

Legal Regulations on Anti Employment Discrimination Among the Elderly in the Context of Social Aging

-- Taking Bengbu City, Anhui Province as an Example

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Abstract

Based on the increasing aging of the domestic population and the active aging of the international community, through relevant literature analysis and data research, a field study was conducted on the willingness of the elderly to re employment and the current status of protection of their rights and interests in re employment in Bengbu City, Anhui Province. It was found that there is an increasing emphasis on the re employment status of the elderly, and the situation is improving. However, there are still a series of problems, For example, the policy of delaying the retirement of elderly people for reemployment in China has not been actively implemented and there has been regional inequality, with a focus on large cities and neglecting small cities. The retirement and reemployment of elderly people are based on a single age standard, and there is a strong desire for reemployment among the elderly, but it is difficult to find employment opportunities. Relevant laws are not perfect, and rights and interests are difficult to be protected. Through data research, it was found that measures taken by domestic and international major cities to safeguard the rights and interests of the elderly in re employment can be referenced; Based on the actual situation in Bengbu City, improve rules and regulations, and play the role of the government; Changing the previous situation where elderly people only retire based on age and considering various factors such as their physical condition; It is stipulated that the employment relationship between the elderly and the employer is a labor relationship rather than a labor relationship, ensuring that the elderly and other workers enjoy equal treatment.

Keywords

Reemployment, Social security, Labor rights and interests, Employment willingness.

1. Research background

In 2020, the National Bureau of Statistics and the Leading Office of the Seventh National Population Census of the State Council issued a communique on the seventh population census. According to data, the current aging population in China has significantly increased, and the advantage of population dividend has gradually faded. As of November 1, 2020, the number of people aged 60 and above in China has exceeded 264 million, accounting for nearly 19%, with the proportion of people aged 65 and above far exceeding 13%. Compared to 2010, the data shows that, The proportion of the population between 15 and 59 has significantly decreased by nearly seven percentage points, indicating that China's current aging population has worsened. The deepening development of population aging has also brought a series of problems, such as an increase in the national labor gap, an increase in pension security expenditures, an increase in the national financial burden, and so on. How to respond to the issue of population aging has become an important issue that the government needs to face. In 2019, The State Council has issued the "Medium and Long Term Plan for Actively Responding to Aging" and proposed in the

"14th Five Year Plan" to actively develop resources for the elderly population, elevating the active response to aging to a national strategic height.

Internationally, the World Health Organization established the "Framework for Active Aging Policy" at the Second Global Assembly on Aging in 2020, clearly proposing the concept of "active aging". Some global cities, such as New York in the United States, London in the United Kingdom, and Tokyo in Japan, have actively taken measures to address the development of aging, such as New York's proposal to focus on elderly employment through the Elderly Friendly City Plan and Community Service Plan; London proposes elderly education and vocational training; Tokyo promotes multi-agent collaboration, focuses on measurable and trainable employment guidance, and some measures and legal regulations for elderly employment security have emerged. The policies of these global big cities have brought us inspiration and reference.

However, with the development of time and the application of policies, drawbacks have gradually emerged. Currently, both internationally and domestically, the guarantee of re-employment in the context of population aging is relatively limited, and there are obvious urban differences, mainly concentrated in international cities. Due to the advancement of urbanization, there is a large number of young and middle-aged people in large cities, and there is a low demand for employment talents. On the other hand, in small cities, there is a high demand for labor force, but the residents are mostly elderly people, The demand for re-employment is high; At present, there is a one size fits all retirement policy in China's labor market based on age. According to the law, the retirement age for males is 60 years old and for females is 50 years old, completely based on age standards, ignoring various factors such as physical, psychological, and occupational factors; The relationship between elderly people and employers is unclear after re-employment, and the legal system related to re-employment is not perfect, making it difficult to protect their rights and interests.

2. Research reasons and significance

Currently, there are urban differences in the reemployment of the elderly, and the promotion and security systems in large cities are far more comprehensive than those in small and medium-sized cities; Due to the advancement of urbanization in China in recent years, the working population often chooses large cities with more job opportunities when seeking employment. The population of large cities has reached saturation, and the population of various professions has reached the upper limit. Large cities are mostly dominated by high-tech industries, and the employment advantage of the elderly is relatively weak compared to young people. The pace of life in small and medium-sized cities is slow, and the labor force population is lost, requiring a large number of labor forces, and the pressure on elderly care in large cities is high; China has set a standard retirement age. After data investigation and research, it has been found that the physical and psychological characteristics of elderly people of different professions and ages are different. A unified retirement age is not conducive to realizing the value of the elderly population. Moreover, with the development and progress of society, the physical fitness of elderly people has improved, resulting in high pressure and the need for employment; In society, attention to the elderly only focuses on security, and what the elderly need more is psychological satisfaction and identification; There is currently a controversy in the legal community regarding whether the re-employment of elderly people belongs to a labor contract or a labor contract. Some scholars believe that the standard of judgment should be whether to receive pension insurance benefits. However, some elderly people engage in manual labor or individual businesses when they are young, and their rights and interests are still not guaranteed.

The topic of this study is the reemployment of the elderly, which has important practical significance. The improvement of anti-employment legal regulations for the elderly helps to

protect their rights and interests in reemployment, enrich their lives, fully utilize their personal value, and reduce waste of social resources; Relieve the government's expenditure on elderly security and alleviate social pressure; Being able to fill the gap in the reemployment of elderly people in small and medium-sized cities and closely adhere to domestic active aging strategies; It can promote the improvement of relevant laws and regulations, and ensure the protection of the law for the reemployment of the elderly.

3. The Rationality of Reemployment for the Elderly

3.1. Elderly people have a willingness to seek employment again

Through field research and questionnaire data feedback in Bengbu City, Anhui Province, we found that the proportion of the elderly population who are currently unemployed is relatively high. However, according to the feedback on the employment willingness of the elderly, it can be seen that the majority of the elderly population will consider re employment. According to the questionnaires and interviews distributed, nearly 60% of the elderly are willing to re employment, and the majority of the elderly are willing to work again after retirement to realize their own value.

3.2. Improvement of physical fitness of the elderly and requirements for special industries

Although China's current aging process is accelerating, it has been transitioning towards a healthy aging stage. The physical health status of the elderly is a core element in the process of population aging. China's emphasis on the elderly care security system and national medical security has led to significant development in the physical health of the elderly; According to the life cycle theory, due to the aging of various bodily functions with age, the working ability of elderly people is not as good as that of eligible workers. Therefore, when enterprises implement retirement and recruitment, they are based on the legal retirement age in China. However, according to the "China Statistical Yearbook 2020" released by the National Bureau of Statistics, data on the withdrawal of elderly people from different industries shows that workers of the same age, due to their physical functions, psychological conditions As well as different employment positions, their retirement rates also vary. Data shows that the proportion of mental workers leaving the industry is much higher than that of physical workers. In some special industries, age requirements and restrictions are not high, and the current improvement in physical fitness of the elderly makes them able to better meet job requirements in re employment.

3.3. Legal provisions

According to Article 42 of the Constitution of our country, labor is both a citizen's right and a citizen's obligation. The re employment of retired workers has legitimacy in the Constitution; In China's Labor Law, only the special rights and interests of minors and women are specifically stipulated, and the minimum age for workers is specified, without limiting the maximum age for workers. As individuals with full civil capacity, the elderly should have the same status as other eligible workers, and can choose their suitable positions for reemployment without discrimination.

3.4. The needs of society and families

From a social perspective, focusing on the background of China's aging population and active aging strategy, China has always adhered to the principle of putting people first and improving the elderly care security system. Deep aging has brought enormous pressure to the elderly care security and national financial expenditure of our society; The decrease in the percentage point of labor force also has an impact on the industry in China. The measures taken by some cities

to address aging have brought inspiration to our reform. We still have legal deficiencies and incomplete issues in promoting the reemployment and security of the elderly. We should improve legal regulations to protect the rights and interests of the elderly who are re employed. In terms of family needs, the main reason why elderly people choose or do not choose to re work is whether their sources of livelihood, such as child support and social insurance, can meet the living needs of the elderly and meet their living and elderly care needs. In the data feedback, the majority of elderly people indicate that they still want to re work for economic reasons to reduce the burden on their families, Their retirement salary is not enough to completely improve their lives, and even some elderly people were manual workers when they were employed. After retirement, there was no salary subsidy, and their lives were difficult, requiring them to seek employment again to improve their living conditions.

4. Insufficient and Harmful Legislation on Discrimination against Elderly Employment

4.1. Defects in relevant laws and regulations

At present, China's laws and regulations on the protection of the rights and interests of the elderly in re employment are not perfect, and compared to foreign legislation, it started relatively late. The existing "Law on the Protection of the Rights and Interests of the Elderly" and "Labor Law" in China do not have clear provisions on the protection of the rights and interests of the elderly in re employment, and do not provide substantive protection for their rights and interests. Moreover, influenced by China's economic level, legislation does not focus on the employment of the elderly, Instead, it focuses on the level of elderly care security for the elderly, with a significant legislative gap.

4.2. Lack of legal protection for the rights and responsibilities of re employed workers and employers

At present, there is a lack of legal protection between the elderly and employers. Looking at previous literature, we found that due to the dual division of the social insurance system and the labor market, as well as the provisions on the termination conditions of labor contracts in China's Labor Contract Law, when the elderly reach the working age, retire and receive basic pension insurance benefits, the labor contract automatically terminates. According to this provision, when the elderly are re employed, they do not have the status of a worker, Labor contracts cannot benefit the elderly who are re employed, and some workers who engage in manual labor have unclear relationships with employers after re employment, making their rights and interests even less protected.

4.3. Insufficient regulation of labor violations against the elderly

Most elderly workers still have the need to participate in social labor after retirement, but relevant market entities dare not hire elderly employees who lack labor legal protection. Society and enterprises have biases towards the reemployment of elderly people, and limit the age of workers. In order to reduce the risk burden, they are unwilling to accept elderly job seekers; Due to unclear relationships when signing contracts with elderly workers, they are unable to enjoy the same rights and interests as eligible workers. When elderly reemployed workers seek help from the law, they may encounter a series of problems such as insufficient legal restrictions and incomplete legal basis.

4.4. Social attitudes discriminate and restrict the reemployment of the elderly

The employment of the elderly is limited by traditional concepts. On the one hand, China's traditional concept advocates for a sense of security for the elderly, believing that the elderly should enjoy their old age after retirement. Young children do not agree with the elderly to seek

employment again, believing that they will lose face or worry about the health of the elderly; On the other hand, there is still a current situation in society where the re employment of the elderly reduces the employment opportunities for young people. Both children and the majority of society hold a negative attitude towards the re employment of elderly people after retirement, and they often do not receive the necessary support and respect for re employment. There are few positions in society that meet the conditions for the reemployment of elderly people. In the current job market, there are not many suitable positions for the elderly to work in. Most of the positions in society have extremely high requirements for age and physical fitness. When the elderly are re employed, they will face the difficulty of finding suitable positions. Often, they can only engage in labor that requires a lot of physical energy, low salaries, and low security. Elderly people may face age discrimination when employed. Society and enterprises have biases towards the employment of elderly people, often with age restrictions on workers, and are unwilling to accept elderly job seekers in order to reduce risk burden.

4.5. The risk of re employment for the elderly is high

The elderly lack access to re employment information, information asymmetry, and their human capital has not yet been fully utilized.

The channels for elderly people to obtain information and new knowledge are limited, and there are few specialized job fairs for elderly people in the talent market, The level of information sharing is low, and it is difficult for the elderly to connect their employment with employers. There is a high risk of employment, with elderly people passively employed and their rights and interests not guaranteed. They are under economic pressure and personal needs, and the majority of elderly workers still have the need to participate in social labor after retirement. However, relevant market entities dare not hire elderly employees who lack legal protection, and are unwilling to bear too much responsibility and uncertainty for the risk of elderly people re employment. Moreover, there is still a gap in China's legal system prohibiting employment discrimination against elderly people, The relevant laws, regulations, and supporting policies are not perfect enough to provide the necessary protection for the elderly.

4.6. Harms of discrimination in re employment

4.6.1. Not conducive to China's economic development

At present, China is facing a rapid aging population, and implementing discrimination against the reemployment of the elderly is not conducive to the entire social security system. It has brought pressure to the national pension security expenditure, and the insufficient utilization of labor resources has had a negative impact on the entire labor market and even the development of the entire economy and society. It will exacerbate the pressure on social security expenditure, national financial pressure, and other obstacles to economic development.

4.6.2. Not conducive to the development of the psychological health of the elderly

On the one hand, elderly people who retire at home cannot guarantee their own economic security ability and social participation ability, and are separated from society; On the one hand, discrimination in re employment can also harm the self-esteem of the elderly. With the social isolation of the elderly, they will suffer from mental abuse, which is not conducive to the physical and mental health development of the elderly group.

4.6.3. Social resources can cause waste

The current aging population in China has also brought about a shortage of labor force, and some positions are in urgent need of workers. Due to the risks of re employment for the elderly population, their rights and interests in re employment cannot be guaranteed, and the overall employment rate of the elderly population is low. The development of elderly human resources is backward, and the utilization of social resources is insufficient, resulting in resource waste.

4.6.4. The rights and interests of the elderly cannot be guaranteed

Due to deficiencies in the current legislation on the protection of the rights and interests of the elderly in re employment, and the lack of systematization of re employment relief for the elderly, it only appears sporadically in some legal regulations without forming a complete system. Elderly people seeking legal protection for infringement of their rights and interests during their employment process cannot be fully protected; And the fuzzy legal relationship between the elderly and the employer determines that the employer cannot pay work-related injury insurance for them, and once injured, their rights and interests cannot be guaranteed even more.

4.6.5. It is not conducive to the overall progress and development of society

the discrimination against elderly reemployment is due to the lack of a unified social reemployment security system supported by the elderly, family identity, and government, which hinders social progress.

5. Legal regulation suggestions

5.1. Drawing on relevant international and domestic laws to improve laws and regulations

The relevant provisions of the Age Discrimination in Employment Act in New York, USA, and the Employment Equality (Age) Rules in London, UK, have already regulated the age phenomenon that occurs in employers, protected the rights and interests of elderly reemployers, and included the rights and interests of elderly workers in the scope of legal protection. We can learn from relevant measures and based on the actual situation in China, Extending the protection of the rights and interests of elderly reemployed workers to the current legal system, such as Article 12 of the Labor Law, which states: "Workers shall not be discriminated against in employment due to differences in ethnicity, race, gender, religion, or belief." Further extending to prohibiting gender, age, or formulating laws specifically targeting employment protection for the elderly.

5.2. Strictly crack down on employment discrimination and clarify the standards for identifying employment discrimination

The current unclear standards for identifying employment discrimination and insufficient crackdown efforts make it difficult to fully protect the rights and interests of the elderly when they are re employed. It is necessary to further improve the relevant standards and make clear provisions for the punishment system of enterprises that face employment discrimination, with legal constraints.

5.3. Clarify the relationship between elderly people and employers

In order to more effectively protect the rights of the elderly, it should be stipulated that the employment relationship between the elderly and the employer is a labor relationship rather than a labor relationship, and the retirement system should be improved to ensure that the elderly and other workers receive equal treatment; According to regulations and laws, enterprises should sign more detailed employment contracts with the elderly who are re employed, specifying their rights and responsibilities, and reducing the risk of re employment for retired elderly people.

5.4. Play the role of the government; Strengthen legal regulations and judicial enforcement

establish special regulatory agencies for the reemployment of the elderly, to solve legal disputes and employment discrimination among the elderly, actively build a market and platform for the

elderly, introduce relevant legal regulations for the employment environment, implement auxiliary policies corresponding to delaying retirement age, learn from relevant experiences in Japan, the United States, the United Kingdom, and adjust the social security system appropriately, Improving relevant legal regulations should actively play the role of the government while improving legal regulations, strengthening cooperation between administration and law. The state can formulate laws on tax incentives, and provide tax incentives to enterprises that hire elderly people.

6. Summary

The current international and domestic situation has promoted the development of re employment for the elderly. Due to the improvement of their own resources and abilities, the elderly also have the ability to re employment. The imperfect re employment system hinders employment development, and it is necessary to continuously protect the rights and interests of the elderly through legal regulations. In terms of law, we need to clarify the identity of workers who are re employed by the elderly, determine their recognition standards and employment relationships, encourage enterprises to sign labor contracts and expand the work injury insurance system. The law should clarify the rights and obligations of job seekers and employers, protect the legitimate interests of these vulnerable groups in accordance with the law, and job seekers also need to collect and protect relevant materials themselves, enhance their awareness of rights protection, We need to continue to promote the legal progress related to the reemployment of the elderly, strengthen the construction of social and moral aspects such as legal procedures and good customs, increase attention to the elderly worker group, listen to their reasonable demands, and protect vulnerable groups. The reemployment of the elderly requires our support.

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