

The Protection of Women's Employment Rights and Interests under the Background of Three-Child

Wenjing Xia*

China Jiliang University, Hangzhou, Zhejiang, China

**Corresponding Author*

Abstract: The current society has entered the "endogenous" low fertility rate, so the low fertility rate problem will not be significantly improved by the "three-child", but the "three-child" will make the equal employment rights of female workers face more severe challenges. The lack of effective protection of the employment rights of female workers is one of the most important reasons that affect the reproductive behavior. The lack of such protection is particularly evident at the legal level: one-sided legal norms, rigid law enforcement mechanisms lead to insufficient regulatory effects and imperfect legal protection systems. This is also the main legal cause of employment discrimination that cannot be resolved. Therefore, it is necessary to reasonably formulate relevant maternity leave laws and regulations, set up professional executive agencies, further clarify the standards of gender discrimination in law, transfer the burden of proof and introduce public interest litigation system, and promote the continuous improvement of laws and other aspects to balance the employment rights and reproductive rights of female workers.

Keywords: Employment Discrimination; Female Employment; Rights Protection; Employment Rights and Interests; Legal Protection

1. Intruduction

In 2022, China's natural population growth rate was -0.60‰, marking the beginning of a negative growth trend. To prevent a sharp population decline, the "single-child couple second-child policy" (2014) and the "universal two-child policy" (2016) were implemented, briefly boosting the fertility rate. However, as the effects of the two-child policy gradually waned, the state introduced the "three-child policy" in 2021 to provide policy support for

alleviating population aging. From a sociological perspective, Heckman (1993) pointed out in his research that although the employment rate of female labor force has been increasing, gender differences or discrimination still accompany women, and this problem has not been effectively solved.[1]

Looking at the outcomes of the two-child policy, the birth rate increased to 13.57‰ in 2016 and remained at 12.64‰ in 2017, suggesting initial effectiveness of the policy and related measures. While the policy temporarily relieved population aging and adjusted the social demographic structure, it overlooked the negative impact on women's employment development. The implementation of the three-child policy has further amplified this negative effect, inevitably exacerbating gender discrimination against women. Although the supporting measures of the policy appear to offer more childbearing benefits to women than before, they actually impose heavier pressures on women in career development and childcare. In particular, women raising three children are often in their prime in terms of age and work experience, but childcare prevents most from engaging in the workplace at their best. The reduction in time and energy directly affects their career progression, placing women in an awkward employment situation and dampening their willingness to have children. This phenomenon is reflected in the birth rate after the three-child policy: the birth rate in 2022 was only 6.77‰, indicating that the policy's effect has not been remarkable.

To address the issue of unbalanced population structure development, China has timely introduced the "three-child policy". However, new problems have emerged during its implementation, mainly focusing on the protection of women's rights and interests, women's employment issues, etc., which are also the key to the effective implementation of the policy.[2]

2. Key Practical Dilemmas of Women's Equal Employment

Women constitute a powerful driving force for economic growth, achieving financial independence, self-development, and life values through employment. While the proportion of women in China's workforce continues to rise, gender-based inequities in career advancement have become increasingly pronounced, with discriminatory practices showing a worrying upward trend.

2.1 The "Maternal Penalty" for Working Mothers

The maternal penalty refers to the phenomenon where women are forced to end their careers due to increased childcare pressures and family responsibilities from childbirth, or face stalled promotions and significant wage gaps with men upon returning to work. Studies have shown that since the reform and opening-up, against the backdrop of rapid urbanization and economic growth, the costs women bear for family and childbearing have escalated, particularly for single women, highly educated women, and those employed in the non-state sector, who have experienced a sharp increase in maternal penalty. Facing a relatively difficult external environment, many enterprises hope to save costs in terms of expenditure, so invisible employment discrimination may occur. They will consider the marriage and childbearing status of women of childbearing age.[3]

The implementation of the three-child policy has exacerbated existing gender discrimination in women's employment, further intensifying the maternal penalty. For many working women, balancing a successful career and motherhood remains a daunting challenge. Traditional gender norms have imposed childrearing responsibilities disproportionately on mothers, making "absent-father parenting" a common reality in most Chinese families. As working mothers allocate more time and energy to family obligations, they experience intangible losses in human capital, work experience, and promotion opportunities. "Temporary career breaks for childbirth, post-natal energy allocation between work and family, and career decisions influenced by childcare needs all contribute to persistent human capital depletion, forming a cyclic maternal penalty."

The career disadvantages and heavy domestic burdens from the two-child era had already left

working women in a vulnerable position. Without effective solutions to these social issues, the three-child policy has subjected working mothers to dual pressures of familial and societal childbearing expectations, risking career interruption or stagnation. It has become a consensus among professional women that childbirth imposes more hindrances than opportunities on their career development.

2.2 Severe Gender Discrimination in the Labor Market

While the three-child policy has introduced extended maternity and parental leave benefits, many working women remain concerned—for good reason. The crux lies not in policy design but in corporate implementation: even the most robust safeguards are meaningless if employers fail to honor them.

During job interviews, female candidates are routinely grilled about marriage and childcare—topics irrelevant to job performance—while male applicants rarely face such intrusions. Some employers even impose blatantly inhumane conditions, like banning marriage for several years after hiring, which constitutes naked employment discrimination. As noted in research: "For employers, training a new employee from novice to proficient requires substantial time and cost. Temporary replacements, even after training, seldom match the experience and proficiency of the original staff. Additionally, employers worry about female employees' work efficiency, capabilities, and shifting life priorities after maternity leave—ranging from three months to half a year." These concerns fuel hiring biases against women, which have only intensified under the three-child policy.

Employers now associate the three-child policy with repeated maternity leaves and breastfeeding breaks, costs that enterprises bear entirely. Compared to men, women are perceived as less career-stable due to heavier family care burdens, which allegedly reduce work efficiency and impact overall productivity. When forced to choose between career and family, most women opt to leave the workforce—a choice that, combined with insufficient government support, inflates corporate hiring costs for women. This leads to a vicious cycle: enterprises shift responsibility onto female individuals, manifesting as discrimination against married women or those

with family duties. As aptly stated: "When women—who bear the highest costs of childbearing—shoulder its greatest responsibilities, the result is not only institutional discrimination from the state's failure to share these burdens but also the transfer of liability to innocent enterprises, trapping society in a 'employer punishment' cycle that's widespread yet long ignored."

Article 23 of the *Law on the Protection of Women's Rights and Interests* explicitly prohibits employment contracts from restricting women's marriage or childbirth. In response, employers have resorted to interview tactics, forcing female candidates to accept unreasonable demands—actions directly contradicting the law's protective intent. Beyond hiring, gender disparities persist in promotions: physiological differences and family obligations often exclude women from training opportunities, skewing gender ratios in leadership positions across enterprises, institutions, and government agencies. This has created a "gender monopoly" and "glass ceiling" effect prevalent in numerous sectors. Even in identical positions, stark gaps in salaries, bonuses, and benefits between men and women remain pervasive. Post-childbirth women who return to work face minimal chances of being valued, often risking "career marginalization." Childbearing should never be a career shackle, nor should women be denied the right to parenthood for employment.

2.3 Challenges in Judicial Rights Protection for Discriminated Women

Employment discrimination in China's labor market predates the three-child policy, evident as early as 2011 when the "single-child couple second-child" policy was piloted in northeast China and Zhejiang. A notable case is the 2014 "Zhejiang New Oriental Cooking School Equal Employment Rights Infringement," where the court ruled in favor of the plaintiff due to the defendant's overt discriminatory conduct. Today, while explicit "male-only" job postings have diminished, subtler hiring criteria disproportionately disadvantaging women persist across employment stages, resulting in far more men than women being recruited.

The three-child policy's welfare measures alone cannot address employment gender discrimination—a root cause of low fertility—and may even exacerbate

discrimination as women shift energy to childcare.

Female workers face formidable hurdles in proving discrimination. "As of August 1, 2021, among 8 relatively clear cases, all plaintiffs claimed violations of equal employment rights, with gender discrimination lawsuits being the most common. Of the 6 adjudicated cases, workers won only 2, while employers prevailed in the rest." In *Huang Yongyi v. Guangzhou Wanbao Commercial Development Group*, the plaintiff alleged discrimination against pregnant employees, but the court found insufficient evidence, a ruling upheld on appeal. Similarly, in *Sun Xiruo v. Huaxin International Trust*, the court dismissed the claim for lack of evidence. These cases illustrate how invisible discrimination prevents female workers from gathering compelling evidence, denying them legal redress.

In the population and family planning regulations of some provinces and cities, it is clearly stipulated that employees are entitled to parental leave, and the salary level and welfare benefits during maternity leave shall remain unchanged without affecting the promotion of their job titles and ranks. In fact, there is a significant gap between the real-life situation and the blueprint for the protection of reproductive rights presupposed in relevant legal norms.^[4]

Despite "equal employment rights disputes" becoming an independent cause of action under "general personality rights disputes" in 2018, most employment discrimination cases involving women still proceed as labor disputes. A review of post-2019 cases using keywords like "equal employment," "gender discrimination," and "pregnancy" shows the new cause of action has failed to fulfill the Nine Ministries' Notice mandate to "provide judicial assistance to women facing employment gender discrimination." Even if cases are filed, vague personality rights laws, lack of specific guidelines, and onerous proof requirements lead to dismal outcomes.

Women's federations and related agencies lack enforcement power, offering only policy guidance. Vague legal provisions, absence of specialized labor dispute agencies, and ineffective judicial relief leave discriminated women nowhere to turn. Facing high proof burdens and costs in time/money, few persist in defending their employment rights.

3. Legal Causes of Employment Discrimination against Women

Scholars have generally made negative judgments on whether the three-child policy and supporting measures can stimulate childbearing: the current low fertility behavior in society remains unaffected by the three-child policy. Unlike the past "one-child" policy, which was mostly restricted by family planning, the current low fertility rate is the result of endogenous factors. "With the rapid economic and social development, during the continuous decline of China's fertility rate, the role of fertility policies has been decreasing, while the role of social and economic development has been increasing. Since 2000, social and economic development has played a decisive role in the low fertility trend, marking China's entry into an 'endogenous' low fertility rate where the impact of fertility policies has become increasingly marginal."

As the primary bearers of childbearing, women's inability to obtain strong legal protection for their employment rights when facing labor market discrimination constitutes the most critical "endogenous" factor affecting childbearing willingness—and the main legal cause of employment discrimination. Therefore, addressing the legal inadequacies in resolving women's employment discrimination is a prerequisite for the three-child policy to achieve effectiveness.

3.1 One-Sidedness of Legal Norms

First, despite China's emphasis on protecting workers' legitimate rights and interests in legislation, and the existence of relevant legal norms, workers often struggle to obtain full relief under the law. The contradiction between legislative intent and practical results indicates that relevant systems are indeed imperfect. The legislative protection of women's equal employment rights in China is weak, which is not only rooted in historical factors but also closely related to China's economic development level and the lag in legal research. China's legislation suffers from poor operability, vague provisions, and narrow local regulations. Although the concept of "employment discrimination" is defined in the Employment Promotion Law, it remains a principled concept. The lack of detailed provisions on discrimination criteria and legal responsibilities makes these laws difficult to implement, failing

to effectively address existing employment discrimination. For example, Article 62 of the Employment Promotion Law states: "Where employment discrimination is implemented in violation of this Law, workers may file a lawsuit with the people's court." While this clarifies the civil litigation system for employment discrimination, it does not specify the definition or criteria for discrimination, leaving invisible employment discrimination in the labor market unregulated. In the chapter on labor and social security rights in the Law on the Protection of Women's Rights and Interests, although specific manifestations of gender discrimination in the employment of female workers are detailed, list-style provisions cannot cover all forms of gender employment discrimination in the labor market. Secondly, regarding liability, the law does not elaborate on the consequences of discriminating against female workers, only generally stipulating that employers bear civil liability for discriminatory acts—without clear norms on the classification of discrimination severity or corresponding compensation amounts and types. Employers' civil liability is often limited to financial compensation for discriminated female employees. However, when female job seekers are denied employment due to discrimination, while employer liability is undeniable, the form of liability remains undefined. Even if economic compensation is assumed, calculating the specific amount under current law is impossible.

Five provinces (Inner Mongolia, Hebei, Zhejiang, Shaanxi, and Guangxi) have made differentiated regulations on maternity leave based on local conditions. These government regulations, local laws, and normative documents on women's equal employment are characterized by strong local characteristics and frequent, unstable revisions. From a legislative hierarchy perspective, local laws and regulations have low authority and weak effectiveness. Such decentralized legislation not only fails to effectively promote equal employment but also undermines legal unity due to inconsistent local standards.

As the three-child policy is implemented, employment discrimination has intensified. The existing one-sided legal norms cannot cover all forms of labor market discrimination, leaving discriminated individuals without real protection.

3.2 Rigidity in Law Enforcement Mechanisms

China currently lacks an independent, professional anti-employment discrimination enforcement agency beyond labor departments. The entire employment process—encompassing recruitment, training, arbitration, and more—requires cross-departmental collaboration, which a single labor administrative department cannot effectively manage. Ambiguous division of responsibilities among relevant departments leads to shirking and inefficiency, casting doubt on the ability to resolve women's employment discrimination. Even when discrimination is confirmed, enforcement is significantly weakened by legal gaps: labor administrative departments currently only impose administrative penalties like corrections and fines, which have limited deterrence—one of the obstacles to ensuring women's employment equality. Moreover, relying solely on government departments for supervision, the lack of a specialized agency to address employment discrimination results in weak oversight and enforcement—another key law enforcement factor contributing to unequal treatment of female workers. Additionally, when organizing learning activities for women, administrative agencies fail to effectively coordinate with women's organizations, offering monotonous and superficial content that lacks scale effect. This formalism, divorced from practical needs, hinders the government's efforts to promote equal employment and provide a favorable employment environment for women.

3.3 Deficiencies in Legal Remedy Systems

"Judicature is the last line of defense for social relief, holding immense value for both citizens and legal entities." However, practice shows that seeking relief through judicial channels is extremely difficult.

First, China's legislation lacks a clear definition of employment gender discrimination, leading to inconsistent judicial understandings of what constitutes gender discrimination and unfair treatment of women in employment. As a result, "without a clear definition of gender discrimination, there is no standard for judges to determine whether gender discrimination has occurred. The absence of a punitive damages system makes it counterproductive for women facing gender discrimination to sue employers." Judges seek specific legislative bases to ensure consistent adjudication, but the lack of clear

definitions and standards for equal employment rights challenges their professional judgment.

Second, although "equal employment rights disputes" were incorporated into "general personality rights disputes" as an independent cause of action in 2018, the number of cases filed under this category has fallen short of expectations, failing to fully protect women's equal employment rights. This stems from the dual nature of equal employment rights—related to both labor rights and personality rights—without specific inclusion in tort law, reducing operability in judicial practice. Filing under equal employment rights disputes (as general personality rights disputes) primarily imposes spiritual damage compensation, which cannot quantify economic losses. Even if successful, the compensation for discriminated female workers is limited, and employer liability is light—failing to redress workers' losses or deter discriminators.

Finally, while the law allows discriminated workers to sue, judicial rights protection is time-consuming and costly. Equal employment rights disputes still apply the general burden of proof, but female workers are at a disadvantage compared to employers. Collecting relevant evidence—key to winning—proves difficult for victims of invisible discrimination. When discrimination is not overt, plaintiffs struggle to meet the high burden of proof, leading most judgments to reject their claims and rendering gender discrimination crackdown and protection of female workers' rights empty rhetoric.

Through arbitration, female workers must first negotiate with employers, then seek mediation, followed by labor arbitration, and finally litigation. The labor arbitration committee's dependence on labor administrative departments undermines trust, and the pre-arbitration procedure consumes excessive time and energy. Although Article 6 of the Labor Dispute Mediation and Arbitration Law shifts the burden of proof for specific evidence to employers, employers often conceal discriminatory evidence due to their dominant position.

4. Legal Pathways to Build a Childbearing-Friendly Society

To address population structure imbalance and alleviate aging, the state promotes the three-child policy for long-term population balance. However, imperfect laws fail to provide institutional guarantee, and the effective

implementation of supporting measures remains uncertain due to social and cultural factors. By studying foreign fertility policies and measures, this section proposes improvements based on China's national conditions. When a large number of women of childbearing age participate in social division of labor, both society and women themselves are not sensitive to fertility policies, which has led to a low fertility rate. Therefore, the state needs to improve the quality of life of families and children to effectively prevent the continuous decline of the fertility rate.[5]

4.1 Implementing Laws and Policies for Social Childcare Support

Under the three-child policy, family pressures may lead female workers to quit and raise children full-time. Improving legislation and implementing government-led fertility policies can provide social support for childcare, share burdens, and enhance women's employment security.[6]

Nordic countries have effectively encouraged childbearing through "family and welfare policies," balancing women's "maternal duties" and careers while creating "child-friendly" environments and increasing childcare support. Nordic family policies are comprehensive: Sweden, Denmark, and Norway promulgated child welfare and family security policies as early as the 20th century, with post-WWII economic development driving maternity leave, birth allowances, and childcare services—indirectly incentivizing childbearing by reducing family burdens.

Sweden, the first to make paternity leave mandatory, transformed maternity leave into parental leave in 1974, requiring fathers to take at least 90 days (non-transferable to mothers). Norway grants 10 weeks of parental leave to both parents, with the remaining leave freely disposable. Denmark offers up to 32 weeks of paid leave, including 2 weeks for fathers. Dedicated paternity leave promotes shared childcare: fathers assume responsibilities, reducing mothers' burdens and easing employer discrimination.

Child allowances entitle every family to financial support for raising children. The monthly allowance is 219 euros for the first and second child, 225 euros for the third child, and 250 euros for the fourth and subsequent children. The recipients are children under 18 years old,

those under 25 years old who are receiving vocational training or education, and children under 21 years old who are unemployed.[7]

Nordic childcare services, age-specific (26 weeks in Denmark, 9–10 months in Finland, 1 year in Norway/Sweden/Iceland), are publicly funded, with public education continuing after care. Sweden's four childcare models (family nurseries, kindergartens, open preschool education, and day care centers) served 50% of 1-year-olds and 90% of children over 2 in 2008, enabling women to work full-time.

While some Nordic measures may not suit China, adjustments are possible. China currently only mandates maternity leave nationally, with varying local regulations. For example, Jiangsu extended paternity leave to 15 days in 2022, while Fujian offers 10 days of parental leave annually until children turn 3. However, China's lengthy maternity leave for women and short paternity leave fail to ensure shared parental responsibility.

China could learn from Nordic experience by:

Paternity Leave Legislation: Shorten Nordic leave durations appropriately, extend paternity leave, and specify leave types and mandatory quotas. Localities should enact regulations based on economic levels, such as minimum independent leave periods for fathers, reducing women's family pressures from traditional gender roles.

Enterprise Incentives: Governments should provide policy preferences to employers hiring more women or offering special care to pregnant women, sharing three-child policy costs and reducing labor market exclusion of women.

China's Draft Preschool Education Law, pending since 2020, can learn from Nordic 1927 child welfare laws. Pre-school childcare institutions should be built, with market demand research and management standards defined first, followed by social participation incentives (e.g., rent/tax reductions) and pilot projects to enhance professionalism and reduce women's employment pressures.

4.2 Improving Laws and Establishing Independent Enforcement Agencies

Due to the particularity of employment gender discrimination, the labor supervision mechanism for employment gender discrimination has the problem of weak law enforcement, resulting in poor effectiveness. The labor supervision's approach of "emphasizing education over

punishment" has weakened the authority of the law.[8] Administrative penalties face the problems of difficult implementation and long duration. If an employer refuses to comply with an administrative penalty decision, the supervision department may apply to the court for compulsory enforcement. If the employer files an administrative reconsideration or lawsuit, it will take at least one year.[9]

Under the three-child policy, enterprises may factor childbearing-related workplace instability into female employment costs, deepening labor market discrimination. Without specialized agencies and specific laws, discrimination will worsen.

Independent, professional anti-discrimination agencies, like the U.S. Equal Employment Opportunity Commission (EEOC), effectively address gender discrimination. The EEOC, backed by systematic anti-discrimination laws, has broad enforcement powers and extended complaint deadlines, strictly implementing equal employment norms and deterring violations.

The EEOC prioritizes dispute resolution through negotiation and mediation to reduce litigation costs, with courts as the final resort. Parties often prefer EEOC mediation for efficiency.

China should Clarify Discrimination Definitions: Include both overt and invisible discrimination in legislation to enhance judicial objectivity and operability.

Specify Civil Liabilities: Entrench compensation for reliance losses (transportation, accommodation, opportunity costs) and punitive damages for intentional discrimination.

Shift Burden of Proof: Adopt a three-step system where workers prove differential treatment, employers justify legality, and workers rebut excuses, easing plaintiffs' evidence-gathering burdens.

China could establish an independent, professional equal employment enforcement agency, modeled on the EEOC, to mediate disputes, warn violators, include discrimination in corporate credit records, and provide legal aid for severe cases, improving efficiency and professionalism.

4.3 Introducing Public Interest Litigation for Anti-Employment Discrimination

Gender discrimination often affects groups rather than individuals, making individual litigation difficult without social support. Public interest litigation, allowing social organizations

to act as plaintiffs, can remedy employment rights and combat discrimination.

Germany's Anti-Discrimination Federation, a non-profit, independently litigates and assists victims, providing legal aid and acting as a qualified plaintiff—reducing victims' need for lawyers and enabling damage claims.

China could introduce public interest litigation for equal employment rights disputes, building on existing systems (consumer, environmental, and public interest litigation). Women's federations and social organizations should be designated as eligible plaintiffs, with the Supreme People's Court issuing judicial interpretations and guiding cases to ensure consistent adjudication.

5. Conclusion

The three-child policy and women's rights protection are mutually reinforcing. Improved and implemented supporting measures enable women to focus on careers, while curbing employment discrimination safeguards women's equal employment and career development—encouraging childbearing and alleviating population aging.

The three-child policy has exposed gaps in China's women's rights protection system, calling for learning from international experience. Guided by "gender equality," systems must be improved: systematic legislation on employment gender discrimination, specialized law enforcement agencies, adjusted burden of proof, public interest litigation, and a social system for sharing childbearing costs—to build a childbearing-friendly society.

References

- [1] Heckman, J. J. "What Has Been Learned about Labor Supply in the Past Twenty Years?". *American Economic Review*, 1993(2):116-121.
- [2] Li Yueru. Research on the Dilemmas and Countermeasures of Women's Rights Protection under the Three-Child Policy. *Heilongjiang Human Resources and Social Security*, 2022(07): 22-24.
- [3] Guo Shuangyan. Intertextuality: The Evolution and Practice of Women's Employment Policy Texts. *Journal of Shandong Women's University*, 2022(07): 29-39.
- [4] Interpreting the Three-Child Policy to

- Promote the Construction of Inclusive Support Measures. Collection of Women's Studies, 2021(4): 48-82.
- [5] Morgan, S P. Is Low Fertility a Twenty - first - century Demographic Crisis. Demography 2003, 40(4): 589-603.
- [6] Tang Mei. A Study on the Legalization of Incentive Fertility Security Measures under the Three-Child Policy. Hubei Social Sciences, 2022(7): 121-130.
- [7] Zheng Chunrong: Family - policy Measures to Encourage Fertility in Germany, People's Tribune, 2022, No. 6, p. 105.
- [8] Xiang Yan, Sui Xinhong: The Improvement Path of Labor Supervision Mechanism for Employment Gender Discrimination, Journal of South-Central University for Nationalities (Humanities and Social Sciences), 2024, No. 2, p. 117.
- [9] Yang Weixia: The Legal Institutional Roots of Labor Supervision Enforcement Dilemmas, Study & Exploration, 2020, No. 1, p. 106.