

# Exploring the Dilemma of Equal Employment Rights and Countermeasures for Childcare Women-Taking China's "Mom Post" as a Background

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**Abstract:** As a flexible form of employment to alleviate the employment pressure on child-rearing women, the policy value and practical deviations of "mother's posts" constitute a core issue in the field of equal employment. By reviewing representative literature in the field of equal employment and analyzing the special policies and safeguard detailed rules for "mother's posts" in the three provinces of Guangdong, Hubei, and Shandong from 2021 to 2024, the study finds that there is a deviation between the promotion of "mother's posts" and the intended policies: the label of "mother's posts" exacerbates gender discrimination; most positions are concentrated in low-skill sectors, hindering the career development of child-rearing women; although pilot provinces require enterprises to sign agreements and ensure social security coverage, in practice, the signing rate of written agreements for new types of "mother's posts" is low, rights and responsibilities are ambiguous, and the social security participation rate of employees is much lower than that of regular positions, which infringes upon the equal employment rights of child-rearing women. Its underlying causes manifest as four major contradictions: first, provisions such as those in the Law on the Protection of Women's Rights and Interests are highly principled and insufficiently connected with policies such as "flexible working hours"; second, the coordination of multiple remedial measures fails; third, employment discrimination is highly concealed, making it difficult for workers to adduce evidence and resulting in high costs for safeguarding their rights; fourth, there is a prominent cost mismatch: the average time for workers to pursue rights protection is 3.2 months, the fine for enterprises' violations is only 8,000 yuan, and compensation for mental damage is mostly

within 10,000 yuan, which is insufficient to form an effective deterrent. In light of this, this paper proposes regulatory paths such as enhancing the operability of laws, optimizing the coordination of remedies, reasonably allocating the burden of proof, and strengthening the punishment and incentive mechanisms for enterprises' illegal acts, so as to provide support for improving the equal employment security system and promoting the standardized development of "mother's posts".

**Keywords:** Equal Employment Rights; "Mom Post"; Gender Discrimination

## 1. Formulation of the Problem

In 2025, the Hubei Provincial Department of Human Resources and Social Security issued the Notice on Promoting Women's Employment by Implementing the Employment Mode of "Moms' Posts", which triggered extensive social discussions upon its release. In fact, the implementation of "mom posts" in Hubei is not the first of its kind—since 2022, when the National Health Commission, the National Development and Reform Commission, and seventeen other departments jointly issued the "Guidance on Further Improving and Implementing Active Reproductive Support Measures", Guangdong, Shandong, and other provinces have been implementing the "Guidance on Further Improving and Implementing Active Reproductive Support Measures". Since the NHRC and 17 other departments jointly issued the "Guidance on Further Improving and Implementing Positive Maternity Support Measures," Guangdong, Shandong, and other provinces have begun to explore the employment model of "mommy posts".

At present, the definition of "mom posts" in China's multi-provincial government policies basically converges: they usually refer to

employment positions that are encouraged by the government, developed and set up by enterprises and other employers, and are mainly for school-age women of legal working age who are legally obligated to raise children under the age of 12, and that offer flexibility in terms of working hours and management modes, making it easier to balance work and child-rearing. Employment positions that allow for flexibility in working hours and management patterns, and that make it easy to combine work and childcare. Under the framework of the right to work theory, the core meaning of the right to equal employment is that workers enjoy equal opportunities, rights and treatment in the employment process, and have the right to maintain the dignity of employment and freedom of work, ultimately realizing substantive equality in the work process. Dismantled from the dimension of rights realization, it specifically covers the freedom of career choice in the job-seeking stage, the freedom of career development in the employment stage, as well as the equal enjoyment of labor security throughout the entire employment process.

However, there are still two types of outstanding problems in the current practice of "mommy jobs" in China, which pose significant constraints on the equal employment rights of childcare women: first, the low quality of job supply. Most of the "mom jobs" are in basic positions with low technical content, no promotion mechanism, narrow space for career development, and generally low salary levels, making it difficult to match the employment needs and career development expectations of groups of childcare women with high knowledge reserves and vocational skills; second, the rights and interests protection mechanism is imperfect, due to the flexibility of working hours, workplaces, and forms of employment. Secondly, the rights and interests protection mechanism is imperfect. Due to the flexibility of working hours, workplaces and forms of employment, the "mother's post" is prone to the potential risk of "invisible overtime work", and most of the posts are employed on a part-time basis, which makes it difficult for female childcare workers to protect their rights and interests in terms of rest and vacation, equal access to remuneration for their work, and participation in social insurance. There are obvious shortcomings in the protection of the rights and interests of female childcare workers, including equal access to labor

compensation and social insurance. The above problems are contrary to the core meaning of the right to equal employment, and essentially violate the right to equal employment of childcare women.

Based on this, the author intends to take the connotation of the right to equal employment as the core, systematically comb through the current "mother post" in China to analyze the reality of the obstacles to the equal employment rights of child-rearing women, and analyze the legal causes behind the problems, and put forward the targeted legal regulation path on the basis of which, with a view to perfecting the legal protection system of equal employment in China and promoting the "mother post" in the future. On the basis of this analysis, a specific legal regulation path is proposed in order to improve the legal guarantee system of equal employment in China and promote the standardized and healthy development of the employment mode of "mother's post".

## **2. The Reality of the "Mom Post" Equal Employment Rights Dilemma**

Currently, China's implementation of the "mother post" employment model, aimed at promoting equal employment of childcare women, but in practice, it is not effective in realizing the original intent of the policy, but in the protection of the right to equal employment, there are three major realities of the dilemma.

### **2.1 Exacerbating Discrimination in the Workplace and Hindering Women's Freedom of Career Choice**

The implementation of the "mom job" employment model has exacerbated workplace discrimination and hindered women's freedom of career choice. This is mainly reflected in the following two aspects.

First, the model reinforces the labeled perception that "women are the main body of childcare" at the conceptual level, further solidifying gender bias in the workplace. The establishment of the "mother's post", its name and positioning itself binds the responsibility of childcare with women in depth, which inadvertently sends a signal to employers and society that taking care of the family is the primary responsibility inherent in women, and their career development needs to make concessions for this purpose. This perception can lead to discrimination on the hiring side: employers may reinforce the bias

that "women are more likely to be destabilized by childcare" and question their professional commitment and competence. The result is a more cautious or even exclusionary attitude toward women in regular hiring and promotion for non-mom jobs. For example, there is a heightened concern about the "risk of childbearing" for married women who have not yet had children, and a presumption that married women who have had children are "too distracted to take on high-intensity work". This results in a gender-based "glass ceiling" for women at the start of their career.

Secondly, at the practical level, the existing "mother post" is mostly focused on low-skill, low promotion space, low-paid auxiliary positions, and usually avoids the enterprise's core business and technical fields, thus solidifying the occupational segregation of "low-value positions = women-only", and seriously compressing women's career choices. This has seriously compressed the space for women's career choices. The "targeted matching" mechanism of "mother post" seems to provide convenience, but in fact, it frames women's career development on the "low-value track", which is very likely to lead to child-rearing women to fall into the "skill degradation-salary stagnation". It is very easy for childcare women to fall into the vicious circle of "skill degradation-pay stagnation-disconnection from the mainstream job market". For example, if a woman originally engaged in technology research and development chooses to enter this kind of "mother post" due to the pressure of childcare, it may be difficult to return to the professional track due to the long-term separation from the core technical work, and the value of her human capital is forced to depreciate, and she will eventually be cured in marginal positions. In the long run, the market's perception of women's professional abilities will also tend to be narrowed and underestimated, and society will tacitly agree that "women are only competent for such low-skilled and auxiliary positions", thus further weakening women's chances of and willingness to enter high-skilled and high-decision-making fields. The ultimate result is the formation and reinforcement of a gender-based occupational stratification structure in which "men dominate the core fields and women are trapped in marginal positions", which runs counter to the original intent of promoting gender equality.

## 2.2. A Single Type of Post, Hindering Women's Career Development

The implementation of the "mother's post" has revealed a significant problem of homogenization of job types, which not only restricts the range of career choices for childcare women, but also poses a substantial obstacle to their long-term career development. This problem is mainly manifested at the following two levels.

First of all, the existing "mom jobs" are mostly concentrated in low-skill, low-pay, low-promotion auxiliary positions, which directly leads to the "ceiling dilemma" in the career development of child-rearing women (especially those who have higher knowledge reserves and vocational skills)<sup>[1]</sup>. At present, China's "mother post" is mostly concentrated in the basic clerical, junior customer service and other low professional skills requirements of the field, the common characteristics of such positions: the lack of supporting career promotion system, that is, there is no level of promotion level set, and the lack of basic positions to the technical post, the management of the flow of the channel. For women who were originally engaged in design, finance, technology research and development and other high-end careers in childcare, choosing the "mom post" means "job downgrading", even if they expect to achieve career advancement after the transition to the "mom post", they will not be able to achieve career advancement because of the lack of career advancement system. Even if they expect to realize career advancement after the transition to the "mother's post", they are forced to fall into a stagnant state of "being in a basic, auxiliary position for a long time" due to the lack of promotion paths in the post itself, which ultimately leads to the failure of their career development goals.

Secondly, there is a significant gap between the "mother's post" and the professional post that some women held before giving birth, and this gap between the old and new posts interrupts the continuity of career development and pushes up the cost of re-employment. On the one hand, when childbearing women enter the "mom job", they are often faced with barriers to switching professional skills. As most "motherhood jobs" are concentrated in low-skill, repetitive and supportive positions, their work content and knowledge structure are fundamentally different

from many women's original fields of specialization. In order to adapt to their new positions, they need to invest additional time and economic costs to learn new, usually low-value operational skills. This initial investment in itself constitutes an immediate cost of re-employment. On the other hand, the more far-reaching impact lies in the systematic deterioration of professional competence and the continued depreciation of human capital. In the process of engaging in "motherhood" for a long period of time, the professional skills accumulated by women before giving birth are prone to deteriorate due to "idleness", and their knowledge of new industry dynamics and technologies will be disconnected due to their separation from the mainstream workplace, leading to a break in the chain of career development. When they try to return to their professional positions, not only will they invest more time and economic costs to re-learn and update their professional skills, but they may also encounter implicit rejection by enterprises due to the "occupational gap" and "skills disconnection", further increasing the cost and difficulty of re-employment.

### **2.3 Lack of Labor Protection, Women's Labor Rights and Interests are Damaged**

As a form of flexible employment designed to balance childcare and employment, the "mother post" has, to a certain extent, led to multi-dimensional damage to women's labor rights and interests in actual operation.

First, the "mother post" infringes on women's right to remuneration for their labor, manifesting itself in generally low pay and unequal pay for the same work.<sup>2025</sup> In Guangdong's Heshan Umbrella Factory, the monthly income of the "mother post" was only 2,000 yuan, and in a Jiangmen enterprise, the daily wage was 120 yuan, with a monthly income of about 3,600 yuan, which was barely enough to pay for the work they did. The monthly income is about 3,600 yuan, barely enough to subsidize the family [2] Such low-paid jobs seem to solve the employment problems of childcare women, but in fact they are forced to fall into the vicious circle of "low hourly wage-long working hours-stagnant skills", which aggravates the impoverishment of their occupation. On the other hand, the principle of equal pay for equal work has been selectively ignored in "mom jobs". Among similar jobs, the average salary of "mom

jobs" is lower than that of ordinary jobs. Enterprises use "flexible working hours" as an excuse to avoid the obligation to provide equal pay for equal work. This kind of differential treatment is contrary to Article 46 of the Labor Law, which states that "the distribution of wages shall be based on the principle of distribution according to work, and equal pay for equal work shall be implemented." It is essentially institutionalized discrimination on the basis of gender and motherhood, resulting in the impairment of the equality of the right to remuneration for work.

Second, "mom jobs" have the core advantage of flexible employment, but this has also led to the frequent occurrence of "invisible overtime," putting workers' right to rest in a substantially impaired situation. Article 36 of the Labor Law clearly states, "The daily working hours of workers shall not exceed eight hours, and the average weekly working hours shall not exceed forty-four hours." Article 37 further stipulates that "for workers who work piece-rate, the employer shall reasonably determine their labor quotas and piece-rate compensation standards in accordance with the working hour system stipulated in Article 36 of this Law." However, the flexible working system of "mom post" circumvents the traditional definition of attendance, making it difficult to implement the legal provisions. The core of the difficulty in protecting the right to rest lies in the dilemma of proof and the regulatory gap. Workers need to prove the fact of overtime on their own, but WeChat instructions, temporary tasks, etc. are often not included in the attendance records, making it difficult to prove. On the other hand, labor security supervision adopts a written review as the core of the law enforcement approach, which is mainly based on the employer reporting the record-type written documents (such as salary ledger, labor contract text, attendance records and social insurance payment vouchers, etc.) as the core review materials, it is difficult to verify the fragmentation of the length of time of employment, enterprises also routinely avoid the filing of the eventual "mom post" This ultimately reduces the right to rest for "mom and pop" workers to a mere formality.

Finally, the "mother post" mostly exists in the form of part-time employment. Enterprises generally do not sign a written labor contract with the practitioners, which directly leads to the

difficulty of identifying the labor relationship, and thus exacerbates the difficulties in safeguarding the rights of the practitioners. Article 7 of China's Labor Contract Law clearly stipulates that "an employer shall establish a labor relationship with a worker from the date of employment." Article 10 also stipulates that "the establishment of labor relations, shall enter into a written labor contract", but "mom post" on the written contract of the general circumvention, so that the labor relationship identified as the primary obstacle to defend rights. On the one hand, there is a significant imbalance between the legal recognition standards and the ability of the workers to prove. According to the Notice on Matters Relating to the Establishment of Labor Relationships (Ministry of Labor and Social Affairs (2005) No. 12), the determination of labor relationships needs to satisfy the three core elements of "the subject's qualification is legal, the laborer is under the employer's management and engages in remunerated labor, and the labor is an integral part of the employer's business". However, the flexibility of "mom posts" has led to practitioners receiving instructions and settling remuneration via WeChat, and the lack of key documents such as attendance records and work badges, which makes it difficult to prove that they are "subject to the rules and regulations of the enterprise", and thus unable to satisfy the requirements for recognition. On the other hand, the ambiguity of the nature of part-time employment further aggravates the difficulty of determination. Enterprises often use the name "part-time" to avoid responsibility, but in practice, they break the legal boundary of "no more than 4 hours of work per day"; and because they have not signed a written contract to clarify the form of employment, workers need to prove that "the actual employment meets the standard of full-time employment". The worker is required to prove that "the actual employment meets the full-time standard". This unreasonable distribution of the burden of proof makes workers passive at the stage of determining the labor relationship, in addition to the flexibility of the "mother's post" in terms of time, location, and employer. Although local policies have attempted to regulate the protection of the labor rights and interests of "mother's work" employees, the actual effect has been limited. For example, Guangdong Province's Notice on the Implementation of the "Mothers' Post" Employment Model specifies that "labor contract

employment requires the inclusion of flexible work matters in the contract or supplemental agreement, and labor service employment requires the signing of a labor service agreement to define rights and obligations." However, these provisions lack binding force and effective supervision, and enterprises still often circumvent labor relations by signing labor contracts, employing "moms' jobs" in the name of part-time or temporary work, and evading their social security responsibilities.

### **3. "Analysis of the Legal Causes of the Difficulties of Equal Employment Rights for 'Mothers' Workers"**

The realization of equal employment rights of childcare women in the special job form of "mother's post" has always faced multiple realities, and the imperfection of the legal regulation and guarantee system is one of the core causes of this predicament. The author will analyze the specific legal causes of this dilemma from three angles. First, focusing on the definition of the content of the legal text and the effectiveness of the application of the rights and remedies, examining the coverage gap of the existing labor laws and regulations in the scene of the "mom post", as well as the practical obstacles of the social, administrative, and judicial remedies in practice; second, exploring the practical appropriateness of the rules on the allocation of the burden of proof between employers and employees, analyzing the impact of the current Secondly, it explores the practical appropriateness of the rules on the allocation of the burden of proof between employers and employees, and analyzes the constraints of the current system of proof on the rights of childcare women, who are in a disadvantaged position in terms of information and bargaining; thirdly, it introduces the framework of law and economics analysis, and through the deconstruction of the costs of workers' rights and the expected benefits of enterprises' discriminatory employment, it reveals the imbalance relationship between the two and its profound impact on the enterprises' willingness to comply with the regulations and the realization of the right of childcare women to equal employment.

#### **3.1 Deficiencies in the Definition and Practical Application of the Legal Norms System**

From the perspective of the legal system, the failure of equal employment rights for childcare

women is mainly due to the deficiencies in the system itself in terms of both content definition and practical application.

First of all, the deficiencies of China's legal normative system in defining the content of employment discrimination are centered on three aspects: firstly, the definition of "employment discrimination" and related concepts is vague; secondly, there is a lack of operability of legal norms, and at the same time, there is an insufficient cycle of protection for childbearing females and fragmentation of the legislative system; and thirdly, there is a lack of cooperation between part-time employment and the new employment scenarios. Third, there is an obvious gap in the institutional provision of labor protection in the context of part-time employment and new forms of employment.

First, there is ambiguity in the definition of the concept of discrimination in employment in China's current laws, which is mainly reflected in the lack of regulation of the dual dimensions of "equal employment rights" and "employment discrimination". To clarify the argument, the operational definitions of the two concepts are first specified herein: "Equal employment rights" refers to the right of workers to be employed based on their labor capacity, whose core lies in excluding discriminatory treatment based on non-labor-related factors such as gender and physiological characteristics, balancing formal and substantive equality, with special consideration given to the additional responsibilities borne by women due to childbirth and childcare; "Employment discrimination" refers to acts by employers that impose restrictions or discriminatory treatment based on the aforementioned non-labor-related attributes, resulting in damage to workers' rights and interests, which shall satisfy the four constituent elements: "based on non-labor-related attributes, without just cause, discriminatory treatment, and damage to workers' rights and interests". First, the connotation of "equal employment rights" is not sufficiently explained, although the relevant laws and regulations stipulate in principle that both genders enjoy equal labor and social security rights, but they do not specify the legal connotation of "equality", and in practice, they mostly adhere to the orientation of formal equality-Courts and arbitration agencies only take the consistency of the employment conditions set by employers as the judgment

standard, but ignore the differences in the real needs of the two genders due to physiological differences, childcare and female family responsibilities, resulting in the absence of the pursuit of the value of substantive equality in the application of the norms<sup>[3]</sup>. Secondly, there is no statutory definition of the concepts of "employment discrimination" and "gender discrimination", which not only fails to clarify their definitions, scope boundaries and judgment standards, but also leads to the ambiguity of the boundaries between employment discrimination and normal employment management behavior of employers, which further leads to the lack of a clear definition of discrimination in judicial practice, and the lack of a legal definition of discrimination. The lack of uniform and clear guidelines for the screening of discriminatory behavior in judicial practice has exacerbated the difficulties in determining<sup>[4]</sup>.

Secondly, although a number of existing laws and regulations in China provide for women's equal employment rights, there are still significant systemic shortcomings in the special protection for childcare women, which are centrally manifested in the more principle-based provisions and less operational content, the phase limitation of the protection cycle, and the decentralized deficiencies of the legislative system. First of all, from the perspective of a single legal norm, the existing legislation on female employment discrimination mostly stays at the level of principle declaration, only abstractly establishing the value orientation of equal employment, but lacking supporting implementation rules, behavioral recognition standards and responsibility, resulting in a significant lack of norms of operability<sup>[5]</sup>. Specifically for the special group of childcare women, although the Law on the Protection of Rights and Interests of Women and the Labor Contract Law clarify the principle of gender equality in employment with general provisions, there is a lack of detailed provisions for childcare scenarios. Secondly, the protection cycle is clearly short-termized, making it difficult to cover the long-term needs of childcare women. The special protection for childcare women under the current laws focuses on the short-term stages of childbirth, such as pregnancy and breastfeeding, and only responds to the stage-by-stage needs of the childcare cycle; under the background of the "three-child" policy, childcare women need to take on longer-term

childcare responsibilities, but the current system fails to include this in the scope of protection, resulting in a gap in the protection of the rights and interests of childcare women in their long-term career development. This has led to a gap in the protection of the rights and interests of childcare women in their long-term career development. On the other hand, the legislative system adopts a decentralized model, with insufficient regulatory synergy. Provisions related to the employment protection of childcare women are scattered in the Law on the Protection of Women's Rights and Interests, the Labor Contract Law and other laws, which lack systematic integration, and there is the problem of duplicated and intersecting norms, failing to form a logically coherent protection system with clear rights and responsibilities, which not only increases the difficulty of applying the law, but also weakens the effectiveness of the system in safeguarding the rights and interests of childcare women in their employment.

Thirdly, China's current "mother post" presents two major characteristics of part-time employment and new forms of employment on the Internet. However, China's current legal system is insufficient to protect the labor rights and interests of these two forms of employment. On the one hand, China's regulation on part-time employment is more flexible than safe, with loose legal provisions, difficulties in recognizing overtime work, loose social security rights and interests, etc.<sup>[6]</sup>. On the other hand, the "de-laboring" feature of the new form of Internet employment makes the legal relationship between workers and platforms blurred, and it is difficult to define the labor relationship; in the judgment of judicial practice, the determination of the labor relationship between workers and platforms of the new form of employment often appears the phenomenon of "different judgment in the same case", which is not the same as the judgment of the new form of employment, and there is the phenomenon of "different judgment in the same case". In the judgment of judicial practice, there is often the phenomenon of "different judgments in the same case" for the determination of labor relations between workers and platforms in new employment forms, which directly affects the certainty of the path of relief for workers and the stability of the protection of their rights.

Second, China's current labor law and normative system has deficiencies in its application to the

relief of workers, which are reflected in the functional limitations of the three core means of social, administrative, and judicial relief and the failure of the synergy mechanism, resulting in the complexity and cumbersomeness of the procedure of "one mediation, one adjudication, and two adjudications," and in the failure of the dispute handling system to give full play to its effectiveness. Firstly, the social relief centered on mediation faces the dilemma of institutional deflation. Internal labor mediation committee because of the existence of subordinate relationship with enterprises, neutrality and impartiality is difficult to guarantee, resulting in its virtual existence; external mediation exists in the enterprise mediation subject redundancy, jurisdictional boundaries of fuzzy problems, and the lack of clear guarantees for the enforcement of mediation agreement, ultimately leading to the actual effectiveness of the mediation system is limited<sup>[7]</sup>. Secondly, the administrative relief to labor arbitration as the core, and the "People's Republic of China Labor Dispute Mediation and Arbitration Law" Article 5 to establish the principle of arbitration before, however, in practice, labor arbitration committees due to the lack of independence, the arbitrator's professional competence varies, not only the credibility of the weak, resulting in the parties to the arbitration after the satisfaction rate of less than 50%, and the ruling of the error rate is high, and a large number of parties to follow up on litigation to protect their rights, which significantly increased The cost of defending rights and relief costs, deviating from the original intention of arbitration "low cost, high efficiency, justice"<sup>[8]</sup>. Thirdly, the professional adaptability of judicial remedies to deal with complex disputes is insufficient: with the extension of labor disputes from traditional "wage claims" to more complex and diversified types, the courts lack specialized research and precise adjudication capacity for disputes in niche areas such as employment discrimination, and the adjudication results may be biased.

### **3.2 Imbalance in the Burden of Proof between Employers and Workers**

The core basis for the allocation of the burden of proof in labor disputes in China is Article 6 of the Law on Mediation and Arbitration of Labor Disputes, which establishes the general principle of "whoever claims, whoever produces the evidence", and sets the general principle of "if



the evidence related to the disputed matter is in the possession and management of the employer, the employer shall provide it; if not, the employer shall Bear the adverse consequences" of the reversal of the burden of proof exception rule. From the viewpoint of legislative intent, this move is aimed at correcting the disadvantageous position of workers relative to the employer by balancing the difference in the ability of the employer and the worker to provide evidence.

However, in judicial practice, this "principle + exception" distribution mode did not realize substantive fairness, the imbalance of the burden of proof is still more prominent. First, the ability of workers to obtain the core evidence is inherently insufficient. Because the employer occupies the management advantage in the labor relationship, most of the key evidence is actually controlled by the employer, and there are obstacles for the workers to obtain the evidence objectively. Even if the workers claim that the burden of proof is reversed, they still need to prove that "the disputed evidence is in the employer's possession", and this prior obligation of proof itself poses a challenge to the workers. For example, if a worker claims that the employer owes him or her wages in arrears, he or she needs to prove that the payroll ledger is managed by the employer, but such ledger is mostly an internal document of the employer, which is difficult for the worker to access or fix; if the employer refuses to provide it on the grounds that the evidence has been lost and no relevant records have been established, the worker also lacks the ability to prove that the evidence in dispute is in the employer's possession. If the employer refuses to provide them on the grounds that "the evidence has been lost" or "no relevant records have been established", the workers will lack effective means to refute them. Second, it is difficult to regulate the risk of false or negative proof by employers. In order to avoid responsibility, some employers falsify attendance records, alter the date of signing rules and regulations, and conceal key employment documents, etc. Workers lack the right to know the internal management process of the employer, and find it difficult to adduce evidence to refute the authenticity of the false evidence. Thirdly, there is a difference in the criteria for determining "evidence in the employer's possession" between the arbitration and judicial authorities. The

allocation of the burden of proof is often complex, so in the absence of specific provisions or in accordance with the provisions of the law and judicial interpretation, the judge can not determine the allocation of the burden of proof. The judge has the discretion to allocate the burden of proof. However, in practice, different judges may differ slightly in the allocation of the burden of proof due to differences in their qualities and understanding of the rules, which may lead to differences in judicial outcomes and further aggravate the uncertainty of the workers' burden of proof<sup>[9]</sup>.

Of particular concern are employment discrimination disputes, which account for a relatively high proportion of labor dispute cases involving childcare women, further highlighting the irrationality of the allocation of the burden of proof. In such cases, employers mostly use legal trappings such as "insufficient job matching" and "job content adjustment" to cover up discriminatory intent, blurring the boundary between discriminatory behavior and normal employment management, resulting in evidence of employment discrimination that is naturally hidden. And China's laws have not yet set up special rules on the burden of proof for employment discrimination cases, i.e., neither clarifying that the reversal of the burden of proof can be applied to such cases, nor lowering the standard of proof for workers, making it necessary for workers to prove that "the employer has discriminatory intent", "discriminatory behavior and the result of not using the workplace. There is a causal relationship between the discriminatory act and the result of not utilizing the work," etc. Such proof is more difficult to prove, significantly increasing the burden of proof on the workers. This creates a vicious cycle of "easy discrimination, difficult to prove, difficult to defend".

This imbalance in the burden of proof triggers a chain of negative effects: it is difficult for laborers to prove their case, and they face a clear risk of losing the case if they do not have enough evidence, so the high threshold of proof significantly reduces their willingness to seek legal remedies. And the decline in the initiative of workers to protect their rights, further aggravating the employer's discriminatory hiring of workers in a fluke mentality. In the end, the two-way dilemma of "low willingness of workers to seek remedies and strong motivation



of enterprises to violate the law", and it is difficult to obtain substantive legal protection of equal employment rights of workers.

### **3.3 Mismatch between the Cost of Violation of Laws by Employers and the Cost of Defending the Rights of Workers**

In China's labor dispute cases, the time and economic costs for workers to defend their rights are both high, which is due to the defective effectiveness of the judicial procedure of "one mediation, one adjudication, and two trials". Although this procedure is designed to resolve disputes in a diversified manner, the actual effectiveness of mediation and arbitration is limited in practice, resulting in most disputes being subject to litigation. According to the Civil Procedure Law, the trial period of the first instance ordinary procedure for labor disputes is 6 months (extendable by statutory procedures), and the trial period of the second instance is 3 months (extendable by the same), and the rule of "appealing is to start the procedure" under the system of the second instance provides institutional space for employers to delay the defense of their rights<sup>[10]</sup>. This less efficient delay in the judicial process consumes a lot of time of the workers and further pushes up the time cost of defending rights. At the same time, the explicit and implicit expenditures of economic costs together constitute a heavy burden. Explicit costs include direct expenses such as litigation fees and attorney's fees, while implicit costs stem from "cost shifting" due to irrational allocation of the burden of proof, whereby workers need to invest additional resources in applying for an investigation order for the purpose of proving their case, commissioning a third party to take evidence, or incurring the costs of witness subsidies and notarization of information, thus adding to the economic burden.

It is worth noting that childcare women, as a special group in labor disputes, have seen their rights protection costs further magnified. As childcare, women bear the main responsibility for childcare and household management, the time and energy they can allocate to the rights defense process has been drastically reduced; from the economic perspective, the expenses for rights defense need to be additionally charged to household expenses, which constitutes an additional economic pressure on childcare women who already have low incomes and who

need to balance the costs of childcare and living expenses. However, the current system has not established a special protection mechanism for their needs, i.e., there is no mechanism to assist them in proving their rights, no green channel for legal aid, no reduction or exemption of fees for defending their rights, and so on, resulting in an invisible increase in the cost of defending their rights.

In sharp contrast to the high cost of workers' rights defense, the cost of employers' violation of the law has been low for a long time, which is due to the limitation of the scope of compensation and the practical dilemma of compensation for moral damage. In general, labor disputes, the statutory compensation is limited to the scope of property compensation, and it is mostly limited to direct economic losses such as the difference in labor remuneration and compensation for unlawful termination of employment, while the relief expenses incurred by the workers in defending their rights, such as the costs of obtaining evidence, as well as the loss of expected benefits such as the loss of job opportunities due to discrimination in employment, are not included in the scope of the compensation, which results in the amount of actual compensation paid by the employers often being lower than the actual losses suffered by the workers. Focusing on disputes over equal employment rights, the Notice of the Supreme People's Court on Increasing the Subject Matters of Civil Cases (Law (2018) No. 344) establishes it as an independent subject matter under the disputes over general personality rights, and Article 1183 of the Civil Code explicitly stipulates that "serious mental damages caused by infringement of personal rights and interests can be claimed as compensation". In judicial practice, the personality infringement model of the right to equal employment is mainly based on the claim of compensation for moral damage<sup>[11]</sup>. However, it still faces double obstacles. On the one hand, there is a lack of quantitative standard for defining "serious mental damage", and the court mostly relies on ambiguous evidence such as medical records and psychological assessment reports; on the other hand, the requirements for proving causality are strict, and workers need to prove that the discriminatory behavior of the employer is directly related to the mental damage, and the hidden nature of the discriminatory behavior makes it more difficult

to prove that the employer's discriminatory behavior has caused mental damage. The hidden nature of the discriminatory behavior makes it more difficult to prove. In the end, the amount of compensation for moral damages awarded to workers in disputes over equal employment rights is often only a few thousand to ten thousand yuan, which is a significant gap between the workers' claims and the actual damages, and is much lower than the illegal benefits such as maternity leave wages and breastfeeding leave replacement costs that employers circumvent through discriminatory employment.

This structural mismatch of "high cost of defending rights-low cost of violating the law" directly triggers a double negative effect, forming a vicious circle in the protection of labor relations. For workers, the double investment of time and economy, the objective existence of the risk of losing the case, so that "the cost of defending rights is higher than the potential benefits" has become a common predicament, resulting in low willingness of workers to defend their rights, and some of the workers even give up legal remedies, so that the effectiveness of the labor protection system has been seriously weakened; for employers, the significant discrepancy between the cost of violating the law and the benefits of violating the law, further breeds a vicious circle of labor relations protection. For employers, the significant gap between the cost of violating the law and the benefit of violating the law further breeds their mentality of violating the law, and they are more inclined to compress the cost of employment through hidden discrimination and other means, forming the negative incentive of "no responsibility for violating the law". As a result of these two factors, the dichotomy between workers' unwillingness to file lawsuits and employers' lack of fear of violating the law continues to intensify, and the provisions of anti-discrimination labor laws may become dormant, making it difficult to effectively safeguard workers' right to equal employment in practice.

#### **4. The Legal Regulation of the Right to Equal Employment of "Moms"**

With regard to the dilemma of safeguarding equal employment rights exposed in the practice of "mother posting", it is necessary to build a systematic legal regulatory framework, and to

make concerted efforts in the four dimensions of system improvement, relief optimization, responsibility balancing and supervision strengthening. Firstly, through the precise definition of legal concepts and the integration of the institutional system, it is necessary to solve the problems of weak operability of legal provisions and fragmentation of rights and interests protection. Secondly, it is necessary to establish a professional relief mechanism, integrate mediation, arbitration and judicial procedures, and set up equal employment commissions and subdivided labor courts to enhance the professionalism of adjudication and reduce the cost of defending one's rights. Finally, through the dynamic distribution of the burden of proof and the linkage of regulatory and disciplinary incentives, the rights and interests of labor and management should be balanced. Through the above paths, we aim to realize the leap from formal equality to substantive equality in the legal system, and to promote the transformation of "motherhood" from an acute policy to a sustainable mode of governance.

#### **4.1 Optimize the Design of the Legal System and Enhance its Practicability**

China's current legal system for equal employment rights has shortcomings such as ambiguous definition of core concepts, fragmentation of the legislative system, insufficient operationalization of legal norms, short protection cycle for the rights and interests of female childcare workers, and incomplete coverage of the rights and interests of workers in full-time employment and new forms of employment. In this regard, the author puts forward the following recommendations to improve the legal framework and enhance its effectiveness in practice.

##### **4.1.1 Incorporating gender equality awareness into the legislative process**

At present, China's legislation and policymaking tends to emphasize the protection of women's rights and interests, while neglecting the equal protection of men's rights and interests. This may seem to strengthen women's rights and interests, but in fact it is an overemphasis on gender specificity, pre-determined binding of women to certain social roles, forming the institutional paradox of "protective discrimination"<sup>[12]</sup>. This legislative bias is particularly evident in the practice of "mom posts". From the perspective of system design,

the naming of "mom posts" directly associates childcare responsibilities with female identity, and the provisions of the rules are only set around the needs of women's childcare, neither reflecting men's childcare responsibilities nor clarifying men's legal rights and obligations to participate in childcare at the legislative level, which is essentially a case of "women dominating the household and men dominating the outside" traditional family division. This is essentially a reproduction of the traditional division of labor in the family in the area of employment. This institutional design, which places sole responsibility for childcare on women, exacerbates the "motherhood penalty" and creates hidden discrimination such as gender segregation in the workplace, resulting in substantive gender inequality.

Therefore, the "gender equality" advocated here does not only emphasize the protection of a single sex, nor is it a formal level of "non-discriminatory treatment"; rather, it is the elimination of obstacles to the development of both genders due to the preconceived notions of social roles through institutional adjustments, and ultimately the realization of rights and opportunities. The ultimate goal is to realize fairness in terms of rights and opportunities. In the institutional construction of the "mother's post", "gender equality" refers specifically to the compulsory regulation of the legal system, transforming family responsibilities such as childcare into rights and obligations shared by both genders, thereby deconstructing the solidification of gender roles and ultimately realizing substantive gender equality. It is recommended that a gender impact assessment mechanism be established in the revision of the Legislative Law, requiring that policies related to labor rights and interests must undergo a gender equality review<sup>[13]</sup>. For female childcare workers, the "mother's post" can be reconstructed as a "birth-friendly post", and men can be included in childcare duties. In addition, the Labor Contract Law can make it clear that men and women enjoy the same rights and interests in childcare support, and make it clear that employers share the responsibility, and require that jobs be equipped with parental leave, breastfeeding facilities, and other supporting measures, so as to break down the system of "childcare responsibilities exclusive to women" presuppositions.

#### 4.1.2 Defining the concept of employment

discrimination

At present, China's legislation has not yet defined the core concept of "employment discrimination" in an explicit manner, and has only prohibited differential treatment based on gender, ethnicity, and other specific reasons through scattered provisions in the Labor Law, the Law on the Protection of Rights and Interests of Women, and other laws, and has not yet formed a systematic regulatory framework. This model has problems such as incomplete coverage of the types of discrimination and vague definitions of exceptions, making it difficult to recognize employment discrimination, especially hidden employment discrimination, in judicial practice.

Therefore, clarifying the concept of employment discrimination is the basic premise for improving the rule of law system of equal employment in China and solving the difficulties of judicial determination. Specifically, a clear conceptual system can be constructed through a two-step path: first, the concept and scope of gender discrimination in employment can be clarified by adopting the composite model of "core concept definition + specific type enumeration + supplementation of presumptive rules"<sup>[3]</sup>. Specifically, the legislation specifies that the essence of "employment discrimination" is "differential treatment without reasonable cause, based on specific characteristics, and the treatment substantially impairs the equal employment opportunity of workers", and at the same time lists explicit discrimination (e.g., refusing to hire directly on the basis of gender) and implicit discrimination (e.g., job naming). implicit discrimination (e.g., implied gender in the naming of a position), and establishes the rule of "presumptive discrimination by differential treatment" to reduce the burden of proof on workers. In the list of specific types of discrimination, a more detailed list of violations can be provided to address the differences in the rights and interests of child-rearing women at various stages of their "motherhood" (e.g., during pregnancy, breastfeeding, child-rearing, etc.). For example, it could explicitly include typical practices such as 'unjustified reassignment with reduced remuneration' during pregnancy, 'denial of statutory breastfeeding breaks' during lactation, and 'denying necessary flexible working arrangements or excluding promotion opportunities on grounds of "priority childcare responsibilities"' during the childcare

period. This enhances the legislation's specificity, providing clear guidance for judicial practice in identifying employment discrimination against women during these distinct life stages, thereby effectively safeguarding their equal employment rights. Second, define the meaning of the principle of "substantive equality" and the scope of application of "lawful preferential treatment" simultaneously, and make it clear that "lawful preferential treatment" should be aimed at "compensating for the disadvantages of specific groups in employment and promoting substantive equality," rather than "protective favoritism" that solidifies the label of a group, as well as refining the criteria for determining preferential treatment so that it doesn't become a pretext for avoiding the discrimination determination.

#### 4.1.3 Coordinating and integrating the legal system for equal employment rights

With the deepening development of China's labor market, workers' awareness of the right to equal employment rights has significantly increased, and related labor disputes are on the rise. However, China's current protection of equal employment rights adopts a decentralized legislative model, and there is insufficient synergy between related legal norms, making it difficult to fully respond to the demand of workers for substantive protection of equal employment rights. Therefore, it is of great significance to strengthen the systematization and integration of laws and regulations related to the right to equal employment, and to enhance the synergy between the legal norms, in order to effectively safeguard workers' right to equal employment.

From the perspective of comparative law experience, many countries in Europe and the United States have adopted special legislation to build a legal framework against employment discrimination and explicitly prohibit all kinds of employment discrimination. On the basis of overseas experience and the actual situation of the labor market in China, China can formulate a special Equal Employment Law and build a systematic and complete legal guarantee system for the right to equal employment. In view of the fact that female groups still face more prominent employment discrimination in the labor market, a special chapter should be devoted to the protection of women's equal employment rights in this law. On the one hand, the period of special protection for women's equal

employment rights in the child-rearing stage should be appropriately extended, so that the special protection that originally covered only the period of pregnancy and breastfeeding can be extended to the longer-term child-rearing stage. On the other hand, taking into account the differences in the needs of women in different stages of child-rearing and the reality of the plight of women whose equal employment rights have been jeopardized, more targeted protection rules should be set up in order to break down the barriers to employment encountered by women due to the needs of child-rearing.

At the same time, China's current legislation on equal employment rights is characterized by "many declarations of principles and few operational provisions", which has limited effectiveness in guiding judicial practice. Further, the Equal Employment Law needs to add operable provisions on remedies, including clear remedies for those whose rights have been infringed upon, rules on the allocation of the burden of proof between employers and employees, and the type and manner of the employer's responsibility for infringement of the right to employment, so as to provide clear guidelines for the judicial safeguard of the right to equal employment, and to effectively enhance the effectiveness of the implementation of the legal system.

#### 4.1.4 Making special provisions for the employment characteristics of "mom posts"

China's "moms' work" presents part-time employment and new forms of employment as the main modes, with the core purpose of helping child-rearing women achieve work-family balance as the typical characteristics. In view of the inadequacy of the current legal regulation of "mom jobs", it is necessary to make special provisions in the legislation to address their characteristics, in order to strengthen the protection of the rights and interests of "mom jobs" workers.

From the perspective of the protection of employment patterns, "moms' jobs" are concentrated in the areas of part-time employment and new forms of employment, and the existing legal protection system in this area is still weak, so China should improve the relevant legal system. First, it should clarify the labor relationship between new forms of labor and the platform. China's practice, although according to the "on the establishment of labor relations related matters notice" (Ministry of

Labor and Social Security issued [2005] No. 12) to "subordinate" to determine whether the labor relationship is established, but the lack of quantifiable standards, the need for legislation to establish a personality subordinate (such as the platform of the degree of control over the work time, content) and economic subordinate (such as labor remuneration), but also to establish a legal system to protect the labor relationship. Legislation is needed to establish specific indicators for consideration of personality affiliation (e.g., the degree of control over working hours and content by the platform) and economic affiliation (e.g., the source of labor remuneration and the main body of the provision of means of production), and to clarify the nature of the legal relationship between the laborer and the platform<sup>[14]</sup>. Second, the labor protection standards for part-time and new forms of employment should be raised, especially in terms of salary payment, rest and vacation, and it is recommended that part-time workers' working hours be converted to the proportion of full-time workers' working hours, so as to benchmark the level and content of the rights protection for full-time workers, and to reflect the principle of equal pay for work of equal value. Third, social insurance standards for part-time and new forms of employment should be appropriately lowered, and subsidies should be provided for social insurance payments, so as to lower the threshold for workers to participate in insurance and expand social insurance coverage<sup>[6]</sup>.

From the perspective of the safeguard dimension of the purpose of establishment, the "mother post" takes the flexible work system to break the work-family conflict of childcare women as its core purpose, and China needs to promote the realization of this purpose by elevating local policies to national rules through legislation. Guangdong Province, Hubei Province and other places have already made it clear in their special policies that "in the case of labor contracts, the employer should negotiate with the employee on matters such as flexible work, no overtime work, and leave for childcare needs, and incorporate these matters into the labor contract or supplemental agreement; and in the case of labor services, the rights and obligations should be clarified through the labor agreement". China's relevant laws may refer to such policy practices and include "flexible work arrangements, overtime negotiation, and the right to take leave for childcare needs related to the purpose of the

establishment of 'mom posts'" in the mandatory clauses of the labor contract, and add the employer's obligation to inform the employer of the The employer is also required to take the initiative to explain the contents of the relevant rights and benefits at the time of contracting, so as to ensure that childcare women have the right to know and the right to negotiate, and to promote the realization of the purpose of the establishment of the "mother's workplace" by means of legal coercive force.

#### **4.2 Setting up Specialized Agencies to Enhance the Efficiency of Remedies**

In China's current "conciliation-arbitration-litigation" labor dispute relief system, the pre-complaint diversion function of conciliation and arbitration is weakened, and the effectiveness of procedural articulation is insufficient, resulting in the concentration of cases in the courts; at the same time, the court's specialized adjudication ability in the niche area of employment discrimination needs to be upgraded, making it difficult to accurately respond to the demand for protection of workers' right to equal employment. At the same time, the court's ability to adjudicate cases of employment discrimination needs to be improved, making it difficult to accurately respond to the needs of workers for equal employment rights protection. The "principle of exhaustive remedies" established by the U.S. Civil Rights Act of 1964 and the specialized administrative remedies of the Equal Employment Commission (EEOC), as well as the three-tier anti-discrimination remedies system in the United Kingdom, which consists of the Equality and Human Rights Commission (EHRC), the Advisory Conciliation and Arbitration Services Center (ACAS), and the labor courts, have provided China with the opportunity to set up specialized institutions. China has provided useful reference for the establishment of specialized institutions, and can enhance the effectiveness of relief through the construction of specialized institutions on the basis of retaining the existing framework of relief procedures.

First, a specialized Equal Employment Commission should be established as the core carrier of administrative remedies, integrating conciliation and arbitration functions in order to strengthen pre-litigation resolution capabilities. The commission should be positioned as a

government agency and integrated into the unified administrative supervision system to guarantee its credibility; its core functions should be clearly defined as follows: to receive complaints from workers about damage to their right to equal employment and initiate special investigations, and if it is found that there is no fact of discrimination, to make a decision to dismiss the case, so that the worker can bring a lawsuit against the decision to dismiss the case to the court within the legal deadline; if it is found that there is a suspicion of discrimination, to start a specialized conciliation procedure as a priority, and if conciliation fails, to issue a certificate of the end of the procedure. If discrimination is found to exist, priority is given to initiating specialized conciliation procedures, and if conciliation fails, a certificate of termination is issued, on the basis of which the worker may bring a lawsuit against discrimination in employment to court. At the same time, it is necessary to strictly enforce access standards for mediators, establish professional qualification examinations and a regular training mechanism, and enhance their professionalism and public recognition in handling disputes, so as to effectively play the role of front-end triage of administrative remedies.

Secondly, to address the lack of precision in the adjudication of employment discrimination cases in courts, a specialized labor court system should be constructed, and a specialized adjudication organization for employment discrimination cases should be set up under the framework of the labor court. Through thematic training, case search guidelines, expert consultation mechanisms, etc., judges can strengthen their professional ability to determine facts and apply laws in the field of employment discrimination, so as to enhance the authority of judicial decisions; at the same time, employers' representatives and workers' representatives can be added to the trial organization, and the reference mechanism for their opinions in the determination of facts can be clarified, so as to make the results of the decision more in line with the characteristics of the practice in the field of labor, and to enhance the representativeness of the industry and the protection of rights and interests. This will make the adjudication results more in line with the practical characteristics of the labor field, enhance the representativeness of the industry

and the protection of rights and interests, and avoid any bias in adjudication due to the disconnection between the judiciary and practice.

In addition, for vulnerable groups of workers, such as women with children, there is a need to appropriately embed tilted safeguard clauses in the relief procedures: at the administrative relief stage, the "proximity principle" has been established, so that women with children, with child-rearing certificates and other documents, can apply for their cases to be handled by the Equal Employment Commission in the area of their residence, in order to resolve conflicts between the protection of their rights and the protection of their children; at the judicial trial stage, appropriate improvements can be made to the labor representation mechanism in the labor courts. At the judicial trial stage, the proportion of women with children among labor representatives in labor courts can be appropriately increased, so as to balance the disadvantaged position of disadvantaged groups in defending their rights through procedural design, and to ensure that the guarantee of the right to equal employment is put into practice.

#### **4.3 Optimizing the Allocation of the Burden of Proof and Balancing the Rights and Interests of both Employers and Employees.**

The current employment discrimination cases in China have the practical dilemma of a heavy burden of proof on workers, which reduces the willingness of workers to defend their rights and makes it difficult for the legal system related to the right to equal employment to be put into practice. Therefore, how to optimize the distribution of the burden of proof and balance the rights and interests of employers and employees has become a key issue in safeguarding the right to equal employment of workers.

In the world, the relevant legislative experience of the United Kingdom and the United States can provide useful reference for China. The United States, mainly based on the way of proving the defendant's discriminatory motive or the proportion of discriminatory motive in the behavioral motive, divided the employment discrimination cases into "direct evidence" cases, "circumstantial evidence" cases and "mixed motive" cases. First, in the case of "direct evidence", "circumstantial evidence" and "mixed motivation". First, in "direct evidence" cases,

workers are required to provide "evidence of intent to discriminate that is sufficient to prove discrimination without inference or assumption" in order to prove that the employer's unlawful discriminatory behavior is established. Secondly, in "circumstantial evidence" cases, the law adopts a three-stage model of proof centered on the examination of the employer's primary motive. That is, at the first stage, the employee is required to make a *prima facie* case of discrimination; at the second stage, the employer is required to give a legitimate non-discriminatory reason for the decision; and at the third stage, the employee can prove discrimination by showing that the legitimate reason given by the employer at the second stage is merely a "pretext" to cover up the discriminatory motive. This mode of proof makes the discriminatory behavior concrete in the evidence of both employers and employees, and helps the plaintiff to attack the defendant's reasons for decision-making in the second stage in the third stage, so as to prove the existence of discrimination, which reduces the burden of proof of the plaintiff to a certain extent. In addition, in "mixed-motive" cases, a "two-step" model of proof is adopted. "Mixed motives" refers to "the employer's decision-making at the same time illegal discrimination and legal factors", in this case, the plaintiff needs to prove that discrimination is one of the defendant's motives to make the final decision. If the proof is established, The defendant will be liable; if the defendant can prove that If this is established, the defendant will be liable; if the defendant can prove that "the same decision would have been made without the discrimination", the liability can be reduced. In the UK, employment discrimination cases are categorized into "direct discrimination" and "indirect discrimination" cases. In "direct discrimination" cases, the criterion of "direct discrimination" discrimination is that "the claimant has suffered disadvantageous treatment in comparison with a person of another sex or race". In judicial practice, courts use the "but for" approach as an important criterion, i.e., "'but for' the plaintiff's being of that sex or race, would he have been treated unfavorably?". In "indirect discrimination" cases, "indirect discrimination" means that a facially neutral provision actually has an adverse impact on a particular group and lacks justification. To determine indirect discrimination, four conditions need to be met:

first, the employer makes a provision that applies equally to all employees; second, the provision disadvantages a specific group; third, the plaintiff himself suffers a disadvantage as a result of the provision; and fourth, the employer is unable to prove that the provision is a reasonable means to achieve a legitimate purpose<sup>[15]</sup>.

Based on China's actuality, we can integrate the British and American experience to build a system of allocating the burden of proof in stages and types. First of all, the initial burden of proof is borne by the workers on the employer's discriminatory behavior, and they need to provide direct evidence (i.e., evidence that is sufficient to prove the discriminatory intent without inference or assumption) or indirect evidence (i.e., evidence that is not able to directly judge whether the employer has discriminatory behavior, but may be able to determine the discriminatory intent after further inference or assumption). After the court reviews the validity of the evidence, if it is direct evidence and established, the employer's liability for discrimination can be found directly; if it is valid indirect evidence, the burden of proof is shifted to the employer, who will provide evidence of legitimate non-discriminatory reasons for decision-making; then the burden of proof returns to the worker, who is required to prove that the reasons given by the employer are "pretexts" to cover up the motivation for discrimination " to complete the final proof of discriminatory behavior. In the discrimination determination process, reference can be made to the British standard: on the one hand, direct discrimination is examined by the "but for" standard to determine whether the plaintiff suffered unfavorable treatment due to the identity of a specific group (e.g., gender, race); on the other hand, indirect discrimination is examined based on the four elements, to determine whether the superficially neutral provision has an unreasonable adverse impact on a specific group and is not justified. On the other hand, indirect discrimination should be examined based on the four elements to determine whether the apparently neutral provision has an unreasonable adverse impact on a particular group without justification. At the level of responsibility determination, the U.S. The theory of mixed motives can be borrowed to distinguish between the "sole motive" (i.e., discrimination is the determining factor) and



"mixed motives" (i.e., discrimination and legitimate factors coexist) of decision-making, and in the case of mixed motives, the responsibility of the employer can be appropriately mitigated. Such a path not only avoids the laborer's inability to recover due to overloaded proof, but also prevents the employer from facing excessive legal risks or triggering a surge in litigation due to overloaded burden of proof, and ultimately realizes a dynamic balance between the rights and interests of both labor and capital.

#### **4.4 Strengthen Supervision and Improve the Disciplinary and Incentive Mechanism**

At present, there is employment discrimination in the field of equal employment punishment is insufficient to lead to the employer's cost of violation of the law is significantly lower than the benefit of violation of the law, the formation of employers "not afraid to violate the law" negative effect, directly weakening the deterrent effect of the legal system related to equal employment and the effectiveness of the regulation. In this context, by strengthening the supervision and discipline of employers, to build a "not afraid to violate the law" constraint mechanism, become a key path to consolidate the protection of equal employment rights of workers, and improve the supporting incentive mechanism can be more from the positive guidance level to promote the realization of the goal of equal employment, specifically from the three aspects of synergistic efforts.

In the prior supervision link, the need to build the source of prevention and control system to curb the incipient problem of employment discrimination. At present, China's "mother post" as an important carrier of flexible employment and female employment protection is in the stage of regional promotion and model improvement. Guangdong, Hubei and other places have explored the establishment of a unified directory system of "mother post" employers, requiring employers to provide information on the "mother post" and the "mother post" of the employer. Guangdong, Hubei, and other places have explored the establishment of a unified directory system for "mom posts" employers, requiring employers to report to their local human resources and social security departments on the creation of "mom posts" and the absorption of workers. By specifying the targets of supervision and standardizing the management of jobs, the

system achieves accurate and regularized supervision of "motherhood" employers, and effectively prevents hidden discrimination and the risk of infringement of rights and interests in the creation of jobs. Its experience can be promoted nationwide as a regional regulatory sample, providing reference for the construction of ex ante regulatory mechanisms in other employment areas.

In the ex post disciplinary process, it is necessary to focus on the shortcomings of the compensation mechanism and improve the cost of violating the law through institutional improvement. The phenomenon of "dual-case parallelism" exists in the judicial practice of equal employment rights in China, i.e., workers can claim their rights through labor dispute disputes or disputes over equal employment rights, but there are limitations in the scope and strength of compensation in both types of cases: when claiming rights in labor dispute disputes, the statutory compensation is only limited to the scope of property compensation, and mostly focuses on direct economic losses, with a narrower coverage. When claiming rights in labor disputes, the statutory compensation is only limited to the scope of property compensation, and mostly focuses on direct economic losses, with a narrower coverage; when claiming rights in disputes over equal employment rights, although moral damages can be claimed, the judicial practice is mostly based on apologies as the main way of undertaking, and the amount of moral damages supported is generally low, which makes it difficult to form an effective punishment. To this end, it is necessary to optimize the compensation mechanism in two ways: first, to expand the scope of support for property compensation, to include in the scope of compensation the direct expenses paid by the worker to seek employment or perform his or her duties, the difference in income due to discrimination, the cost of litigating the case and the expected benefits of the loss of job opportunities due to discrimination, and to clarify the indexes and methods of calculating the expected benefits by means of legislation, so as to solve the problem that it is difficult to quantify the expected benefits in practice; and second, to improve the mental The second is to improve the compensation system for mental harm, establishing clear criteria for defining "serious mental harm" on the one hand. and standardizing

the scale of judicial decisions on the other; on the other hand, appropriately increasing the support for compensation for mental harm to ensure that the amount of compensation matches the degree of physical and mental harm caused by discriminatory acts to workers, so as to give full play to the dual functions of the compensation system as a disciplinary measure and as a remedy<sup>[16]</sup>.

In terms of positive incentives, it is necessary to build differentiated incentive mechanisms for special employment patterns such as "mom posts" to guide employers to take the initiative in fulfilling their responsibilities for equal employment. The government can strengthen policy support, and increase financial subsidies and tax incentives for employers who open "mom posts" and effectively protect the rights and interests of workers, such as labor compensation, rest and vacation, and social insurance, so as to reduce the cost of labor compliance. At the same time, we can draw on Hubei Province's policy recommendations for "mom posts" to give play to the benchmarking and leading role of high-quality employers through the establishment of a standardized recognition system and the selection of exemplary demonstration units. Promote the transformation of "mom posts" from "quantity growth" to "quality improvement," forming a virtuous cycle of "compliance benefits and demonstration leadership." virtuous cycle, and then drive more employers to actively participate in the practice of equal employment protection, and ultimately build a trinity of equal employment governance system of supervision, punishment and incentives.

## 5. Conclusion

The protection of equal employment rights for childcare women is not only an important issue for building a birth-friendly society in China, but also an important yardstick for testing the fairness of the labor law system. As a policy innovation to cope with the difficulties of childcare women's employment, the problems of increased workplace discrimination, impeded career development and lack of labor protection exposed in the operation of the "mother post" are essentially a concentrated manifestation of the contradiction of the legal regulatory system lagging behind the development of the new form of employment. Existing legal norms, due to vague conceptual definitions, ineffective relief

mechanisms, imbalance in the burden of proof and mismatch in the cost of violating the law, have led to a vicious circle of "system supply defalcation-increased damage to rights and interests-and low willingness to defend rights" in the scenario of "mother post". As a result, the vicious circle of "system supply deflation-increased damage to rights and interests-low willingness to defend rights" in the scenario of "mother's post" is caused, which urgently needs to be broken through the restructuring of systematic legal regulation paths.

The optimization of the legal regulation path should be oriented to "substantive equality", and build a full-chain governance framework covering ex ante prevention, ex post relief and ex post incentives. At the level of system design, the legal text should be refined and systematized by clarifying the legal connotation of "employment discrimination", extending the cycle of special protection for childcare women, and refining the rules of employment in "mother's posts"; at the level of relief effectiveness, the construction of specialized agencies and professional trial organizations should be relied upon to strengthen administrative remedies and to enhance the effectiveness of administrative remedies. At the level of relief effectiveness, relying on the construction of specialized agencies and professional trial organizations, the synergy between administrative and judicial relief should be strengthened to break the dilemma of "procedural idleness", and at the same time, skewed safeguard provisions should be embedded to reduce the cost of childcare women's rights; at the level of allocation of the burden of proof, the experience of comparative law should be used to construct a three-stage rule of proof in phases and dynamically, so as to reduce the burden of proof of childcare women appropriately. At the level of regulatory incentives, by expanding the scope of compensation, raising the standard of compensation for moral damages, and improving policy tools such as financial subsidies and tax incentives, a compatible mechanism of incentives for "high cost of violating the law-high benefit of compliance" has been formed.

The realization of the right to equal employment is not only the improvement of the legal text, but also the deep interaction between social concepts

and institutional practices. Future research needs to pay more attention to the trend of integration of the "mother post" model with the digital economy, platform labor and other new business models, and explore the synergistic mechanism of gender equality and labor rights protection in flexible employment scenarios. At the same time, it is necessary to strengthen the empirical evaluation of the implementation effect of the legal regulation path, verify the effectiveness of the system design through quantitative analysis, and provide dynamic feedback for the continuous optimization of the legal system of equal employment. Only through the rigid constraints of the legal system and the flexible change of social concepts, can we really break the real dilemma of equal employment rights of childcare women, and promote the development of China's labor law system in the direction of more inclusiveness and adaptability.

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