

Comparative Study on Anti-employment Discrimination Laws for Special Groups in China and the United States

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Abstract. In society, employment discrimination against special groups often fails to receive due attention. Even in modern society, after being penalized, hidden discrimination still persists. This paper delves into the discrimination faced by special groups in the employment context and examines the differences in the protection of the legitimate rights and interests of special groups under the anti-employment discrimination laws of two countries. By adopting the comparative research method and literature research method, this paper compares and summarizes the legal characteristics of the two countries in anti - employment discrimination, and analyzes how relevant laws safeguard the rights and interests of special groups. This paper selects the legal provisions related to the workplace rights of special groups in the Chinese mainland, Hong Kong, China, and the United States, and conducts comparative and literature studies. The aim is to promote the two countries' emphasis on employment discrimination against special groups and the advancement of relevant laws.

Keywords: Anti-employment discrimination law; Employment discrimination; Protection of groups.

1. Introduction

China's anti-employment discrimination law for special groups is compared with the relatively perfect anti-employment discrimination law of the United States. The principles of equality and non-discrimination are the fundamental principles of all human rights issues. International standards related to the right to work are mentioned in numerous human rights conventions formulated by the United Nations and the International Labor Organization, affirming the "principle of equality and non-discrimination". However, implicit discrimination and indirect discrimination are easily overlooked. "Equal employment right" is not only a simple formal "anti-discrimination", but also a combination of formal and substantive equality. Different groups should enjoy formal equality in terms of identity, opportunities, rights and rules.

2. China's Anti-employment Discrimination Law

2.1. The Legislative Framework of Laws Regarding Anti-employment Discrimination on the Chinese Mainland

Article 33 of the Constitution establishes that "all citizens are equal before the law." Article 12 of the Labor Law prohibits discrimination based on ethnicity, race, sex and religious belief, but does not cover common types of discrimination such as age, household registration and educational background. The law mainly applies to enterprises and individual economic organizations, and civil servants and employees of public institutions and other groups are excluded. On the basis of the Constitution and labor law, there are special laws and administrative regulations that provide more detailed division and legal protection for special groups. The Law on the Protection of Women's Rights and Interests: prohibits recruitment inquiries about women's marriage and childbearing status, and requires enterprises to establish an anti-sexual harassment system. And the Law on the Protection of Persons with Disabilities, which requires employers to hire disabled people on a proportional basis or pay a security fee. The Law on the Prevention and Control of Infectious Diseases: Discrimination against hepatitis B carriers is prohibited. Under the special laws and administrative laws, there are



more detailed departmental rules as well as local legislative and policy pilots. Article 24 of Interim Regulations on the Human Resources Market stipulates: Discriminatory content in recruitment information is prohibited, with a maximum fine of 30,000 yuan for violators. Article 27 of Regulations of Shanghai Municipality on Employment Promotion clearly prohibits household registration and regional discrimination, and requires public employment service agencies to eliminate unreasonable restrictions.

2.2. The Legislative Framework for A-employment Discrimination in Hong Kong, China

Hong Kong has adopted four Equal opportunity Ordinances to establish the legal framework for anti-employment discrimination, forming a distinctive model of "classified legislation + cross-application". The main reason is that the Sex Discrimination Ordinance prohibits direct or indirect sex discrimination, sexual harassment and pregnancy discrimination. Under the DDO, employers are required to provide barrier-free facilities and adjust working hours for employees with disabilities. For example, a bank was awarded compensation for not providing screen reading software for its visually impaired employees. The DDO protects employees who need to adjust their work schedules to take care of family members, such as children and the elderly. For example, an employer's refusal to allow an employee to apply for flexible working hours may constitute discrimination. The Race Discrimination Ordinance covers race, colour, descent, national or ethnic origin, and was amended in 2025 to further prohibit discrimination on the basis of "national origin, immigration status". The enforcement mechanism of Hong Kong's laws is a pluralistic remedy system led by the Equal Opportunities Commission. Hong Kong has established a triad mechanism of "mediation, legal assistance and public education" with the Equal Opportunities Commission (EOC) at its core: the functions and effectiveness of EOC are complaint handling, legal assistance and policy advocacy respectively.

2.3. Relevant Cases of Employment Discrimination against Special Groups in Hong Kong, China, and on the Chinese Mainland

In 2016, Hayden, a foreign executive at Leighton Construction Company, was fired after being called a "gweilo" (a Cantonese term for white people) by his colleagues and accused the company of abusing his authority because of his race. He sued under the Race Discrimination Ordinance, seeking HK \$200,000 in compensation and loss of earnings. In the ruling, the court dismissed the claim after finding that the term "gweilo" itself was not discriminatory and that the plaintiff's dismissal was mainly due to interpersonal problems rather than race. The judge stressed the need to distinguish between linguistic habits and systemic discrimination, and that subjective feelings alone are not enough to constitute legal racial discrimination. Disability discrimination: The case of Visually Impaired Applicants for Administrative Assistant Positions. The Hong Kong court's determination of racial discrimination needs to be combined with the specific context and evidence chain. Simple name may not constitute illegal, but it can still supervise the enterprise to cultivate a good employment environment and the construction of workplace culture.

In another case in Hong Kong, a visually impaired person applying for an administrative assistant position in a company was rejected because the company did not provide Braille materials and a barrier-free interview environment. He lodged a complaint with the EOC against the company for breaching the Disability Discrimination Ordinance. After an investigation, the EOC concluded that the company had failed to meet its duty of "reasonable accommodation" and ordered it to reassess the application, provide the necessary facilities and pay compensation. The company eventually hired the visually impaired person and changed the working conditions. As shown above, the DDO requires employers to make reasonable accommodations for employees with disabilities, such as adjusting work procedures, providing AIDS, etc., if they do not do so, it may constitute discrimination. This can ensure the quality of life and work rights of the disabled, and make the company appear more humane [1]. In July 2019, Sheraton Hotel posted a job offer. In the same month, Ms. Yan saw the job offer and sent her resume. Ms. Yan in the delivery of job resumes, including name, gender, date of

birth, residence, current residence and other information. Where the hukou filled in as "Henan Nanyang". But in the second day Ms. Yan received the position is not suitable conclusion, and the company gave the inappropriate reason for "Henan people", Ms. Yan that Sheraton hotel refused to hire this reason for regional discrimination. Sheraton hotel said is actually Ms. Yan's resume does not meet the company's basic recruitment requirements, no work experience does not meet the job conditions, and "Henan" is just the company's staff for Ms. Yan's remarks. Mainland law for employment discrimination is defined as the employer in the recruitment process, the recruitment conditions of the same or similar job seekers based on some factors unrelated to personal work ability or work, and can not give its equal employment opportunities or in wages, job arrangements, labor conditions and protection, social insurance and welfare can not provide equal treatment. Therefore, the court found that the Sheraton Hotel had employment discrimination and ordered the hotel to compensate Ms. Yan 9,000 yuan and apologize to Ms. Yan [2]. According to the above cases, we can find that China's protection of special groups can basically cover most people, but the means of proof is complicated, and it is easy to be hidden discrimination and difficult to defend its rights.

3. The Anti-employment Discrimination Law of the United States

3.1. The United States Federal Government's Legislative Framework for Employment Non-discrimination Law

The federal government's principled prohibition of employment discrimination is reflected in Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, gender, and ethnic origin, covering the entire process of recruitment, promotion, pay, and dismissal. In 2020, sexual orientation and gender identity fall under the category of "sex discrimination", and LGBTQ+ groups are included in the protection. The Americans with Disabilities Act, which applies to employers with more than 15 employees, requires that "reasonable accommodations" (such as wheelchair access and flexible working hours) be made for people with disabilities, unless they result in an "undue burden." And the Age Discrimination in Employment Act, which protects workers 40 and older, prohibits age-related hiring restrictions, wage cuts or firings [3]. Other specific legislation, the Pregnancy Discrimination Act, includes pregnancy, childbirth and related medical conditions that discriminate on the basis of sex [4]. The Equal Pay Act forbids men and women from being paid differently for the same work. The Genetic Information NonDiscrimination Act prohibits employers from making hiring or promotion decisions based on genetic test results, such as family medical history. The U.S. federal enforcement mechanism is EEOC [4]. The Equal Employment Opportunity Commission (EEOC) is responsible for accepting complaints, investigating and obtaining evidence, and settling disputes. The second is judicial remedies: individuals or EEOC can bring civil lawsuits. Third, state and local legislation such as California's Fair Employment and Housing Act (FEHA) prohibits discrimination on the basis of age, sexual orientation, and marital status; And New York City requires companies to disclose pay ranges.

3.2. State Definitions of Employment Groups and Anti-discrimination Laws for Special Groups in Employment

States have also made state-level breakthroughs against employment discrimination when prohibited by the federal government. Sexual Orientation and Gender Identity: California's Fair Employment and Housing Act (FEHA) explicitly prohibits discrimination on the basis of sexual orientation and gender identity [5]. And New York City's Human Rights Act included LGBTQ+ protections, and in 2022 Yeshiva University was found to have violated the law by refusing to recognize an LGBTQ+ student community. Then there's criminal records. Nebraska passed "Ban the Box," a law that prohibits employers from asking about criminal records in the early stages of hiring. Texas bans landlords from requiring extra security because of tenants' criminal records. Finally, appearance and height: Colorado's 2024 law prohibits employment discrimination based on physical appearance (such as height and weight). This law will make employment opportunities more transparent and fully

protect workers' human rights. In the United States, there are also some emerging protection areas in the part of family responsibility. New York State passed the Family Responsibility Discrimination Act in 2023, which prohibits the dismissal of employees for taking care of children, the elderly or disabled dependents. The second is the protection of the rights and interests of the employed with immigration status: California prohibits employers from discriminating on the basis of an employee's immigration status (such as DACA protectees). And more help for domestic violence victims: New Jersey requires employers to offer paid leave and job protections to domestic violence victims [6]. Comparisons of state-level legal frameworks are split between progressive states, conservative states and states with half-measure legislation. Progressive states (e.g., California, New York) cover a wide range of states. California: Prohibits discrimination based on sexual orientation, gender identity, marital status, veteran status, etc. The New York City Human Rights Code protects age (unlimited minimum), victims of domestic violence, immigration status, etc. This is followed by conservative States (e.g. Texas, Florida). The enforcement mechanism of progressive states is that the state EOC and the court cooperate to enforce the law, and the resources are more concentrated. Conservative States have limited coverage. Texas enforces only the federal minimum and has no laws prohibiting discrimination based on sexual orientation or age.

Florida passed the Anti-Wakefulness Act in 2024, which restricts companies from considering race, gender and other factors in hiring. Conservative States rely on the federal EEOC for enforcement mechanisms, and state-level agencies are weak. Finally, there is compromise legislation in Midwestern states such as Illinois and Minnesota. The Illinois Human Rights Act prohibits discrimination based on sexual orientation and gender identity, but does not cover age. Minnesota's 2024 law requires companies to disclose pay ranges to indirectly reduce gender and race discrimination. But legislation that varies from state to state can present different challenges and controversies. Some states, such as Texas and Florida, have passed "religious freedom" laws that allow businesses to refuse to hire LGBT+ people based on their faith, sparking strong litigation.

3.3. Examples of Employment Discrimination against Special Groups in the United States

Yeshiva University is the oldest Jewish institution of higher education in the United States. The word "Yeshiva" literally means a school for the study of the Talmud, and the study of the Talmud remains at the heart of everything Yeshiva University does to teach. Most undergraduates spend up to five hours a day in religious study, and all students are expected to uphold the values of the Torah on campus, including observing Shabbat and kosher (kosher) food laws. In 2020, a small group of students asked Yeshiva University to approve the formation of a society called the Pride Alliance on its undergraduate campus. In keeping with its 3,000-year-old Tora values, Yeshiva University determined that it could not approve the proposed society. Now, a small group of alumni and students have sued the university, asking the court to force it to formally recognize the Pride Union society, despite Yeshiva's religious decision, made in consultation with its senior rabbinical leader, that the society is inconsistent with the religious climate Yeshiva seeks to maintain on its undergraduate campus [7]. After the New York County Supreme Court rejected Yeshiva's arguments and concluded that the school was not a "religious body" under city law and was not protected by the U.S. Constitution, the court issued a permanent injunction ordering Yeshiva University to "immediately" violate its Torah values and approve the society. Becket quickly petitioned the New York Court of Appeals and the New York Court of Appeals, the state's highest court, for relief on Yeshiva University's behalf, but both requests were denied.

4. Comparative Analysis of Chinese and American Cases

4.1. Comparison of Implementation Mechanisms

China implements multi-agency coordination and executive-led implementation. The law enforcement bodies are human resources and social security departments (labor inspection), labor arbitration commissions, and courts. Process: Labor arbitration before (need to go through arbitration,

dissatisfied with the result can be sued), the average processing period is about 12-18 months. The main burden of proof requires workers to prove the existence of discrimination (such as discriminatory terms in recruitment advertisements, dismissal without reasonable grounds). The U.S. federal government uses EEOC specialization to lead. In the United States, the Equal Employment Opportunity Commission (EEOC) is the main body of law enforcement, which is responsible for complaint acceptance, investigation, mediation and litigation support. Compared with China, the law enforcement process is relatively simple. Complaints can be submitted directly to the EEOC, investigations are completed within six months, and 70% of cases are settled through mediation, with an average period of three months. Proof in the United States requires the plaintiff to show a preliminary likelihood of discrimination, after which the burden of proof shifts to the employer (such as proving that the age limit meets a "bona fide occupational qualification"). As mentioned above, the United States has differentiated enforcement at the state level due to different state laws. California's FEHA requires companies to disclose pay ranges, and New York City's CCHR directly fines companies for violations. Defensive States such as Texas rely on the federal EEOC, but state-level agencies have limited resources, and their success rate in 2024 is less than 20% [8].

4.2. Results Treatment Comparison

China's compensation for victims as a result is limited. The compensation is mainly divided into three parts. The first part is the actual loss: pay back wages, economic compensation (such as compensation for illegally rescinding the labor contract). The second part is the compensation for mental damage: Only in a few cases, the amount is relatively low, the Chinese court for compensation should pay attention to the infringer's fault degree, the means of infringement, occasions, behavior and other specific circumstances, the consequences of the tort, the infringer's profit, the infringer's economic ability to bear responsibility, the average living standard of the place where the court is prosecuted and other legal factors to determine the amount of spiritual comfort. It is also necessary to define the amount of compensation according to the average living standard of the location of the appraised court. The third part is the administrative penalty: a maximum of 500,000 yuan (the Anti-Employment Discrimination Law (Draft) proposes to raise it to 500,000 yuan), but the enforcement rate is insufficient. Secondly, the relief measures after the judgment are single, and the victims cannot return to their previous jobs or get new jobs. The courts are more likely to award financial compensation and less likely to force labor relations to resume. Corporate rectification measures lack consistent supervision. Many companies still have hidden discrimination even after being adjudicated, which makes it difficult for victims to obtain evidence and cannot be completely eradicated.

The result in the United States is a diversity of damages and punitive measures. The type of compensation in the United States is the same as that in China: actual loss, moral damages (up to \$300,000), and punitive damages (no limit in case of malicious discrimination). But unlike in China, judicial remedies in the US are extensive. Courts can force employers to rehire, promote, or provide training (as in the YU Pride Alliance case in New York in 2024, which requires Yeshiva University to recognize an LGBTQ + community). Issue injunctions prohibiting discriminatory practices (e.g., a tech company barred from using certain hiring tools in 2023 for algorithmic discrimination). According to the above comparison, the United States will be more comprehensive in the result processing than China, and the enforcement will restore the rights of victims more quickly after the violation of their rights, so that people who encounter employment discrimination in their lives will feel less pressure when deciding to prove evidence, and it will be more effective to spur enterprises in the market.

4.3. Public Opinion

Awareness of anti-employment discrimination is growing in China. Media push: The topic "The 35-year-old crisis" has been read more than 5 billion times, forcing companies to adjust their recruitment strategies. And the traditional concept of Chinese society is strong. Gender discrimination (such as marriage and childbearing discrimination) and household registration discrimination are still common,

and the public has a vague understanding of implicit discrimination (such as the exclusion of women in "comprehensive assessment"). Workers have a weak sense of rights protection and are more inclined to negotiate privately. According to the data of the Ministry of Human Resources and Social Security in 2024, the success rate of employment discrimination cases is less than 15%. The government promotes "zero-employment families" and proportional employment for the disabled, but social prejudices still exist (for example, the employment rate of hepatitis B carriers is less than 40%) [8]. At the enterprise level: Huawei, Tencent and others have pledged to set no age limit, but small and medium-sized enterprises have not followed suit. The American society is more concerned about anti-employment discrimination, and civil rights organizations are active: ACLU, Lambda Legal and other promote LGBTQ + rights litigation, and the successful case of same-sex couples' inheritance rights in 2024 has been widely supported. However, due to the wide range of culture in the United States, cultural conflicts appear. The conflict between religious liberty and equality (Texas, for example, allows companies to deny health benefits to transgender workers) has sparked public debate. And American society is making its rulings transparent. Microsoft and Google open recruitment data, and the promotion rate of ethnic minorities has increased by 15%, forming an industry demonstration effect. Conservative states pass anti-awakening laws to limit corporate diversity measures.

5. Contrast the Subsequent Push and Inspiration for Anti-discrimination Laws for Special Groups

What China can improve is the improvement and innovation of the legislative system to expand the scope of protection: referring to the US Civil Rights Act and the EU Artificial Intelligence Act, sexual orientation, gender identity and age are included in the categories explicitly prohibited by the Employment Discrimination Law. For example, in 2025, the NPC and CPPCC proposed to incorporate age discrimination into the legislation, which can learn from the age subsidy mechanism in Singapore's Retirement and re-employment Act (such as the maximum 8% salary subsidy for employees over 60 years old) to promote the integration of the "silver economy" and the job market. Second, strengthen the regulation of implicit discrimination: in response to implicit behaviors such as algorithmic discrimination and exclusion of women in comprehensive assessment, we need to establish a "Disparate Impact" standard, requiring enterprises to prove the "business necessity" of recruitment tools or policies. For example, the "employment discrimination early warning system" piloted in Shanghai could be extended to monitor the fairness of AI recruitment tools. Moreover, punitive damages could be introduced: referring to the 1991 Civil Rights Act in the United States, punitive damages for malicious discrimination (such as the \$1.1 billion compensation in the Walmart racial discrimination case) could be imposed to raise the cost of violating the law. The enforcement mechanism should be professionalized and more efficient. Setting up an independent anti-discrimination body: drawing on the Dutch "Equal Treatment Committee" model, set up a national anti-employment discrimination committee to independently handle complaints, investigations and mediation, and reduce the cost of multi-departmental coordination.

After workers provide preliminary evidence, it is legal for enterprises to prove themselves. For example, in the Shenzhen age discrimination case, if the company sets a "under 35" limit, it needs to prove that the condition is directly related to the job skills. Transparency of data supervision: Shenzhen's Age Structure Disclosure system will be promoted, requiring companies with more than 300 employees to disclose the age and gender distribution of their employees and include them in the enterprise credit evaluation system. The optimization space for anti-employment discrimination in the United States is to balance religious freedom and equal rights protection. For example, church schools can refuse to hire teachers who conflict with their teachings, but non-religious functions such as hospitals are subject to anti-discrimination laws. Push for more specific legislation: In response to "anti-awakening laws" passed in conservative states, such as Florida's ban on the use of race in hiring, federal legislation is needed to clarify the legality of diversity measures and prevent reverse discrimination. Regulation of the gig economy and technological change. Flexible employment rights

protection: refer to California's AB5 law (which treats gig workers as regular employees), but balance the needs of business operations. For example, platforms could be required to provide drivers with a minimum income guarantee, workers' compensation insurance, and allow them to pick up their own orders. Algorithmic ethics and transparency: Drawing on the European Union's Artificial Intelligence Act, hiring algorithms can be required to make their decision logic public and subject to regular third-party audits. For example, Silicon Valley tech companies that use AI to screen resumes are required to disclose whether their algorithms include gender or racial bias. Coordination and data governance across state lines. Unified state-level legal standards: In view of the weak anti-discrimination enforcement in conservative states such as Texas, the federal government can promote states to establish unified complaint handling procedures and compensation standards through financial support or policy guidance. Data-driven decisions: Companies like Microsoft and Google should promote open recruitment data to force companies to improve diversity through transparency. Then there are the global trends and challenges. Given the adaptability of developing countries and the rapid growth of the gig economy in Southeast Asia, Africa and other regions, it is necessary to strike a balance between protecting workers' rights and promoting employment, and avoid "one-size-fits-all" policies that stifle economic vitality. A long-term shift in cultural attitudes.

Finally, there is the penetration of the education system: the inclusion of anti-discrimination elements in primary and secondary school curricula to foster "inclusive values". In Sweden, for example, gender equality education was made compulsory, significantly reducing gender bias among young people. Media and artistic guidance: Through film and television works, literary works to portray a diversified workplace image, break the "gender temperament" and "age ability" and other stereotypes.

6. Conclusion

In modern society, employment discrimination persists as a significant global issue, impeding the realization of fair employment and social justice. This study meticulously compares the anti-employment discrimination laws of China and the US, analyzing their legislative frameworks, enforcement mechanisms, and handling of cases related to special groups. It holds great significance as it provides valuable insights for improving anti-discrimination legislation, protecting the rights of special groups, and promoting equal employment opportunities. However, the research has its limitations. It lacks in-depth exploration of the impact of cultural and social changes on anti-discrimination laws in the long-term. Future research could focus on filling this gap.

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