

# Corporate Commercial Client Alert

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### New Beijing Employment Interpretation: Employers can be fined up to RMB50,000 for gender discrimination in employment— Punishment Benchmark Table (Involving Women's Rights and Interests Protection Law) of the Beijing Human Resources and Social Security Administration

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#### Background

On October 30, 2022, the 37th Meeting of the Standing Committee of the Thirteenth National People's Congress of the People's Republic of China reviewed and adopted the new revised **Law of the People's Republic of China on the Protection of Women's Rights and Interests** (hereinafter referred to as the "**Women's Rights and Interests Protection Law**"), which came into force on January 1, 2023. The new revised Women's Rights and Interests Protection Law clarifies prohibitions on gender discrimination in employment situations. It explicitly prohibits discrimination against women in terms of salaries and welfare benefits during marriage and pregnancy, promotion rating, labor contract, and retirement, etc.,. **The Beijing Human Resources and Social Security Administrative Punishment Benchmark Table (Part Involving Women's Rights and Interests Protection Law)** (hereinafter referred to as the **Punishment Benchmark Table**), has been formulated by the Beijing Human Resources and Social Security Administration to implement the newly revised Women's Rights and Interests Protection Law and to regulate the administrative punishments from human resources and social security departments. It contains 5 administrative punishment discretionary benchmarks involving in the Women's Rights and Interests Protection Law, with 4 items newly added, effective from January 13, 2023 (the date of issuance).

#### Catalogue of Violations

The Punishment Benchmark Table has set out five violations in the part related to the Women's Rights and Interests Protection Law. The newly added sections are as follows:

1. An employer refuses to recruit (employ) women by virtue of gender or applies different higher standards to the recruitment (employment) of women;
2. An employer reduces the salaries and welfare benefits of female employees, restricts their promotion in post or in rank, evaluates them differently for professional and technical titles and positions, dismisses female employees, or unilaterally terminates the labor (employment) contract or service agreement, due to marriage, pregnancy, maternity leave and breast-feeding, etc.;
3. An employer terminates the labor (employment) contract or service agreement during the pregnancy or the period of maternity leave enjoyed by a female employee according to law;
4. An employer discriminates against women due to gender when implementing the retirement system of the country.

## Punishment Benchmarks

The Punishment Benchmark Table has sorted out the violations into two categories “General” and “Severe”. For example, in the circumstance that an employer terminated the labor (employment) contract or service agreement during the pregnancy or the period of maternity leave enjoyed by a female employee according to law, the “general” categories include: the violations that did not cause serious harmful consequences, but involved more than 5 people; or the employer’s refusal to make corrections after being ordered to make corrections within a time limit. As for the “severe” categories, it applies under any one of the following circumstances: 1. causing difficulties to the life of the employees; 2. affecting the health of the employees; 3. causing other adverse effects or consequences; 4. violating the same legal provisions twice or more within the previous 12 months from the date of inspection.

According to the Policy Interpretation of the Beijing Human Resources and Social Security Bureau<sup>1</sup>, the circumstances regarding affecting the employment, life, and health of employees, or causing other adverse effects or consequences, mainly refers to the fact that the employer’s violating actions have caused substantial damage to the personal, property, and employment of female employees, or caused severe social opinions, emergencies, and other adverse social consequences, etc.

Depending on the “general” or “severe” classification of the violations, the fine amount in the Punishment Benchmark Table varies from RMB 10,000 to RMB 50,000. Other factors including the number of employees impacted by the violations, whether corrections were made within the required time limit, and the number of violations within 12 months will also affect the determination of fines. Compared with the scope of fines of RMB 3000 to RMB 10,000 under the **Beijing Human Resources and Social Security Administrative Punishment Benchmark Table (March 22, 2022 Edition)**, the new Punishment Benchmark Table has significantly increased the punishment for the employer’s gender discrimination.

## Conclusion

The Punishment Benchmark Table has clarified the standards of supervision and punishment by human resources and social security departments against an employer’s gender employment discrimination. The increase in punishments is also conducive to the realisation of gender equality in employment and protection of female employee’s rights and interests. The Beijing Human Resources and Social Security Bureau has taken the lead in promulgating the Punishment Benchmark Table, which helps move the implementation of the new Women’s Rights and Interests Protection law from theory to practice. More provinces and cities will issue relevant policies to prevent and correct gender discrimination in employment, protect women’s labor rights and interests, and create a fair employment environment for women.

Deacons will continue to pay close attention to the latest status of legislation on labor rights and interests protection in China, and provide updates that may impact your business. For tailored measures and practical advice on labor rights and interests protection, please contact us.

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<sup>1</sup> See details at [http://rsj.beijing.gov.cn/xxgk/zcjd/202301/t20230117\\_2902391.html](http://rsj.beijing.gov.cn/xxgk/zcjd/202301/t20230117_2902391.html) (January 13, 2023)

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