

Employment Discrimination:

International Standards and National Practice



禁止就业歧视： 国际标准和国内实践

李薇薇 Lisa Stearns | 主编

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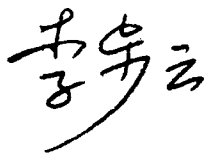
就业是谋生的手段,谋生乃民众生存之道。关注就业实乃关注民生,禁止就业歧视则属维护民众的生存之道。从现代法制社会角度讲,禁止就业歧视是平等原则在社会领域中的具体体现,是实现社会公平正义和维护人权的必然要求。挪威奥斯陆大学人权研究中心中国项目组选择了这样一个既具有朴素的平民情结,又关系到职场民主化、多样性和机会均等等具有社会正义性质和法律意义的课题,可谓寓意深远。

目前我国就业领域的歧视问题还很普遍和严重,立法亟待完善。该领域的深入研讨可以为我国制定反歧视方面的立法提供重要的理论和研究的基础。2005年8月,全国人大常委会审议批准了国际劳工组织核心公约之一的《歧视(就业和职业)公约》(第111号公约),就业促进法也在加紧制定过程中。就业歧视在一定程度上已经受到了中国政府和专家学者们的密切关注,本书在这一背景下出版问世,可谓恰逢其时。

本书是由至少25位专家学者共同完成的一部学术专著,它绝非论文集或个人著作所能比拟的。它具有专著的理论体系和内在结构联系,在设计有效措施反对就业歧视的过程中需要着重解决以下四个重要问题:定义歧视;了解不歧视的基本国际标准;分析中国现存的歧视问题,并从法律、政策和社

会的角度寻求解决这些问题的途径；比较和借鉴其他国家反歧视的经验。本书的体系、内容和章节正是根据上述思路 and 不同阶段而编排和设计的。通过对中国歧视问题从不同角度的研究和分析以及对中外反歧视立法的不同理论和实践的比较研究和有效借鉴，探讨解决就业歧视的方法。

本书还具有几个独特的优势：首先，本书由中外学者合作对同一题目进行全方位的分析研究，其视野既包括联合国和国际劳工组织的非歧视标准，也包括欧盟的法律和实践；既有我国国内层面的问题与对策，也有对我国香港和台湾地区及国外经验的借鉴和参照，内容翔实丰富。其次，本书采用了多学科交叉研究的方法，凝聚了法学、社会学、经济学和人类学的共同智慧，而且法学领域中又吸收了国际法、劳动法、婚姻法、宪法和行政法等不同部门专家学者的优秀成果。不同学科的作者从各自专业领域，在自己最擅长的话题下，将各自的“绝活”奉献给了本书的读者，可称是强强联合之作。这些不同人员的不同学术背景、不同的工作经历和不同的思维方式，甚至不同的观点可以使人广开思路。值得一提的是，这种对某一社会问题进行多学科多部门交叉研究的方法，在法学研究领域还不多见。在信息社会和知识更新飞速发展的今天，这种研究方法本身应大力倡导。最后，本书是在全国主要高校和科研机构的部分教师和研究人员以及外方的研究人员和香港平等机会委员会的共同努力下完成的。参与写作的作者之广泛也是空前的。“众人拾柴火焰高”，愿这本书像高高燃起的火焰，给社会弱势群体带来体贴和温暖，给政策决策者以一定的启迪和思路，给国内外学者提供进一步研究的基础。我们期待着以后有更多的禁止就业歧视的理论和成果问世。



2006年2月7日

Preface

Employment is the guarantee for livelihood, and to seek a livelihood is the people's way to ensure their means of existence. Thus, to pay attention to employment means to pay attention to the livelihood of the people, and the prohibition of discrimination in employment is the way to protect people's means of existence. From the perspective of a modern society, the prohibition of discrimination in employment is a manifestation of the equality principle in the social sphere, an essential principle for achieving social justice and protecting human rights. This research topic, closely linked to people's livelihood, democratization, diversity and equality in the workplace, will definitely serve the purpose of promoting social justice and the rule of law. The identification of this research topic by the China Programme at the Norwegian Centre for Human Rights will therefore have far-reaching implications.

Employment discrimination in our country is widespread and serious, and there is an urgent need for legislative improvement. Explorations in this area may provide an important theoretical and research foundation for anti-discrimination legislation in our country. In August 2005, the Standing Committee of the National People's Congress ratified the Discrimination (Employment and Occupation) Convention (No. 111), one of the core conventions of the International Labour Organization, and the Chinese Employment Promotion Law is also undergoing an intense drafting process. As employment discrimination has already received attention from the Chinese government and specialized scholars, the publication of this book is very timely and appropriate.

This book is not merely a collection of papers or the work of a

single scholar; it is an academic monograph jointly completed by more than 25 scholars and experts, built up within a theoretical framework and a coherent structure typical of an academic work. Four important issues need to be addressed in designing effective measures against employment discrimination: defining discrimination; understanding international standards for non-discrimination; analyzing discriminatory practices in China and seeking solutions from legal, policy and sociological perspectives; and assessing and learning from the experiences of other states regarding employment discrimination, the structure of this book is based on the structure described above. The book seeks to resolve employment discrimination by researching and analysing employment discrimination in China from various perspectives, including comparative research and effective exchanges on different theories and experiences of anti-discrimination legislation.

This book has a number of unique advantages. First, it is the outcome of joint research by Chinese and foreign scholars on the same topic. Its scope includes both employment discrimination from the perspective of the United Nations non-discrimination standards and the International Labour Organization, as well as the legislation and practices of the European Union. The research provides detailed information on domestic problems and remedies, as well as experiences of China's Hong Kong and Taiwan regions and foreign countries. Second, the research is multi-disciplinary, bringing together law, sociology, economics and anthropology. In the field of law, you may see contributions from scholars of International Law, Labour Law, Marriage Law, Constitutional Law and Administrative Law. All the authors, coming from different disciplines, have contributed to this strongly cooperative work by applying their intellectual wisdom on their most competent field of expertise. With different academic backgrounds, work experiences, modes of thinking, and even different viewpoints, the authors will help us broaden our minds. It is worth noting that this multi-disciplinary approach to the study of a social issue is rarely seen among legal scholars in China, and in the information society and the rapid knowledge renewal of today, this is a methodology that should be encouraged. Finally, this book is the product of joint efforts by professors and researchers from key Chinese univer-

sities and research institutes, as well as foreign research institutes and the Hong Kong Equal Opportunities Commission. The number of authors involved in this project is unprecedented. As the saying goes, "Only when all contribute their firewood will they be able to build a strong fire", we wish this book will be a strong fire, bringing warmth and care to vulnerable groups, food for thought to policy makers, and materials for further research to Chinese and foreign scholars. We are looking forward to more theories and accomplished publications on employment discrimination in the future.

Li Buyun

February 7th, 2006

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第一编

基本理论

