

However, when we only consider young people aged 25 to 34, who are in the "best employment age", the wage gap between men and women has increased from 26% in 1982 to 14% in 2002 and then to 8% in 2022. gradually shrinking.

In China, the gender wage gap has never been high. In the era of planned economy, distribution according to work meant that rural women's income was lower than that of men. However, there is no difference in wages between men and women among urban workers, teachers, civil servants, etc.

Of course, the economy in the planned economy era is completely mandatory and cannot be used as an example of China's more equal employment. It reflects more of China's ideology and state coercion than the rule of law and the natural laws of the economy. Therefore, although China did achieve basic gender equality in cities during the planned economy era, it cannot be used as a reference for legislation [7].

Entering the era of a market economy, although China is still not a complete market economy, law, rule of law, and market construction are all in progress. Since the COVID-19 era, the wage gap between men and women in China has been getting lower year by year. In 2024, the wage gap between men and women in China will be only 13%, while in 2019 before the COVID-19 epidemic, the wage gap between men and women in China was 23%. In just five years, the average wage gap between men and women in China has dropped by ten percentage points.

3.3. Other Economic Factors

The overall income gap in the United States has not narrowed, but the income gap between men and women in China has narrowed. The reason for this phenomenon may be related to the fertility rates in China and the United States. After giving birth, women may no longer participate in the workplace and become housewives. China's total fertility rate in 2024 is 1.16, while the total fertility rate in the United States is 1.66. This means that during the best working age, which is also the childbearing age of women, American women are more likely to quit their jobs and become housewives. Those who make this choice are often those with lower incomes, which can also explain why the average salary gap between American women and men in the best working age statistics is smaller, and women who become housewives are not included in the statistics [8].

Another factor that affects statistics is immigration. The United States absorbs millions of immigrants every year, while the number of immigrants accepted by China is basically zero. Immigrants tend to be younger and enter the workplace with lower incomes than natives, so immigrants will also affect the statistical results in all-age statistics, making the wage gap between men and women larger.

4. Analysis, Comparison, and Suggestion

So, do anti-employment discrimination laws in both countries really protect women? In other words, do they increase women's average wages and reduce the wage gap with men? Whether it is the California Constitution or U.S. federal laws, they were all enacted at least a hundred years ago, and the Constitution and Labor Law of the People's Republic of China are also decades old. Due to the lack of research on gender differentiation in the early years, it is difficult to explore how these laws promoted employment protection for women when they were enacted. In recent decades or recent years, what has made great progress in China or the United States is at the law enforcement level. In

the United States, this is manifested in the establishment of the EEOC (Equal Employment Opportunity Commission), while in China it is manifested in the implementation of labor laws at the legislative level, especially the increase in the number and types of cases in labor arbitration institutions [9].

4.1. The U.S. Law Enforcement

The EEOC was established in 1965 but has faced staff and budget shortages since its inception. In 1975, when the backlog of cases to be investigated reached more than 100,000, President Gerald Ford's full budget of \$62 million was approved. In 1978, Philadelphia established a "Backlog Task Force" to resolve thousands of federal equal employment complaints inherited from the Civil Service Commission. In 1980, Eleanor Holmes Norton made good on her promise to eliminate the backlog by beginning to recharacterize it as "workload" in her reports to Congress. It can be seen that after the EEOC really took effect, the wage gap between men and women was greatly reduced from 1982 to 2002.

4.2. Progress in Chinese Law Enforcement

In recent years, the number of labor arbitration cases has greatly increased in China. Between 2014 and 2017, the number of labor arbitration cases increased by 50%. These registered workers are increasingly aware of the legal system and rights protection and are willing and likely to solve problems through legal means.

Just like Yan's case at the beginning of this article, as women are a vulnerable group in employment, the increased intensity of labor law enforcement and the increase in reporting channels have undoubtedly increased their protection.

4.3. Suggestion

Over the past two decades, the wage gap between men and women in the United States has not continued to decrease, which seems to indicate that legislation to eliminate this wage gap has reached its limit [10]. And China is just repeating this process. Then, what really prevents men and women from achieving equal pay for equal work may be the gap in social structure or productivity.

At present, women still bear the responsibility of childbearing in human society, which is also a major reason why the average salary of women is not as good as that of men. In the future, when new technologies such as artificial wombs become technically and socially ethically feasible, it may be possible to truly achieve equal pay for men and women for equal work.

5. Conclusion

Yan's case highlights the evolution of China's employment non-discrimination laws and reveals the complexities and challenges women face in the workforce. Despite legal victories, such as Yan's successful lawsuit against discriminatory practices, broader questions remain: Do these laws effectively protect the employment rights and incomes of women and other vulnerable groups? Studying the changing patterns of women's average wages can provide valuable insights into the effectiveness of these laws. However, in addition to legislative measures, addressing the root causes of gender inequality in the workforce is likely to require a multifaceted approach.

Going forward, the pursuit of equal pay requires a re-evaluation of existing paradigms and a commitment to creating inclusive environments where individuals are judged on merit rather than gender. Additionally, technological advances such as artificial wombs have the potential to redefine traditional gender roles and pave the way for a more equitable future. By addressing systemic barriers and embracing progressive reforms, societies can work toward the fundamental principle of equal opportunity for all, regardless of gender or background.

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