

Chinese Government Forbids Employers from Asking About Childbearing or Marital Status

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On January 15, 2019, we posted an article about the effect of the #MeToo era on China's efforts to draft its first Civil Code enshrining the country's civil laws (<https://www.internationallaborlaw.com/2019/01/15/china-responds-to-metoo-employers-stay-alert/>). While China is not expected to adopt the Code until at least 2020, the Chinese government is beginning to take steps now to address gender discrimination in the workplace.

On Thursday, February 21, the Chinese government posted a notice on the website of the Ministry of Human Resources and Social Security of the People's Republic of China, outlining plans to enforce current laws against gender discrimination in the workplace.

The notice comes in response to a declining birth-rate driven by the "one-child" policy which has been in place since 1979, concerns over sluggish economic growth, and decreased female participation in the workforce. The notice's main focus is to better define what constitutes "gender discrimination" in employment practices, a practice that is technically enshrined in the Chinese constitution, but in reality vaguely defined and poorly enforced.

China has a widespread issue with of sexual harassment and gender discrimination in the workplace. Recruiters and employers are known to ask female candidates about marital status or childbearing plans. Job postings may specify that the position is only open to men or highlight the "beautiful girls" working in the office. It was not until 2013 that a woman successfully brought a case claiming gender discrimination in an employment context. Indeed, 73 percent of women participated in the workforce in 1990, but that number has declined to 60 percent in 2018.

In an effort to address these concerns, the notice specifically forbids employers and recruiters from:

- Asking about a woman's marital or childbearing status;
- Restricting births as a condition of employment; or
- Asking a woman to take a pregnancy test as a condition of hiring.

Additionally, the Chinese government intends to reinforce a victim's ability to bring claims in court, increase child and infant care services in the workplace, and provide more support for women trying to reenter the workplace after giving birth. Employers or recruiters who discriminate based on gender may face up to \$7,400 in fines, and more serious or repeat violations could result in stiffer penalties.

While there are still questions around the actual implementation and enforcement of these new policy goals, the notice signifies a shift toward greater protections for women in the workforce.

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