

# “Take Maternity Leave and You’ll Be Replaced”

China’s Two-Child Policy and Workplace Gender Discrimination

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# **“Take Maternity Leave and You’ll Be Replaced”**

China’s Two-Child Policy and Workplace Gender Discrimination

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## China’s Two-Child Policy and Workplace Gender Discrimination

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## Summary

If you haven't had children, employers regard you as an "extra-large time bomb" that will explode twice [take maternity leave twice]. If you've had one child, you're a "time bomb" likely to have a second child at any time. If you already have two children, you must be too busy taking care of the children so [you] can't focus on work.

— A popular saying on the Chinese internet describing the impossible position working women face under China's two-child policy

In May 2017, doctors told Liu Yiran, a 34-year-old woman working for an internet company in Beijing, that she was pregnant. Liu immediately informed her employer of the pregnancy. Soon thereafter, the company posted a job ad for a new position that had the same responsibilities as hers, never informing Liu. In July, a new employee assumed Liu's position and the company stopped paying Liu's salary.

Liu then took the company to a labor arbitration board in Beijing, seeking past unpaid wages and overtime pay from the company. In March 2018, the labor arbitration board mostly denied Liu's request, saying she had not proven her case and citing such things as her failure to properly document salary and regular work attendance prior to her termination, information that the company refused to provide her.

Because Liu had spoken out about her experience on Chinese social media platforms, her former employer then sued her for defamation. In a July 2017 article on the Chinese news website *The Paper*, Liu said, "[I] just wanted an explanation, an apology, and just, fair treatment," but found "the difficulty in defending [my] rights has been beyond my imagination."

Liu Yiran's story is just one of many stories of women in China who face egregious pregnancy-related discrimination in the workplace. This report—based on a review of Chinese websites and social media, Chinese and international media reports, and a review of court verdicts—details the nature of workplace discrimination that took place immediately after the two-child policy went into effect in 2016, and the discrimination that Chinese women continue to face today.

China's Population and Family Planning Law states that, "citizens have the right to reproduction, as well as the duty to carry out family planning according to the law." For 35 years, from 1979 until 2015, for most couples in China, "the duty" was to only have one child. The one-child policy, however, brought about a rapidly aging population and a dwindling labor force. In December 2015, the Standing Committee of the National People's Congress revised the law to allow couples to have two children, effective January 1, 2016.

After the two-child policy went into effect, a majority of women surveyed by various Chinese companies and women's groups reported they had been subjected to gender and pregnancy-based discrimination in pursuit of employment. Countless job ads specify a preference or requirement for men, or for women who have already had children. Numerous women have described, on social media, to the Chinese media, or in court documents, their experiences being asked about their childbearing status during job interviews, being forced to sign contracts pledging not to get pregnant, and being demoted or fired for being pregnant.

"She didn't inform us in advance at all. Got pregnant ahead of the schedule. This is not being trustworthy," a representative of a company said to the newspaper *Beijing Youth* in April 2017, explaining why the company fined an employee for being pregnant.

"The company's illegal behavior incurred serious mental harm to me, resulting in me having a miscarriage on September 20, 2018," Sun Shihan said in a court filing. Sun sued her former employer after the company suspended her upon learning she was pregnant.

"After you get married, you don't have the final say about whether you have a child or not... If you get pregnant, you will take maternity leave, then I will certainly hire others, and you will be replaced," a human resources staff member at a company told an interviewee during a job interview in September 2020, explaining to her why the company required applicants to pledge not to get pregnant if hired.

On the surface, the government appears committed to women's rights and equal employment: "women's emancipation" is a key objective of official Chinese Communist ideology and officials continue to develop policies to counter workplace discrimination. In February 2019, nine Chinese central government agencies jointly issued a notice outlining specific measures for implementing laws that prohibit gender discrimination in employment. In January 2021, the Ministry of Human Resources and Social Security, the government's main labor administration agency, committed to amending and improving anti-gender discrimination laws and strengthening enforcement. However, authorities have so far failed to consistently enforce existing anti-gender discrimination laws and regulations.

While authorities claim they are combatting gender discrimination in employment, they have disseminated extensive propaganda across China encouraging women—but not men—to reject work outside the home and instead raise children.

China's constitution guarantees equal rights between men and women. While laws ban gender and pregnancy-based discrimination in employment, they provide few specific enforcement mechanisms, leaving victims with inadequate avenues for redress. Some women, after suffering discriminatory treatment, have filed complaints with local labor arbitration boards or courts, but, like Liu Yiran, have too often ended up empty handed. Sometimes their claims do not succeed because legal standards are unclear, or they face bureaucratic or evidentiary requirements that prove insurmountable. Even when women win their cases, compensation awarded to victims is too often too small to justify going through the legal system and penalties imposed on companies too insignificant to serve as a deterrent for future violators.

The Chinese government has now doubled the number of children it allows most people to have, but it has failed to address the still disproportionate and discriminatory impact of its child policies on women in the workplace.

More than 25 years after hosting the landmark 1995 United Nations Fourth World Conference on Women in Beijing, the Chinese government should abolish the two-child policy, end all restrictions of reproductive choices, enforce and strengthen anti-discrimination laws, and promote equitable caregiver leave policies. Chinese authorities should also lead on gender equality by speaking out promptly and decisively on public



controversies that reveal attitudes in broader society that perpetuate China's deep gender inequality.

## Methodology

The Chinese government is hostile to research by international human rights organizations, closely monitors and strictly limits the activities of domestic civil society groups, and censors the internet and the media. In recent years, the authorities have significantly increased surveillance and suppression of discussions and activism on many issues, including women's rights, a topic that had been relatively tolerated before. These limitations affected the design and conduct of this research.

In assessing conditions facing women in the workplace in China today, we focused on the period between January 2016, when China's two-child policy went into effect, and January 2021. We have drawn on studies by Chinese companies and nongovernmental organizations, Chinese social media posts, reports by domestic and international media, and other publicly available information. We interviewed Chinese women's rights activists who have done extensive work to combat gender discrimination in the workplace in China. We also examined court documents from the government-run court verdicts database "China Judgments Online," searching the terms "pregnancy" and "labor contract," and filtering for cases involving employment.

We have not been able to access the original methodology sections of many studies cited in the report and are therefore unable to analyze their disparate research methods and the quality, reliability, or limitations of each study. However, given the minimal amount of open quantitative data and the inability to conduct primary surveys in China, we are cautiously citing these statistics as material that helps corroborate the qualitative research that Human Rights Watch has conducted.

# I. Background

## Human Rights Abuses Related to the One-Child Policy

In 1979, to curb population growth and ease environmental and natural resource challenges, the Chinese government introduced the “one-child policy,” limiting most couples who were Han—China’s predominant ethnic majority—to just one child. Exceptions were later given to families in the countryside whose first child was a girl, households in which both parents were themselves only children, and other limited situations.<sup>1</sup> In 1982, the National People’s Congress adopted a new constitution that, for the first-time, enshrined birth control as every citizen’s duty. Starting in 2014, couples could have two children if either of the parents were themselves only children. For China’s ethnic minorities, most couples have been allowed to have two children. Some were allowed more.<sup>2</sup>

To enforce the one-child policy, the authorities subjected countless women to forced contraception, forced sterilization, and forced abortion, particularly in the 1980s and 1990s. A vivid illustration is the “Childless Hundred Days” campaign launched by authorities in Guan and Shen counties in Shandong province in 1991. In 100 days from May to August that year, all pregnancies in the two counties were forcibly aborted, regardless of whether the birth would have been in compliance with the one-child policy.<sup>3</sup>

Parents across the country who resisted complying with the one-child policy were harassed, detained, and had their properties confiscated or houses demolished.<sup>4</sup> Authorities often levied enormous fines on families who violated the policy, forcing them

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<sup>1</sup> “Mapping Out Regional Family Planning Policies: 9 Groups of People Are Qualified for a Second Child” (“各地计生政策盘点：9类人有条件生二胎”), *Beijing News*, August 13, 2013, <http://politics.people.com.cn/n/2013/0813/c1001-22539695.html> (accessed March 10, 2021).

<sup>2</sup> Zhang Liping (张丽萍), “The Reproductive Transition of the Ethnic Minority Population in China” (“中国少数民族人口的生育转变”), *World Politics* 4: 665-83, [http://www.shehui.pku.edu.cn/upload/editor/file/20180714/20180714124029\\_7789.pdf](http://www.shehui.pku.edu.cn/upload/editor/file/20180714/20180714124029_7789.pdf) (accessed March 10, 2021).

<sup>3</sup> Shishi Shishi (时拾史事), “An Old Story in the New China: the ‘Childless Hundred Days’ campaign in Shandong” (“新中国旧故事：山东的百日无孩运动”), *sohu.com* (搜狐网), August 21, 2016, [https://www.sohu.com/a/111413012\\_119977](https://www.sohu.com/a/111413012_119977) (accessed March 10, 2021).

<sup>4</sup> Mei Fong, “Sterilization, Abortion, Fines: How China Brutally Enforced its 1-Child Policy,” *New York Post*, January 3, 2016, <https://nypost.com/2016/01/03/how-chinas-pregnancy-police-brutally-enforced-the-one-child-policy/> (accessed March 10, 2021).

into destitution. Children who were born outside of the one-child policy were denied legal documentation. As a result, until the hefty fine was paid, these children were unable to access education, health care, or other forms of public services.<sup>5</sup> Couples who were employed by the government or government-affiliated institutions were often fired from their jobs if they had unauthorized children.<sup>6</sup> Women who suffered from complications relating to forced contraception, sterilization, or abortions were never properly treated or compensated.

The one-child policy decreased China's birth rate, and by the early 2010s, after it had been in effect for more than 30 years, it had contributed to a rapidly aging population and a dwindling labor force. Coupled with China's traditional preference for boys, the one-child policy also created a huge gender imbalance. Researchers estimate that China now has 30 to 40 million "missing women." This gender imbalance has made it difficult for many Chinese men to find wives and has fueled a demand for trafficked women and girls from abroad, as Human Rights Watch has documented.<sup>7</sup>

## The Two-Child Policy and the Gender Gap

To bring relief to an aging population, the Chinese government, starting in 2016, allowed all couples to have two children, putting an end to the one-child policy. In some situations, couples are now allowed to have more than two children, such as if the first or second child has a disability. Each province makes its own rules on eligibility to have additional children and on specific punishments, including the size of fines, for violating the law.<sup>8</sup>

It is not clear that the policy is achieving its objectives. Five years after the universal "two-child policy" was promulgated, statistics show that it is failing to reverse the falling birth

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<sup>5</sup> "Over 13 Million 'Black Households' in the Country, an Issue Left Over from the History" ("超生 '黑户' 全国超 1300 万 成历史遗留问题"), *Worker's daily (工人日报)*, November 8, 2015, <https://www.jiemian.com/article/431727.html> (accessed March 10, 2021).

<sup>6</sup> Wang Wenwei (王文伟), "Government Officials In 14 Provinces May Still Lose Their Job For Violating Family Planning Regulation ("14 省规定公职人员超生仍可能被开除 5 省规定直接开除"), *Legal Daily (法制网)*, September 27, 2016, <https://china.huanqiu.com/article/9CaKrnXP3D> (accessed March 10, 2021).

<sup>7</sup> Human Rights Watch, *"Give Us a Baby and We'll Let You Go" - Trafficking of Kachin "Brides" from Myanmar to China* (New York: Human Rights Watch, 2019), <https://www.hrw.org/report/2019/03/21/give-us-baby-and-we-ll-let-you-go/trafficking-kachin-brides-myanmar-china>

<sup>8</sup> Standing Committee of National People's Congress (NPCSC) (中华人民共和国主席), "Decision of the Standing Committee of the National People's Congress on Amending the 'Population and Family Planning Law of the People's Republic of China' ("全国人民代表大会常务委员会关于修改《中华人民共和国人口与计划生育法》的决定 (主席令第四十一号)"), December 28, 2015, [http://www.gov.cn/zhengce/2015-12/28/content\\_5029897.htm](http://www.gov.cn/zhengce/2015-12/28/content_5029897.htm) (accessed March 10, 2021).

rate, despite an initial spike. The number of newborns in 2016 was 18 million, a jump of over 1 million from the previous year. Births dropped each year afterwards, to 12 million in 2019 and 10 million in 2020, the lowest since 1961. Projections show the two-child policy will help alleviate population aging, but not enough to reverse the trend. By 2050, 366 million, or about 26 percent of the country's population, will be 65 or older.<sup>9</sup>

Around the time the two-child policy was announced, studies by the government and private companies showed that many women did not want to have a second child. In a 2016 survey by the All-China Women's Federation, the government-controlled women's organization, 53 percent of families who already had a child said they did not want a second child, and 26 percent said they were not sure whether they wanted a second child. Only 21 percent said they would like to have a second child. Families from more economically developed areas showed less desire for a second child. The study also showed that access to education, health care, and childcare, as well as economic status, are the main factors in families' decisions whether to have a second child.<sup>10</sup>

Similarly, in a 2016 survey of professional women by one of China's largest recruitment sites, Zhilian Zhaopin, 59 percent of those who already had one child said they did not intend to have a second child. Among those who had not had a child, 21 percent said they did not want any children. Nearly 42 percent of those who did not want any children or a second child cited "hindering work, professional development" as a reason.<sup>11</sup> Local surveys reflected similar views: a survey by the women's federation in Jinyinshan, a town

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<sup>9</sup> Zhuang Pinghui and Josh Ye, "China Sees 1.3 Million More New Babies In 2016 ... But Workforce Shrinks as Population Ages," *South China Morning Post*, January 21, 2017, <https://www.scmp.com/news/china/policies-politics/article/2064219/china-sees-13-million-more-new-babies-2016-workforce>, (accessed March 10, 2021); Amanda Lee, "China Population: Concerns Grow as Number of Registered Births in 2020 Plummet," *South China Morning Post*, February 9, 2021, <https://www.scmp.com/economy/china-economy/article/3121112/china-birth-rate-population-concerns-grow-number-registered> (accessed March 10, 2021); Mark Mather, "Aging and Health in China: What Can We Learn From the World's Largest Population of Older People?," *PRB*, January 31, 2020, <https://www.prb.org/aging-and-health-in-china-what-can-we-learn-from-the-worlds-largest-population-of-older-people/#:~:text=The%20United%20Nations%20projects%20that,%25%20to%20a%20projected%2026%25> (accessed March 10, 2021).

<sup>10</sup> "Survey Says More Than Half of the Households Showing No Willingness to Have a Second Child, Due to Multi-Factors" ("调查显示超半数家庭无生育二孩意愿 受多因素影响"), *Beijing News* (新京报), December 24, 2016, <http://finance.sina.com.cn/china/2016-12-24/doc-ifxyxury8338154.shtml?cre=financepagepc&mod=f&loc=1&r=9&doct=o&rfunc=100> (accessed March 10, 2021).

<sup>11</sup> Hu Junhua (胡军华), "Survey: 60% of Women are Unwilling to Have a Second Child" ("机构调查: 六成女性不愿意生二胎"), *Diyi Caijing* (第一财经), May 8, 2016, <https://www.yicai.com/news/5010674.html> (accessed March 10, 2021).

in Hunan province, showed that 76 percent of local women said they did not want a second child. Among them, 85 percent cited the negative impact on career as a reason.<sup>12</sup>

Despite the strong interest among women in work, shown by such surveys, China's gender gap has increased since the universal two-child policy took effect, continuing a trend that started years earlier. While China's labor force still has a relatively high number compared to that of many other countries, the percentage of woman has decreased from 45 percent in 1990 to under 44 percent in 2019.<sup>13</sup>

China's ranking in the World Economic Forum's Global Gender Gap index in 2020 fell for the 12th consecutive year, leaving China in 107th place out of the 156 countries surveyed. It has been a dramatic fall: in 2008, China had ranked 57th. Large gender gaps exist also in terms of senior roles, where only 11 percent of board members and 17 percent of senior managers in China are women.<sup>14</sup>

Comparable data is not available on whether gender discrimination in employment has also worsened in recent years and contributed to the gender parity gap. A 2019 study by the Women's Federation in Yunnan province showed that 40 percent of women faced discrimination when looking for employment.<sup>15</sup>

Human Rights Watch's analysis of the Chinese government's national civil service job lists showed continuing employment discrimination. In the 2020 job list, 11 percent of the postings specify a preference or requirement for men. In both the 2018 and 2019 job lists,

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<sup>12</sup> Women's Federation in Jinyinshan Street(金银山街道妇联), "The Impact of the Implementation of the Two-Child Policy on Female Employment: An Example of the Jinyinshan Street in Heshan District" ("推行全面二孩政策对女性就业影响——以赫山区金银山街道为例"), *Xiaoxiang Women's Website*(潇湘女性网), December 6, 2016, <http://www.hnwomen.org.cn/2016/12/06/183170.html> (accessed March 10, 2021).

<sup>13</sup> World Bank, "Labor force, female (% of total labor force) – China," n.d., <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS?locations=CN> (accessed March 11, 2021)

<sup>14</sup> The Global Gender Gap Index benchmarks the evolution of gender-based gaps among four key dimensions (Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment) and tracks progress towards closing these gaps over time. World Economic Forum, "Global Gender Gap report," March 2021, [http://www3.weforum.org/docs/WEF\\_GGGR\\_2021.pdf](http://www3.weforum.org/docs/WEF_GGGR_2021.pdf) (accessed April 7, 2021).

<sup>15</sup> Zhang Wenling (张文凌), "A survey by Women's Federation in Yunnan: Gender discrimination in Employment against Women Still Exist" ("云南省妇联调查显示：妇女就业性别歧视依然存在"), *China Youth Daily* (中国青年报), May 30, 2020, <https://shareapp.cyol.com/cmsfile/News/202005/30/387618.html> (accessed March 11, 2021).

19 percent of the postings specified a preference or requirement for men. In 2017, the rate was 13 percent.<sup>16</sup>

## Propaganda Encouraging Women to Stay at Home and Have Children

Extensive state propaganda across China has encouraged woman—but not men—to stay at home and raise children. A February 2016 article by the state news agency Xinhua said women being at home was “not only beneficial to the growth of children, the stability of the family,” but also had a “positive effect on the society.” The government-controlled *China Youth Daily* said, in 2017, that women were “more suitable to stay at home and look after children.” In August 2020, as part of President Xi Jinping’s campaign against food waste, the All-China Women’s Federation (ACWF) called for women—but not men—to “exercise the important role in family life” and “be diligent and frugal in managing the household.”

Family planning propaganda slogans have also turned to promoting having a second child. A billboard in Liaoning province read, “what abortion takes away is not just a child... what is aborted is the bloodline of the male partner’s ancestors.”<sup>17</sup> The slogan “one child poor, two children rich, the Party leads the way to comprehensive moderate prosperity” appeared in various places in China.<sup>18</sup> A board displayed in Shangjiaping village in Shanxi

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<sup>16</sup> “China: Gender Discrimination in Hiring Persists - 11 Percent of Civil Service Ads Specify ‘Men Only,’” Human Rights Watch news release, April 29, 2020, <https://www.hrw.org/news/2020/04/29/china-gender-discrimination-hiring-persists>; “China: Female Civil Servants Face Discrimination, Harassment,” Human Rights Watch news release, November 8, 2018, <https://www.hrw.org/news/2018/11/08/china-female-civil-servants-face-discrimination-harassment>; Human Rights Watch, “Only Men Need Apply”: Gender Discrimination in Job Advertisements in China (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/04/23/only-men-need-apply/gender-discrimination-job-advertisements-china#9f3461>.

<sup>17</sup> “Liaoning Province Takes the Lead In Anti-Abortion and Pushes Policy to Encourage ‘Give Birth’” (辽宁省率先反堕胎 推鼓励政策 “催生” ), *Xingdao Daily* (星岛日报), August 15, 2018, <https://www.singtao.ca/2185510/2018-08-15/post-%e9%81%bc%e5%af%a7%e7%9c%81%e7%8e%87%e5%85%88%e5%8f%8d%e5%a2%ae%e8%83%8e-%e6%8e%a8%e9%bc%93%e5%8b%b5%e6%94%bf%e7%ad%96%e3%80%8c%e5%82%ac%e7%94%9f%e3%80%8d/?variant=zh-cn> (accessed March 11, 2021).

<sup>18</sup> @rongjian1957, “中国实行计划生育制度，是汉民族的自我灭绝，当时忽悠老百姓的口号是：“只生一个好，政府来养老”。那时谁不计划生育，就强行结扎上环，甚至强行堕胎，犯下的罪行罄竹难书！如今口号变了：“一胎穷，二胎富，全面小康靠带路”。现在老百姓不是不想要二胎，而是养不起。党估计很快会实行强行配种制度。” (“China’s family planning system is a self-extinction of the Han nationality. At that time, the slogan used to coax people was: “Only one is good, the government will provide for the elderly.” At that time, anyone who didn’t comply would be forcefully put on the birth control ring, or even forced to have an abortion. The crimes they committed were countless! Now the slogan has changed: “One child poor, two children rich, the Party leads the way to comprehensive moderate prosperity.” It’s not that people don’t want a second child, but that they can’t afford it. A forced breeding system might soon will be implemented by the party.”), and photo of a propaganda banner with the slogan, “One child poor, two children rich, the Party leads the way to comprehensive



province encouraged different generations to have a second child: “Mother and daughter being pregnant at the same time is not shameful. Mother-in-law and daughter-in-law having second children at the same time is something to be proud of.” During the Covid-19 lockdown in Luoyang, Henan province, health authorities put up a banner saying, “Stay at home during the outbreak, two-child policy has started, creating a second child can also contribute to the country.”<sup>19</sup> In Yichang, Hubei province, a 2016 document called for Communist Party members to take the lead in having a second child.<sup>20</sup>

## Policies Incentivizing Having a Second Child

Authorities still think that women alone are responsible for childcare, and government policies and laws on caregiver leave reflect that view. This has encouraged discriminatory behavior by employers.

Nationwide, female employees are entitled to at least 98 days of paid maternity leave; there is no national legislation on paternity leave. After the two-child policy went into effect, 30 of China’s 31 provincial-level governments lengthened mandated maternity leave. In provinces such as Hunan and Hainan, women are now entitled to 188 days of maternity leave with pay.<sup>21</sup> Provincial and municipal paternity leave can vary from 7 to 30 days.<sup>22</sup>

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moderate prosperity” on it, *Twitter*, November 30, 2017, 8:33 p.m., <https://twitter.com/rongjian1957/status/936407934359277568> (accessed March 11, 2021);

Visible History, “Old Version of Propaganda Posters: Implement Late Marriage and Family Planning for the Revolution (“老版宣传画 为革命实行晚婚和计划生育”), *Wangyi* (网易), August 11, 2018, <http://dy.163.com/article/EM9HLQDoo516A873.html> (accessed March 11, 2021).

<sup>19</sup> @teamlipei, “hooray, finally there is a propaganda banner telling people they can make babies if getting bored staying home #coronavirus,” and photo of a banner that reads, “Stay at home during the outbreak, two-child policy has started, creating a second child can also contribute to the country”, *Twitter*, 6, 2020, 7:06 a.m., <https://twitter.com/teamlipei/status/1225390430482653184> (accessed March 11, 2021).

<sup>20</sup> Bai Mo (白墨), “China Watch: Behind the ‘Party of the Communist Party’”(“中国观察: ‘共产党员带头生二胎’ 的背后”), *BBC News*, September 22, 2016, [https://www.bbc.com/zhongwen/simp/indepth/2016/09/160922\\_nan\\_china\\_second\\_child\\_yichang](https://www.bbc.com/zhongwen/simp/indepth/2016/09/160922_nan_china_second_child_yichang) (accessed March 11, 2021).

<sup>21</sup> “30 Provinces Extend Maternity Leave: Chongqing is the Most Flexible, Tibet Can Take Up to 1 Year” (“30 个省份延长产假: 重庆弹性最大 西藏最长可休 1 年”), *China News* (中新网), July 10, 2017, <http://www.chinanews.com/gn/2017/07-10/8273178.shtml> (accessed March 11, 2021).

<sup>22</sup> “26 Provinces Amended Family Planning Regulations: Shandong and Tianjin Paternity Leave is At Least 7 Days” (“26 地修订计生条例: 山东天津陪产假最少为 7 天”), *People’s Website* (人民网), April 6, 2016, <http://news.iqilu.com/china/gedi/2016/0406/2742695.shtml> (accessed March 11, 2021).

Other incentives for additional children do not distinguish between mothers and fathers. Besides expanding maternity leave benefits, local authorities have also rolled out subsidies for baby food, housing, and education, as well as tax cuts and cash rewards.<sup>23</sup>

Human Rights Watch research has not found evidence of overtly abusive policies to punish couples for not having a second child, but there have been controversial proposals. A 2018 article in the government-controlled *Xinhua Daily*, for example, suggested a national “childbirth fund,” into which all citizens younger than 40, regardless of gender, would be required to deposit a certain percentage of their earnings every year. Families could withdraw from the fund when they had a second or third child.<sup>24</sup> An expert in a government-affiliated reproductive center in Shanxi province proposed to provincial legislators, in 2021, that the government create a “good matchmaking environment and encourage women aged between 21 and 29 to give birth during this optimal reproductive period.”<sup>25</sup> These proposals, coming after 30 years of coercive state birth policies, raise concerns that that authorities are considering requiring women to have more children.

## Censorship and Repression of Women’s Rights Activism

Efforts by women’s rights activists and ordinary citizens to combat gender discrimination are seriously hampered by the Chinese government’s tight restrictions on freedom of expression and the internet, and its stepped-up harassment, censorship, and punishment of those who speak out for rights.

In recent years, prominent women’s rights activists have faced police harassment, intimidation, and forced eviction for their peaceful advocacy.<sup>26</sup> In March 2015, around International Women’s Day, the Chinese government detained five women’s rights activists

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<sup>23</sup> “Many Places Across the Country Successively Introduced Policies to Promote the Two-Children Policy: Some Provide Free Care Until Elementary School” (“全国多地相继出台催生二孩政策：有的免费照料至小学”), *The Paper* (澎湃新闻), July 18, 2018, <https://finance.sina.com.cn/china/gncj/2018-07-18/doc-ihfnsvyz7584552.shtml> (accessed March 11, 2021).

<sup>24</sup> “Media: Increasing Fertility Rate New Tasks for China’s Population Development in the New Era” (“媒体：提高生育率 新时代中国人口发展的新任务”) *Xinhua Daily* (新华日报), August 17, 2018, <http://finance.sina.com.cn/china/gncj/2018-08-17/doc-ihhvciw8373611.shtml> (accessed March 26, 2021).

<sup>25</sup> Qin Chen, “Can China Encourage its People to Have More Babies? New Local Government Proposal Attempts to Address Demographic Fears,” *South China Morning Post*, January 25, 2021, [https://www.scmp.com/news/people-culture/social-welfare/article/3119139/can-china-encourage-its-people-have-more-babies?utm\\_source=Twitter&utm\\_medium=share\\_widget&utm\\_campaign=3119139](https://www.scmp.com/news/people-culture/social-welfare/article/3119139/can-china-encourage-its-people-have-more-babies?utm_source=Twitter&utm_medium=share_widget&utm_campaign=3119139) (accessed March 11, 2021).

<sup>26</sup> Jonathan Kaiman, “In China, feminism is growing; and so is the backlash,” *Los Angeles Times*, June 15, 2016, <http://www.latimes.com/world/asia/la-fg-china-feminist-activists-20160614-snap-story.html> (accessed March 11, 2021).

for a month after they planned to distribute stickers with anti-sexual harassment messages on public buses.<sup>27</sup>

At the same time, authorities have intensified media and internet censorship of women's rights activism.<sup>28</sup> In March 2018, social media platforms Weibo and WeChat permanently suspended the accounts of Feminist Voices, a social media publication run by outspoken feminists. During the #MeToo movement in 2018 and 2019, censors removed numerous social media posts supporting victims of sexual harassment. Not surprisingly, the activists' public campaigns are much less influential than they were several years ago, when the media was freer to report on their activities and online discussions of them and their work were not overtly controlled.

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<sup>27</sup> "China: Drop All Charges Against Feminist Activists - End Harassment of Activists, Nongovernmental Organizations," Human Rights Watch news release, April 14, 2015, <https://www.hrw.org/news/2015/04/14/china-drop-all-charges-against-feminist-activists>.

<sup>28</sup> Didi Kirsten Tatlow, "Chinese Feminist Group's Social Media Account Suspended," *New York Times*, February 22, 2017, <https://www.nytimes.com/2017/02/22/world/asia/china-feminist-weibo.html> (accessed March 11, 2021).

## II. Pregnancy-Based Discrimination in Employment

“[When the interviewers realized I already had two children], they appeared delighted that ‘I had completed the task’ and wouldn’t take prolonged time off. But they also said that there were two blank years on my resume, so they regarded me as an entry-level employee.”

— Woman job-hunting after taking two years off to care for her children, Hubei province, September 2020<sup>29</sup>

Many women in China have posted messages on social media or told Chinese journalists they have experienced pregnancy-based employment discrimination since the two-child policy took effect. A 2019 study by the recruitment site Zhilian Zhaopin showed that 57 percent of the professional women it surveyed believed “being at the life stage of marriage and childbearing” is a reason for being bypassed for promotion. The study also showed that 41 percent of the women surveyed said they “want to have a second child but do not dare.” Among them, 59 percent listed a second child “could hinder career development” as a reason.<sup>30</sup> A 2020 study by Zhilian Zhaopin reported that 64 percent of women listed childbearing/childrearing as a reason for gender inequality in the workplace, while only 39 percent of men cited it.<sup>31</sup>

The 2017 annual report by the Zhicheng Legal Aid Center for Migrant Workers in Beijing showed that the number of cases the organization handled involving pregnancy-related dismissals of migrant women significantly increased after the two-child policy took effect.<sup>32</sup>

A major driver of pregnancy-based discrimination appears to be that companies do not want the inconvenience created by the months-long absence of an employee and costs

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<sup>29</sup> Human Rights Watch interview with (name withheld), Hubei province, September 2020.

<sup>30</sup> “The Big Data of Zhaopin’s Recruitment Reveals Why Women Dare Not ‘Have A Second Child’” (“智联招聘大数据揭秘，女性为何不敢‘生二胎’？”), *Fenghuang Business* (凤凰网商业), August 8, 2019, <https://biz.ifeng.com/c/70y9joH98ca> (accessed March 11, 2021).

<sup>31</sup> “Industry Report | A 30-Year-Old Working Woman Cannot Ride The Wind And Waves” (“行业报告 | 30 岁的职场女人，无法乘风破浪”), *FSG Plus*, June 29, 2020, [https://www.fsgplus.com/news/hr\\_insight/202006/t20200629\\_27620.shtml](https://www.fsgplus.com/news/hr_insight/202006/t20200629_27620.shtml) (accessed March 11, 2021).

<sup>32</sup> “Pregnant Female Workers are Fired in Continuity. Some Companies ‘Coerced’ Them for Various Reasons” (“怀孕女工屡遭辞退 有些单位以各种理由‘逼辞’”), *Beijing Evening News* (北京晚报), January 25, 2017, [http://www.xinhuanet.com/2017-01/25/c\\_1120381828.htm](http://www.xinhuanet.com/2017-01/25/c_1120381828.htm) (accessed March 13, 2021).

associated with hiring a replacement. The cost of maternity leave is also a major driver. If an employer has paid parental insurance for an employee, the social security fund will cover their parental leave. But if the employer has not paid parental insurance for the employee, it must pay the employee as if she or he were working during parental leave. Because mothers have much longer mandatory parental leave than fathers (and in some regions, fathers have none at all), it is much more costly to pay for parental leave for women than for men.<sup>33</sup>

## Discriminatory Job Ads

There are numerous job advertisements that specifically exclude women who appear more likely to take maternity leave. Human Rights Watch found many ads on major job search websites in China that require female applicants to “have [already] given birth” (已经生育).

An ad posted in August 2020 on Indeed.com for a nurse in a hospital in Jiangsu province stated, “women, married with children, at least two years of experience.” Another ad posted in September 2020 for quality control managers at an auto parts manufacturer in Fujian province stated, “no restriction on male or female (females must be unmarried, or married with children, [schedule] won’t interfere with night shifts), age between 18-35.” An ad posted in September 2020 on 51job.com for an editor position at an online education company in Beijing said applicants who “already have children are preferred.” Another September ad on the site for a manager position in a clothing company in Beijing said, “age between around 30 and 35, already have children, good looking and good disposition.” Human Rights Watch wrote to Indeed.com and 51job.com to confirm and comment on the accounts mentioned above (see Appendix). At time of writing, Human Rights Watch received no response.

Similarly, company websites, social media platforms, and chat groups publish discriminatory ads. In a September 2020 ad for a clerk on the website of Shanghai Pudong Hospital, the hospital required applicants to be “men” or “married women with child(ren).” In a June 2020 ad for an accountant, *Ma’anshan Daily*, a government-owned newspaper in Anhui province, required applicants to be between 30 and 45 years old, and,

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<sup>33</sup> Special Provisions on Labor Protection of Female Employees (女职工劳动保护特别规定), NPCSC, 2012, art. 8, [http://www.gov.cn/zwgk/2012-05/07/content\\_2131567.htm](http://www.gov.cn/zwgk/2012-05/07/content_2131567.htm) (accessed March 11, 2021).

if the applicant was a woman, “be married with child(ren).” A 2019 ad for a finance position at a subsidiary of the insurance conglomerate Ping An Insurance stated, “no restriction on men or women, [but applicants] married without child(ren) will be rejected.” While the exclusion did not say it applied only to women, it almost certainly would be interpreted that way given the cultural context. Human Rights Watch wrote to Shanghai Pudong Hospital, Ma’anshan Daily, and Ping An Insurance to confirm and comment on the accounts mentioned above (see Appendix). At time of writing, Human Rights Watch received no response.

To be more competitive in the job market, some female job seekers voluntarily provide information about their family status. In a looking-for-work ad on the social media website Weibo, a female user stated, “24-year-old, six years of working experience... married with child(ren).” Attached to the ad is a photo of a baby, presumably her child.

## Discrimination During Job Interviews

According to a 2014 study by the All-China Women’s Federation of college graduates in three provinces, 59 percent of surveyed women reported that during job interviews they were asked whether they were the only child of their parents or whether they planned to have two children (a woman who is an only child typically faces particular pressure to have more than one child).<sup>34</sup> A 2020 Zhilian Zhaopin study reported that 58 percent of surveyed women—compared with nearly 20 percent of surveyed men—said they had been asked about whether they had, or intended to have, children during the recruitment process.<sup>35</sup>

Numerous women have gone public with their experience of being asked pregnancy-related questions during job interviews. In July 2019, *China Youth Daily* reported that Zhang Chun, a woman who had just graduated with a master’s degree in journalism, was told not to get pregnant for a five-year period as a condition of her employment at the publicity department in a public hospital. “We could hire you, but this job requires you to carry equipment, taking photos. You can’t go and have a child [for the next] five years,” the

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<sup>34</sup> All-China Women’s Federation, “Second Child: the Entanglement of ‘Birth’ And ‘Promotion’” (“二孩: “生”与“升”的纠结”), August 24, 2015. This study was conducted after the two-child policy went into effect. At the time, only a small segment of women could have two children. For more information on Human Rights Watch’s use of statistics in this report, see the methodology section.

<sup>35</sup> “Industry Report | A 30-Year-Old Working Woman Cannot Ride the Wind and Waves” (“行业报告 | 30岁的职场女人, 无法乘风破浪”), *FSG Plus*, June 29, 2020, [https://www.fsgplus.com/news/hr\\_insight/202006/t20200629\\_27620.shtml](https://www.fsgplus.com/news/hr_insight/202006/t20200629_27620.shtml) (accessed March 12, 2021).

interviewer at the hospital told her. Zhang also said the job ad had required applicants to be male, but no men had applied.<sup>36</sup>

“In 2018, when I changed jobs. I was interviewed by five organizations. Every time, I was asked these questions [referring to marriage and childbearing status]. Three of them said they would not offer me the job if I wanted to have a child,” Yu Yu, 30, told *China Youth Daily*. Yu had not married or had a child at the time.<sup>37</sup>

A woman who graduated from college in 2019 said, in a September 2020 post on the social media website Douban, that a company interviewer told her the position required her not to get married for at least two to three years. A human resources staff member at the company said to her, “After you get married, you don’t have the final say about whether you have a child or not... If you get pregnant, you will take maternity leave, then I will certainly hire others, and you will be replaced.”<sup>38</sup>

In a January 2020 post on Douban, a woman shared a photo of a form a Guangdong-based apparel company told applicants to fill out during job interviews. The form asked applicants about their family status, including whether they were married, pregnant, or had children—and if they had children, the birth date of the children. A human resources officer told the job seeker that the company was worried that if the children were too young, the applicant would not have the time to devote herself to work.<sup>39</sup>

A recruiter at a mechanical company in Guangxi province said if the company hired women “unmarried with no children,” “in less than two years, they would want to get married and

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<sup>36</sup> “Women are Always Asked Whether They Will Have a Baby As They are Seeking Employment. When Will the Pregnancy-Based Discrimination Stop?” (“女性求职就业总被问 “生没生娃” 生育歧视几时休”), *China Youth Daily* (中国青年报), July 4, 2019, [http://www.xinhuanet.com/fortune/2019-07/04/c\\_1124707340.htm](http://www.xinhuanet.com/fortune/2019-07/04/c_1124707340.htm) (accessed March 12, 2021).

<sup>37</sup> Ibid.

<sup>38</sup> Zhihebaikaishui (只喝白开水), “HR Required Me not to Plan for Marriage for 2-3 Years” (“去面试被 hr 要求 2-3 年没有结婚打算”), post to “Douban” (“豆瓣”) (blog), September 16, 2020, <https://www.douban.com/group/topic/193926041/> (accessed March 12, 2021).

<sup>39</sup> Yeyehua(也也话), “Wow! Such Obvious Discrimination in Marriage and Childbirth! The Company Deserves a Name! ! “(哇! 这么明面婚育歧视! 某司值得拥有姓名! ! ), post to “Douban” (“豆瓣”) (blog), January 2, 2020, <https://www.douban.com/group/topic/162338952/> (accessed March 12, 2021).



have a child. [They will want to] take some time off to get married, and then more time off to have children. It's hard to actually do work.”<sup>40</sup>

In order not to have their answers negatively affect their chance of getting a job, some women chose not to answer them honestly. The *People's Daily* reported, in May 2018, that Deng Ping, a woman in Beijing who had just graduated from a PhD program, was repeatedly asked during job interviews whether she would have a second child. “I didn’t dare to actually say what I thought. I only kept emphasizing that I would not have a second child,” Deng said.<sup>41</sup> But even those who don’t intend to have a second child feel employers do not believe them. “Actually, I didn’t have plans to have a second child, but companies still worried,” said a mother-of-one working in finance.<sup>42</sup>

## Forced to Sign Contracts Promising No Pregnancy

To deter employees from taking maternity leave, some employers require current or newly hired female employees to sign agreements promising not to have a child or not to have one during a certain period. This was particularly common in the first two years following the promulgation of the two-child policy. In some companies and organizations with a large percentage of female workers, female employees of childbearing age were required to queue to take maternity leaves. Those who became pregnant not following the “schedule” incurred penalties and some were fired.

In April 2017, the newspaper *Beijing Youth* reported that a woman in Shandong province was fined 2,000 yuan (US\$300) for having a second child earlier than the time stipulated in the contract between her and her employer. She was “scheduled” to have a second child in 2020, but had one in 2016. “She didn’t inform us in advance at all. Got pregnant

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<sup>40</sup> “One Comment | Recruitment Requires Married and Childbearing, Practical Measures Must Be Taken to Deal With Gender Discrimination In Employment” (“壹评|招聘要求已婚已育 应对就业性别歧视要出实招”), *Qilu Evening News* (齐鲁晚报), February 27, 2019, <http://sd.sina.com.cn/news/2019-02-27/detail-ihxncvf8302297.shtml> (accessed March 12, 2021).

<sup>41</sup> “More Options, More Outlets. What Kind of Job College Students Want to Find” (“选项更多，出路更多 大学生想找啥工作”), *People's Daily* (人民日报), May 2, 2018, [http://www.xinhuanet.com/politics/2018-05/02/c\\_1122768821.htm](http://www.xinhuanet.com/politics/2018-05/02/c_1122768821.htm) (accessed March 12, 2021).

<sup>42</sup> Huang Guixia (黄桂霞), “Ensuring Female Employment Under the ‘Comprehensive Two-Child’ Policy” (“‘全面二胎’政策下保障女性就业”), *China Social Science Net* (中国社会科学网), March 8, 2017, [http://www.cssn.cn/shx/201703/t20170308\\_3443900.shtml?COLLCC=1038966803&](http://www.cssn.cn/shx/201703/t20170308_3443900.shtml?COLLCC=1038966803&) (accessed March 12, 2021).

ahead of the schedule. This is not being trustworthy,” a representative of her employer told the newspaper.<sup>43</sup>

According to a December 2017 *Beijing Evening News* report, Chen Xue, a 32-year-old mother of one, was asked during a job interview with a financial firm whether she was planning to have a second child. After Chen said she would not, the firm’s human resources representative asked her to sign a contract promising that she would not have a second child in three years, and said that if she violated the terms, she would be demoted, and her salary decreased.<sup>44</sup>

*Guangming Daily* reported, in April 2018, that various schools across the country compelled female teachers to sign pregnancy-related agreements. In a vocational school in Hainan, newly hired female teachers had to sign contracts promising that they would not have a child in the first two years of employment. Those who violated the terms would only be given a “pass” during the annual performance review and would not be promoted. Their benefits would also be negatively affected.<sup>45</sup>

In an August 2020 post on Douban, a woman described a job interview in which a company asked her to sign an agreement promising not to get pregnant for the next six years. “This made me—a person who has been urged to have a child for many years but will never want one—want to have a child to show to him on the spot,” the 30-year-old job seeker said.<sup>46</sup>

## Fired, Demoted, Sidelined

Numerous women have reported that they have been demoted, sidelined, or fired from their jobs for becoming pregnant. In some cases, they say they believe stress related to

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<sup>43</sup> “Woman Fined for Failing to Give Birth to Second Child According To Company’s Schedule” (“女子没按单位时间表生二胎被罚”), *Beijing Youth* (北京青年报), April 29, 2017, [http://www.xinhuanet.com//local/2017-04/29/c\\_1120893652.htm](http://www.xinhuanet.com//local/2017-04/29/c_1120893652.htm) (accessed March 12, 2021).

<sup>44</sup> “In ‘Second Child Era’, New Discrimination Troubles Women’s Employment, ‘Already Given birth’ Became one Employment Requirement” (“‘二胎时代’新歧视困扰女性就业 招聘门槛抬高到‘已生二胎’”), *Beijing Evening News* (北京晚报), December 20, 2017, <http://beijing.qianlong.com/2017/1220/2267773.shtml> (accessed March 12, 2021).

<sup>45</sup> “Pregnancy is not Allowed for the First Two Years of Employment, Why Does the Employer Turn a Blind Eye to Reproductive Rights” (“入职前两年不让怀孕 用人单位为何对生育权视而不见”), *Guangming Daily* (光明日报), April 21, 2018, <http://www.chinanews.com/sh/2018/04-21/8496665.shtml> (accessed March 12, 2021).

<sup>46</sup> Yuquanzhaicai (鱼泉榨菜), “I Found I am Really Rebellious” (“我发现我真的是叛逆”), post to “Douban” (“豆瓣”) (blog), August 17, 2020, <https://www.douban.com/group/topic/189768198/> (accessed March 12, 2021).

these events led them to have miscarriages. Other women have been fired while they were on maternity leave or shortly after they returned.

A joint survey by *China Youth Daily* and the survey service website Wenjuan, in 2020, found that 51 percent of the respondents said sidelining or pay reduction due to pregnancy is a common problem facing professional women over 30 years of age.<sup>47</sup> In a 2020 book on the impact of family planning policy changes on urban women, Yang Hui, a researcher at the Women's Studies Institute of China, said that among the 45 percent of respondents who reported their employment was negatively affected by pregnancy or childrearing, over one-third reported income loss, and over 20 percent reported losing opportunities for training or promotions. Another 13 percent said they were fired or forced to resign, and eight percent said they experienced demotion.<sup>48</sup>

Between 2017 and 2019, 47 percent of the cases handled by 074 Professional Women Legal Hotline (074), a legal aid group, concerned pregnancy-based discrimination. Among the women who sought help with such discrimination from 074, 69 percent said they had been fired or forced to resign. Thirteen percent said their positions were shifted, and 11 percent said their wages were withheld.<sup>49</sup>

Human Rights Watch searched the government-run court verdicts database “China Judgments Online” for cases of pregnancy-related lawsuits between January 1, 2016 and January 1, 2021.<sup>50</sup> We found 67 lawsuits concerning pregnancy-related disputes in 26 provinces across the country, involving women from the age of 24 to 47; the actual number of pregnancy-related lawsuits is almost certainly much larger: the government database does not include all lawsuits filed, let alone all lawsuits that conclude in a verdict. Most of the disputes were brought after the women were fired or their contracts were not renewed. A few women also mentioned being demoted or reshuffled to a less desirable position

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<sup>47</sup> “86.2% of the Interviewed Workplaces Bluntly Said that Many “30+ Women” Around Them Have Sharply Reduced Career Opportunities” (“86.2%受访职场人直言身边很多 “30+女性” 职场机会锐减”), *China Youth Daily* (中国青年报), July 9, 2020, [http://www.xinhuanet.com/politics/2020-07/09/c\\_1126213956.htm](http://www.xinhuanet.com/politics/2020-07/09/c_1126213956.htm) (accessed March 12, 2021).

<sup>48</sup> Employment Sex Discrimination Monitoring Team (就业性别歧视监察大队), “Book Recommendation: *Research on the Mechanism of Adjusting and Improving the Fertility Policy on Urban Female Employment* by Yang Hui” (【图书推荐】杨慧著《调整完善生育政策对城镇女性就业影响机理研究》), post to “Weibo” (微博) (blog), October 17, 2020, <https://m.weibo.cn/status/4561028711715340> (accessed March 12, 2021).

<sup>49</sup> 074 Professional Women Legal Hotline (074 职场女性法律热线), “We Received a Hundred Inquiries | 074 Hotline Report” (“我们接到了一百个咨询 | 074 热线报告”), post to “Weibo” (微博) (blog), January 2, 2020, [https://weibo.com/ttarticle/x/m/show/id/2309404456267438489683?\\_wb\\_client\\_=1](https://weibo.com/ttarticle/x/m/show/id/2309404456267438489683?_wb_client_=1) (accessed March 12, 2021).

<sup>50</sup> “China Judgement Online” (“中国裁判文书网”), <https://wenshu.court.gov.cn/> (accessed April 2, 2021).

before their contracts were terminated, presumably because their employers wanted them to resign voluntarily.

In December 2016, China Railway Logistics cut three female employees' pay in half after two of them became pregnant and the third had just returned to work after maternity leave. After the three refused to agree to the new salaries, the company removed their office equipment, revoked their company credentials, and later fired them.<sup>51</sup> Human Rights Watch wrote to China Railway Logistics to confirm and comment on the accounts mentioned above (see Appendix). At time of writing, Human Rights Watch received no response.

In February 2018, a woman surnamed Liu in Shandong province was fired from a trading company on her second day back to work after having a second child, the news website *The Paper* reported. According to Liu's husband, Liu had worked for the company for eight years. She had been continually promoted and became the vice president of the company, but was later demoted after having a first child in 2014.<sup>52</sup>

In February 2019, Fan Huiling, 41, a school security guard and mother of one in Guangdong province, was fired days after she informed her employer that she was pregnant. Fan sought advice online and visited government offices for help. She eventually filed for labor arbitration. The next day, she was informed by her doctor that she had had a miscarriage.<sup>53</sup>

In a similar case from September 2018, according to court documents, after learning that Sun Sihan was pregnant, her employer, a technology company in Beijing, made it difficult for her to get approval for time off to focus on her health. The company then suspended Sun's work email, insurance, and other company privileges when Sun was on leave. "The

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<sup>51</sup> Liu Yang (刘洋), "Kicked Out of the Company During Pregnancy, China Railway Logistics Was Ruled to Compensate Pregnant Women's Wages" ("怀孕期间被赶出公司 中铁物流被裁决补偿孕妇工资"), *Beijing News* (新京报), December 5, 2017, <http://www.bjnews.com.cn/news/2017/12/05/467293.html> (accessed March 13, 2021).

<sup>52</sup> "Fired After Having the Second Child? The Female Senior Manager Claimed 1.05 Million, And the Court Ruled!" ("生完二胎遭辞退? 女高管索赔 105 万, 法院判了!"), *The Paper* (澎湃新闻), July 7, 2020, [https://www.thepaper.cn/newsDetail\\_forward\\_8160227](https://www.thepaper.cn/newsDetail_forward_8160227) (accessed March 13, 2021).

<sup>53</sup> Stevenson and Chen, "In China, Working Mothers Say They Are Fired or Sidelined," *New York Times*, November 1, 2019, [https://www.nytimes.com/2019/11/01/business/china-mothers-discrimination-working-.html?\\_ga=2.238047744.1855401676.1602270074-1361628706.1542879108](https://www.nytimes.com/2019/11/01/business/china-mothers-discrimination-working-.html?_ga=2.238047744.1855401676.1602270074-1361628706.1542879108) (accessed March 13, 2021).

company's illegal behavior incurred serious mental harm to me, resulting in me having a miscarriage on September 20, 2018," Sun said in the court filing<sup>54</sup>.

In some cases, employers have forced pregnant employees to resign after making the work environment difficult for them. A pregnant kindergarten teacher in Guangdong province resigned in 2018, after her manager frequently verbally abused her and "made her do activities that were unsuitable for a pregnant woman," according to a report by *Guangming Daily*.<sup>55</sup>

After Li Ronghua returned to work after giving birth, the executives at her company criticized her for leaving her desk to pump milk without permission. She was eventually told to quit. Li left the company and later found a new job, but during the interviews for the new positions, she was regularly asked whether she planned to have a second child.<sup>56</sup>

According to a January 2016 report by *Wuhan Evening News*, a woman surnamed Li in the city of Wuhan was told to resign after she became pregnant. Li refused to resign and told her employer that it was illegal for the company to force her to do so. Although the company backed down, Li felt that her colleagues treated her very differently afterwards and she was not assigned any new work to do. Her supervisors also repeatedly tried to persuade her to quit, saying, "You are soon going to be a mother of two children. You won't have the energy for work... please don't make it difficult for me."<sup>57</sup> Li told the newspaper that the circumstances made her not want to work for the company anymore.

In July 2018, after notifying her employer she was pregnant, an engineer in Changchun, Jilin province, was forced to resign. She took the company to the labor arbitration board and won the case. Yet, when she resumed working for the company in December, seven-and-a-

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<sup>54</sup> *Sun Sihan v. Beijing Changsu Technology Co., Ltd.*, People's Court of Chaoyang District, Beijing, Case No. (2019) Beijing 0105 Minchu No.87426 ( (2019) 京 0105 民初 87426 号), December 29, 2020

<sup>55</sup> "Pregnancy is not Allowed for the First Two Years of Employment, Why Does the Employer Turn A Blind Eye To Reproductive Rights" ("入职前两年不让怀孕 用人单位为何对生育权视而不见"), *Guangming Daily* (光明日报), April 21, 2018, <http://www.chinanews.com/sh/2018/04-21/8496665.shtml> (accessed March 13, 2021).

<sup>56</sup> Alexandra Stevenson and Elsie Chen, "In China, Working Mothers Say They Are Fired or Sidelined," *New York Times*, November 1, 2019, [https://www.nytimes.com/2019/11/01/business/china-mothers-discrimination-working-.html?\\_ga=2.238047744.1855401676.1602270074-1361628706.1542879108](https://www.nytimes.com/2019/11/01/business/china-mothers-discrimination-working-.html?_ga=2.238047744.1855401676.1602270074-1361628706.1542879108) (accessed March 13, 2021).

<sup>57</sup> "Woman Was Asked to Voluntarily Resign After Getting Pregnant with Second Child" ("女子怀二胎被要求自动离职 不辞职处处遭刁难"), *Wuhan Evening News* (武汉晚报), January 23, 2016, <https://china.huanqiu.com/article/9CaKrnJTo4h> (accessed March 13, 2021).

half months pregnant, she found that her position had been changed and she had to work at a construction site in the cold winter.<sup>58</sup>

In some cases, companies have fired employees citing “economic difficulties.” In July 2019, when Lin Jianrong was on maternity leave, her employer, a food company in Fujian province, informed Lin that her labor contract was terminated due to the company’s “extreme operational difficulties,” even though the company was not experiencing business loss, according to court documents.<sup>59</sup> An e-commerce company in Jiangsu province, in April 2020, terminated the labor contract of an employee after learning that she was pregnant, citing the company’s poor business performance due to the pandemic. “Please understand. The company is losing a lot of money, under huge pressure,” a manager told the employee, according to court documents.<sup>60</sup> Human Rights Watch wrote to the food company and e-commerce company to confirm and comment on the accounts mentioned above (see Appendix). At time of writing, Human Rights Watch received no response.

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<sup>58</sup> 074 Professional Women Legal Hotline (074 职场女性法律热线), “On August 24, the Media Exposed a Pregnancy-Based Discrimination Case” (“8 月 24 日, 媒体曝光了一起#怀孕歧视# 事件”), post to “Weibo” (“微博”) (blog), August 25, 2020, <https://m.weibo.cn/status/4541819449253559?> (accessed March 13, 2021).

<sup>59</sup> *Fujian Lanshun Food Processing Co., Ltd. v Lin Jianrong*, Intermediate People's Court of Fuzhou City, Fujian Province, Case No. (2020) Fujian 01 Minzhong No.7436 ((2020) 闽 01 民终 7436 号), December 31, 2020.

<sup>60</sup> *Sha Meng v Xuzhou Haluo Electronic Commerce Co., Ltd.*, People's Court of Xuzhou Economic and Technological Development Zone, Jiangsu Province, Case No. (2020) Jiangsu 0391 Minchu No.3330 (2020) 苏 0391 民初 3330 号), January 02, 2021.

### III. Enforcement of Domestic Laws

The Chinese government has failed to uphold domestic law or its international legal obligations to prevent widespread gender and pregnancy-based discrimination and provide remedies for victims of discrimination.

While Chinese laws and regulations contain provisions banning gender and pregnancy-based discrimination in employment, they provide few specific enforcement mechanisms, leaving victims with inadequate avenues for redress. Fines imposed on companies that have violated anti-discrimination laws are too small to serve as a deterrent for future violators. Compensation amounts awarded to victims who are willing to go through the taxing litigation process and win are often too low to make companies change their conduct.

The Chinese government's history—and escalating practice—of internet censorship and harassing and detaining women's rights activists has also created chilling effect on women's rights activism, including campaigns against discrimination in employment.

#### Chinese Laws on Gender and Pregnancy-Based Discrimination

Chinese government documents concerning pregnancy-based discrimination routinely reference gender discrimination, acknowledging that domestic anti-gender discrimination laws should be applied to cases of pregnancy-based discrimination.

The Law on the Protection of Women's Rights and Interests (妇女权益保障法) states, “women shall enjoy equal rights with men in all aspects of political, economic, cultural, social and family life”; “discriminating against ... women is prohibited.”<sup>61</sup> The Labor Law (劳动法), the Employment Promotion Law (就业促进法), and the Provisions on Employment Services and Employment Management (就业服务与就业管理规定) all state that “workers

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<sup>61</sup> Law on the Protection of Women's Rights and Interests, Standing Committee of National People's Congress (NPCSC), 1992 (revised 2005), [http://www.gov.cn/banshi/2005-05/26/content\\_980.htm](http://www.gov.cn/banshi/2005-05/26/content_980.htm) (accessed March 13, 2021), art. 2.



should not be discriminated against because of ethnic group, race, gender, or religious belief.”<sup>62</sup>

China’s Advertising Law (1994, revised 2015) (广告法) bans “gender discriminatory content” in advertising, a provision that on its face should apply to job recruitment ads as well as other forms of advertising. For a published advertisement that violates the law, the advertised entity, the advertising agency, and the entity that publishes the advertisement can each be fined from 200,000 yuan to one million yuan (\$30,000 to \$150,000) and have their licenses suspended.<sup>63</sup> The Interim Regulations on Human Resources Markets (人力资源市场暂行条例) stipulate that employers can be fined from 10,000 yuan to 50,000 yuan (\$1,500 to \$7,700) if they refuse to rectify publishing gender discriminatory recruitment ads.<sup>64</sup>

Though the above laws and regulations prohibit gender discrimination, none of them contains a definition of “gender discrimination.”

The Law on the Protection of Women’s Rights and Interests states, “No employer shall reduce the pay of female employees, dismiss them, or unilaterally terminate employment contracts or service agreements with them due to circumstances such as marriage, pregnancy ( ), childbirth ( ) or nursing ( ).”<sup>65</sup> Both the Labor Law ( ) and

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<sup>62</sup> Labor Law of the People’s Republic of China, NPCSC, 1995, [http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content\\_5004622.htm](http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content_5004622.htm) (accessed March 13, 2021), art. 12.; Employment Promotion Law, NPCSC, 2007, [http://www.gov.cn/flfg/2007-08/31/content\\_732597.htm](http://www.gov.cn/flfg/2007-08/31/content_732597.htm) (accessed March 13, 2021), art. 3.; Provisions on Employment Services and Employment Management, Ministry of Human Resources and Social Security (人力资源社会保障部), 2007 (revised 2014), <http://www.lawinfochina.com/display.aspx?id=31816&lib=law> accessed March 13, 2021), art. 4.

<sup>63</sup> Advertising Law of the People’s Republic of China, NPCSC, 1994, (revised 2015), [http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content\\_2065663.htm](http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065663.htm) (accessed March 13, 2021), arts. 9, 55.

<sup>64</sup> Interim Regulations on Human Resources Markets (人力资源市场暂行条例), State Council, June 29, 2018, [http://www.gov.cn/zhengce/content/2018-07/17/content\\_5306967.htm](http://www.gov.cn/zhengce/content/2018-07/17/content_5306967.htm) (accessed March 10, 2021), art. 43.

<sup>65</sup> Law on the Protection of Women’s Rights and Interests, NPCSC, 1992 (revised 2005), [http://www.gov.cn/banshi/2005-05/26/content\\_980.htm](http://www.gov.cn/banshi/2005-05/26/content_980.htm) (accessed March 13, 2021), art. 2. “Pregnancy” is defined in the law to cover the period from the start of a pregnancy to the 15th day before childbirth; “childbirth” to cover the period from the 15th day before childbirth to the 98th day after childbirth (the nationwide maternity leave period). Each province offers varying additional days. The “nursing” period refers to the period between the day maternity leave ends and the first birthday of the child. The above applies to giving birth to one child without complications. For twins and difficult pregnancies, the relevant periods are longer.

Labor Contract Law ( ) prohibit the termination of labor contracts during female employees' "pregnancy, childbirth and nursing."<sup>66</sup>

Yet, provisions in the Labor Contract Law allow companies to legally terminate employment of any employees, including women who are pregnant or on maternity leave, in a number of situations, such as if those individuals are "proven not to meet hiring requirements during probation period" or "seriously violating employers' rules and regulations."<sup>67</sup> This law has been invoked by some companies to justify firing employees who become pregnant.

The Employment Promotion Law bans labor contracts that contain information related to restricting female employees from getting married or having children.<sup>68</sup> The Special Rules on the Labor Protection of Female Employees (女职工劳动保护特别规定) have more specific stipulations on the protections afforded to female employees in relation to childbirth, including that companies cannot require employees who are seven months or more pregnant to work overtime or work at night.<sup>69</sup>

In February 2019, nine Chinese central government agencies, including the Ministry of Human Resources and Social Security and the All-China Women's Federation, jointly issued a notice outlining specific measures for implementing existing laws that prohibit gender discrimination in employment. The regulation stipulates that employers are prohibited from inquiring about women's marriage and childrearing status during job interviews, requiring women to take pregnancy tests in the recruitment process, or conditioning employment on their not being pregnant. Employers and recruiters who publish gender discriminatory job ads can face fines of up to 50,000 yuan (\$7,700).<sup>70</sup>

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<sup>66</sup> Labor Law of the People's Republic of China, NPCSC, 1995, [http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content\\_5004622.htm](http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content_5004622.htm) (accessed March 13, 2021), art. 29.; Labor Contract Law, NPCSC, 2007, [http://www.gov.cn/flfg/2007-06/29/content\\_669394.htm](http://www.gov.cn/flfg/2007-06/29/content_669394.htm) (accessed March 13, 2021), art. 42.

<sup>67</sup> Ibid., art. 39

<sup>68</sup> Employment Promotion Law, NPCSC, 2007, <http://jyj.km.org.cn/c/2019-09-02/3104924.shtml> (accessed March 13, 2021), art. 27.

<sup>69</sup> Special Provisions on Labor Protection of Female Employees (女职工劳动保护特别规定), NPCSC, 2012, art. 6 [http://www.gov.cn/zwggk/2012-05/07/content\\_2131567.htm](http://www.gov.cn/zwggk/2012-05/07/content_2131567.htm) (accessed March 11, 2021).

<sup>70</sup> Notice of nine departments including the Ministry of Human Resources and Social Security and the Ministry of Education on Further Regulating Recruitment Behavior and Promoting Women's Employment (人力资源社会保障部、教育部等九部门关于进一步规范招聘行为促进妇女就业的通知), Ministry of Human Resource and Social Security of the People's Republic of China, 2019, [http://www.mohrss.gov.cn/SYrlzyhshbzb/jiuye/zcwj/201902/t20190221\\_310707.html](http://www.mohrss.gov.cn/SYrlzyhshbzb/jiuye/zcwj/201902/t20190221_310707.html) (accessed March 13, 2021).

In January 2021, the Ministry of Human Resources and Social Security, the government's main labor administration agency, stated that the ministry will amend and improve anti-gender discrimination laws and strengthen enforcement, so to "protect women's legal employment rights and interests and reduce the cost of childbearing/childrearing for women."<sup>71</sup> Human Rights Watch wrote to the Ministry of Human Resources and Social Security to inquire about investigative measures and complaint mechanisms available to ensure companies' adherence to non-discrimination laws (see Appendix). At time of writing, Human Rights Watch received no response.

## Weak Enforcement of Provisions Banning Pregnancy-Based Discrimination in Hiring

The Labor Law and the Employment Promotion Law stipulate that labor administration agencies—mainly local human resources and social security bureaus—are the primary government agencies responsible for the enforcement and administration of labor and employment laws and regulations. Any organization or individual can report violations of labor laws and regulations to a local social security bureau and request an investigation.

As detailed in Human Rights Watch's 2018 report on gender discrimination in job advertisements, authorities, contrary to what they have claimed in public announcements, rarely investigate gender discriminatory job ads without first receiving complaints. In addition, they usually only ordered companies to make corrections and warned them not to repeat their mistakes, rather than imposing fines.<sup>72</sup> In an August 2018 case, after many netizens tagged the Weibo account of the human resources bureau in Changsha city and a person made an official complaint to the mayor's complaint mailbox, an online media

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<sup>71</sup> Reply of the Ministry of Human Resources and Social Security to Proposal No. 3411 (No. 293 for Social Management) at the Third Meeting of the 13th National Committee of the Chinese People's Political Consultative Conference (人力资源社会保障部对政协十三届全国委员会第三次会议第 3411 号 (社会管理类 293 号) 提案的答复), Ministry of Human Resource and Social Security of the People's Republic of China, 2021, [http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zhgl/jytabl/tadf/202101/t20210106\\_407232.html](http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zhgl/jytabl/tadf/202101/t20210106_407232.html) (accessed March 13, 2021).

<sup>72</sup> Human Rights Watch, *"Only Men Need Apply": Gender Discrimination in Job Advertisements in China* (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/04/23/only-men-need-apply/gender-discrimination-job-advertisements-china#9f3461>.

company rescinded all 400 job ad posters across the city that stated “recent graduates and those married and have children preferred.”<sup>73</sup>

Although media stories and social media posts on gender discrimination are relatively common in China, it is rare to find any mention in the media and on social media about authorities investigating companies for discrimination during job interviews. Unlike discrimination in job ads, discrimination during job interviews can be hard to prove: the process is not in writing and employers can deny allegations afterwards. Facing potential liability, some companies have also learned to solicit information through indirect questions. Labor law expert Yan Tian told *Beijing News*: “For example, they would not ask your marital/childrearing status, but ask you whether the tuition for your local kindergarten is expensive. If they know you have only one child, they would ask whether you think the only child is lonely.”<sup>74</sup>

Some victims of discrimination also worry about the negative consequences of reporting. Under an article on the news website *Sina* advocating for women report to their local human resources bureau if they encounter gender and pregnancy-related discrimination when looking for jobs, one person commented: “Bamboozle women to report like this, and in the future, it will be even more difficult for women to get job interviews.”<sup>75</sup>

## Weak Legal Recourse for Pregnancy-Based Dismissal

Under the Law on Mediation and Arbitration of Labor Disputes, parties to a labor law dispute must go through labor arbitration before cases can be heard by a court. A decision by the labor arbitration board is binding, but if either party is dissatisfied with the arbitration result, they can then take the issue to court. The labor arbitration board is set

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<sup>73</sup> Employment Sex Discrimination Monitoring Team (就业性别歧视监察大队), “Eliminate Employment Sex Discrimination” (消除就业性别歧视), post to “Weibo” (“微博”) (blog), August 15, 2018, <https://m.weibo.cn/status/4273378150185593?> (accessed March 13, 2021); comment posted by Employment Sex Discrimination Monitoring Team (就业性别歧视监察大队) on August 21, 2018, to the blog post ““Eliminate Employment Sex Discrimination” (“消除就业性别歧视”) on “Weibo” (“微博”) (blog), August 15, 2018, <https://m.weibo.cn/status/4273378150185593?> (accessed March 13, 2021).

<sup>74</sup> “Nine Departments: Employers Shall Not Ask Women About Marriage and Childbirth, Nor Ask for Physical Examination for Pregnancy” (九部门：招聘不得询问妇女婚育情况 入职体检不得测妊娠), *Beijing News* (新京报), February 24, 2019, [http://www.xinhuanet.com/fortune/2019-02/24/c\\_1124154808.htm](http://www.xinhuanet.com/fortune/2019-02/24/c_1124154808.htm) (accessed March 13, 2021).

<sup>75</sup> Comment posted by 细雨鱼儿出日记 on February 23, 2019, to the blog post “If Asked During Interviews Whether You Get Married or Not? Don't Hesitate to Report” (“找工作时又被问 “婚否” “生娃否”？别犹豫果断举报”) on “Sina” (新浪) (blog), February 23, 2019, <https://finance.sina.com.cn/china/2019-02-23/doc-ihqfskcp7768787.shtml> (accessed March 13, 2021).

up by the human resources and social security bureau at various levels of the government. It is staffed mostly by officials from the bureau, but personnel from government-controlled labor unions and companies can also be on the board.<sup>76</sup>

Data is not available on how often arbitration or courts rule in favor of dismissed workers in pregnancy-related cases, but press and social media accounts suggest that even successful claimants often have concluded the process was too onerous and the compensation awarded too low to be worth the effort, or to deter companies from continuing to engage in discrimination.

Employees dismissed for pregnancy-related reasons generally have two ways to seek compensation. One is to request that companies rehire them and pay back wages or maternity leave compensation. There are no additional penalties imposed on companies for unlawful dismissals. The other way is to request compensation for the unlawful termination. The amount depends on the length of employment. The Labor Contract Law stipulates that in general the compensation rate for unlawful termination of labor contract—within which pregnancy-based dismissal falls—is two months of salary for every year of employment. Some victims, especially those who had not worked for the company for a long time or were newly employed, said the compensation felt too low to be worth the effort of going through the legal process.

One main difficulty victims encounter is proving that their termination was in fact due to their being pregnant, rather other reasons employers might give. In some cases, even establishing an employment relationship or actual wages can be hard due to the lack of a paper trail. When Liu Yiran, the Beijing-based woman who was fired from an internet company for being pregnant (the case summarized at the start of this report), took her employer to the arbitration board, the board refused to admit copies of electronic transfer receipts as evidence of her past salary because they were not original documents or notarized. Liu was also unable to produce evidence to prove her work attendance because the company refused to provide that information to her after her departure.<sup>77</sup>

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<sup>76</sup> Law on Mediation and Arbitration of Labor Disputes, Ministry of Human Resource and Social Security of the People's Republic of China, 2017, [http://www.mohrss.gov.cn/SYrlzyhshbzb/zcfg/flfg/gz/201705/t20170524\\_271349.html](http://www.mohrss.gov.cn/SYrlzyhshbzb/zcfg/flfg/gz/201705/t20170524_271349.html) (accessed March 13, 2021).

<sup>77</sup> Zhu Ying (朱莹), "Lean In: How Difficult is it to Defend Rights After A 34-Year-Old Female White-Collar Worker Encounters Pregnancy Discrimination? ("向前一步: 34岁女白领遭遇怀孕歧视之后, 维权多难?"), *The Paper*(澎湃新闻), July 9, 2019, [https://www.thepaper.cn/newsDetail\\_forward\\_3872092](https://www.thepaper.cn/newsDetail_forward_3872092) (accessed March 13, 2021).

When victims, especially those hired not long before they become pregnant, speak about their cases publicly, they are sometimes accused by their former employer or the public of exploiting the law for their own benefit. In 2019, after two months at her new job as a web designer, a woman surnamed Wang in Liaoning province was fired after informing her employer that she was pregnant. Wang went online to seek help for her situation, and while many netizens offered their advice and support, some questioned Wang's motives and accused her of using her pregnancy to "take advantage of the company."<sup>78</sup>

Companies sometimes retaliate, which can further deter victims from seeking redress. Li Xiaoping, a woman in Shandong province, took her former employer, an electronics company, to arbitration after the company fired her for being pregnant. Later, the company sued Li, her husband, a reporter, and a newspaper that wrote about her case for defamation, seeking about \$1 million in damages.<sup>79</sup> After Liu Yiran, the Beijing woman mentioned above, posted on WeChat about her experience and that of a colleague of hers, the company sued her for "leaking commercial secrets." Later the company initiated another lawsuit for "reputational damage" after Liu spoke to an online media platform.<sup>80</sup>

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<sup>78</sup> "Female Employee was Dismissed for Pregnancy During the Probation Period. Human Resources and Social Security Bureau: Illegal, Suggest to Report" ("女员工试用期内怀孕遭辞退 人社局: 违法, 建议举报"), *China Voice (中国之声)*, April 20, 2019, [http://www.xinhuanet.com/legal/2019-04/20/c\\_1124391505.htm](http://www.xinhuanet.com/legal/2019-04/20/c_1124391505.htm) (accessed March 13, 2021).

<sup>79</sup> Stevenson and Chen, "In China, Working Mothers Say They Are Fired or Sidelined," *New York Times*, November 1, 2019, [https://www.nytimes.com/2019/11/01/business/china-mothers-discrimination-working-.html?\\_ga=2.238047744.1855401676.1602270074-1361628706.1542879108](https://www.nytimes.com/2019/11/01/business/china-mothers-discrimination-working-.html?_ga=2.238047744.1855401676.1602270074-1361628706.1542879108) (accessed March 13, 2021).

<sup>80</sup> Zhu Ying (朱莹), "Lean In: How Difficult is it to Defend Rights After A 34-Year-Old Female White-Collar Worker Encounters Pregnancy Discrimination?" ("向前一步: 34岁女白领遭遇怀孕歧视之后, 维权多难?"), *The Paper (澎湃新闻)*, July 9, 2019, [https://www.thepaper.cn/newsDetail\\_forward\\_3872092](https://www.thepaper.cn/newsDetail_forward_3872092) (accessed March 13, 2021).

## IV. China's International Legal Obligations

### Discrimination on the Basis of Gender

Discrimination on the grounds of gender is prohibited under core international human rights instruments and treaties to which China is a party. As a United Nations member state, China has affirmed acceptance of the Universal Declaration of Human Rights, whose provisions are broadly accepted to reflect customary international law.<sup>81</sup> The declaration upholds the fundamental rights and freedoms that are due to every individual on the basis of their being human: “All human beings are born free and equal in dignity and rights” and are protected from discrimination, arbitrary interference in privacy, family and home.<sup>82</sup>

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), China is obligated to “ensure the equal right of men and women” to enjoy all covenant rights, including the right to work.<sup>83</sup> Governments also are obligated to take “measures to combat discrimination and to promote equal access and opportunities.”<sup>84</sup>

### Bodily Autonomy and Reproductive Rights

The two-child policy is a fundamental and deeply intrusive violation by the Chinese government of women's right to reproductive choice and bodily autonomy. The right to bodily integrity and the right of a woman to make her own reproductive choices are enshrined in a number of international human rights treaties and instruments.

The right to sexual and reproductive health is an integral part of the right to health, enshrined in article 12 of the International Covenant on Economic, Social and Cultural

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<sup>81</sup> Universal Declaration of Human Rights. G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>82</sup> Universal Declaration of Human Rights, arts. 5 and 7.

<sup>83</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by China in 2001, art. 3, <http://hrlibrary.umn.edu/instree/b2esc.htm> (accessed March 13, 2021).

<sup>84</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 18, The Right to Work, U.N. Doc. E/C.12/GC/186 February 2006, para. 23, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1aoSzabooXTdlmnsJZZVQfUKxXVIsd7Dae%2FCu%2B13J25Nha7l9NlwYZ%2FTmK57O%2FSr7TB2hbCAidyVu5x7XcqjNXn44LZ52C%2BIkX8AGQrVylc> (accessed March 13, 2021).

Rights.<sup>85</sup> As the UN Committee on Economic, Social and Cultural Rights noted in its General Comment No. 14 on the right to the highest attainable standard of health, “The realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in article 16, guarantees women equal rights in deciding “freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”<sup>86</sup>

The Beijing Platform for Action from the UN Fourth World Conference on Women states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”<sup>87</sup>

## Pregnancy-Based Employment Discrimination

Pregnancy as a condition is inextricably linked to being female. Consequently, when women are treated in an adverse manner by their employers or potential employers because they are pregnant or because they may become pregnant, they are being subjected to a form of sex discrimination by targeting a condition childbearing women experience.

Pregnancy discrimination is not limited to the refusal to hire pregnant job applicants and the firing of pregnant workers, but also includes any behavior or practice that aims to determine pregnancy status or plans.

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<sup>85</sup> ICESCR, art. 12.

<sup>86</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by China on November 4, 1980, art. 16. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (accessed March 13, 2021). See also, UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on August 11, 2000, E/C.12/2000/4.

<sup>87</sup> United Nations Fourth World Conference on Women, UN Women, Beijing, China, September 1995 <https://www.un.org/womenwatch/daw/beijing/platform/health.htm> (accessed March 26, 2021).



The preamble to CEDAW states that “the role of women in procreation should not be a basis for discrimination.” Under CEDAW, China is obligated to take “appropriate measures” to “eliminate discrimination against women in the field of employment,” and to “prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave.”<sup>88</sup>

The International Labour Organization’s (ILO) Convention on Discrimination in Employment and Occupation, which China has ratified, obligates governments to enact and implement legislation that prohibits all forms of gender-based discrimination.<sup>89</sup> The Maternity Protection Convention (No. 183), which China has not ratified, requires states to provide protection for pregnant women or nursing mothers from discrimination based on maternity.<sup>90</sup>

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<sup>88</sup> CEDAW, art. 11.

<sup>89</sup> International Labour Organization (ILO) Convention No. 111 concerning Discrimination in Respect to Employment and Occupation, adopted June 25, 1958, 362 U.N.T.S. 31, entered into force June 15, 1960, ratified by China in 2006, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111) (accessed March 13, 2021).

<sup>90</sup> ILO Convention No. 183 concerning Maternity Protection, adopted June 15, 2000, entered into force February 7, 2002, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C183](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183) (accessed March 26, 2021).

## Recommendations

The Chinese government should demonstrate its long-professed commitment to gender equality in employment through targeted legal reforms and vastly improved enforcement of existing laws and regulations banning gender and pregnancy-based discrimination.

### To the Chinese Government and the National People's Congress

- End the two-child policy and all restrictions on women's reproductive rights.
- Stop harmful and discriminatory propaganda pressuring women to have children and encouraging them to leave the workforce.
- Enact and enforce a comprehensive employment anti-discrimination law that:
  - Contains a definition of gender discrimination that encompasses the full range of ways in which employers discriminate against women, protecting against both direct discrimination and discriminatory impact;
  - Explicitly prohibits childbearing status-specifications in job advertisements and imposes penalties sufficient to deter future violations;
  - Ensures effective remedies for women who have been dismissed while pregnant, and while on or soon after returning from parental leave, including compensation to victims for the harm they suffered; and
  - Establishes penalties for companies that discriminate against women based on their real or perceived childbearing status, including fines sufficient to deter employers from future violations.
- Amend relevant laws and regulations to create equal access to caregiving leave for women and men and incentives for men to use this leave.
- Adopt ILO Maternity Protection Convention (No. 183).
- Cease all forms of harassment, intimidation, and arbitrary detention of women's rights activists.

### To the Ministry of Human Resources and Social Security

- Strengthen the investigation of complaints of pregnancy-based discrimination submitted to the ministry and its local affiliates.

- Proactively supervise and regularly inspect employers to ensure they comply with anti-discrimination provisions in relevant employment laws and regulations.
- Increase the penalties imposed on employers that discriminate to better deter future offenses.
- Address, in cooperation with nongovernmental women's rights activists and groups, prevailing gender stereotypes in employment, including through awareness-raising campaigns.

### **To the UN Committee on the Elimination of Discrimination against Women and the International Labour Organization**

- Call on the Chinese government to ensure that domestic laws fully comply with China's international legal obligations with regard to non-discrimination and equal treatment in employment.
- Call on the Chinese government to comply with and enforce domestic laws and policies against employment discrimination to comply with China's obligations under international law.
- Provide training to relevant Chinese government bodies, including inspectors at the Ministry of Human Resources and Social Security and its local affiliates, on equal-right-to-employment issues and investigative techniques.

### **To UN Population Fund (UNFPA)**

- Call on the Chinese government to end the two-child policy and allow all couples and individuals to decide freely the number, spacing, and timing of their children.
- Work with women's rights activists and independent nongovernmental organizations in China to advance the reproductive rights of women in China.

### **To UN Women**

- Call on the Chinese government to enforce and amend anti-gender and pregnancy discrimination laws and regulations.
- Work with, and provide assistance to, women's rights activists and independent nongovernmental organizations in China to raise awareness of legal protections afforded to victims of gender and pregnancy-based discrimination.

- Provide technical and financial assistances to victims of gender and pregnancy-based discrimination in seeking redress.

## **To National and Foreign Companies Operating in China**

- Adopt and enforce company policies prohibiting all forms of gender and pregnancy-based discrimination in the workplace.
- Adopt and enforce job-hiring policies that are nondiscriminatory, including on the basis of gender and childbearing status.
- Provide adequate leave for women who need pre-natal and post-natal care and provide facilities and flexibility to support employees who are breastfeeding.
- Provide adequate caregiving leave equitably to female and male employees and encourage male employees to use this leave.
- Consider providing or subsidizing childcare for female and male employees who are parents.
- Adopt gender equality due diligence policies in line with the UN Guiding Principles on Business and Human Rights and conduct proper due diligence.

## Acknowledgments

This report was researched and written by Yaqiu Wang, China researcher in the Asia Division at Human Rights Watch. This report was edited by Sophie Richardson, China director; Heather Barr, interim co-director of the Women's Rights Division; Arvind Ganesan, director of the Business and Human Rights program; Brian Root, quantitative analyst; and a consultant with the health team. James Ross, legal and policy director, and Joseph Saunders, deputy program director, provided legal and programmatic reviews. Production assistance was provided by Racqueal Legerwood, Asia coordinator; Travis Carr, digital publication coordinator; and Fitzroy Hepkins, administrative manager.

This report was also reviewed by an expert on women's rights in China who did not wish to be named.

Human Rights Watch is grateful to the Chinese women's rights activists who agreed to be interviewed, despite the risks, and who provided invaluable input to this report.

## **Appendix: Letters to Companies and the Ministry of Human Resources and Social Security**

The following pages include letters Human Rights Watch sent between May 11, 2021 and May 12, 2021 to companies mentioned in our reporting, as well as the Ministry of Human Resources and Social Security. At time of writing, Human Rights Watch received no responses.

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May 11, 2021

Minister Zhang Jinan  
Ministry of Human Resources and Social Security  
12 Hepingli Street  
Dongcheng District, Beijing 100009  
People's Republic of China

### Re: Pregnancy-based Discrimination in Employment in China

Dear Minister Zhang,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women, ILO Violence and Harassment Convention (No.190) and Recommendation (No.206), and other international human rights instruments. The report discusses key Chinese legislation governing pregnancy-based discrimination at work as well as in job ads and duties, including The Law on the Protection of Women's Rights and Interests (妇女权益保障法), the Labor Law (劳动法), the Employment Promotion Law (就业促进法), and the Provisions on Employment Services and Employment Management (就业服务与就业管理规定).

Chinese government authorities played an important role during the tripartite treaty negotiations to strengthen protections against workplace

violence, discrimination, and harassment. We, therefore, hope that China can ratify ILO Convention 190 and implement it in letter and spirit in-country.

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the ministry in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 25, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 25, 2021, may be reflected in our forthcoming publications and press work.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch



## Questions:

1. By when will the Chinese government authorities ratify ILO. C. 190?
2. Does the Ministry of Human Resources and Social Security (MHRSS) or any local Human Resources and Social Security Bureaus (HRSSBs) across the country collect data on pregnancy-based discrimination, such as the number of complaints filed, bureaus' response rate, and percentages of companies that were fined for violating non-discrimination laws? If yes, please provide us with such data since the two-child policy came into effect. If not, why is this data not gathered?
3. What measures are available to ensure that HRSSBs proactively investigate companies that publish discriminatory job ads, discriminate against job applicants based on their pregnancy status, force employees to sign contracts promising no pregnancy, or punish employees for being pregnant?
4. What mechanisms are in place to ensure that HRSSB officials respond adequately and promptly to complaints pertaining to pregnancy-based discrimination in job advertising or in the workplace?
5. What mechanisms are available to ensure that the penalties to companies for pregnancy-based discrimination are proportionate to the severity of their violations?

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May 11, 2021

Chairman Zhao Mingliang  
China Railway Logistics  
No. 98, Zhangtai Road  
Heizhuanghu Township, Chaoyang District, Beijing  
People's Republic of China

### Re: Pregnancy-based Discrimination in Employment in China

Dear Mr. Zhao,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women, ILO Violence and Harassment Convention (No.190) and Recommendation (No.206), and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their job advertising and employment practices.

Our research has found that in December 2016, China Railway Logistics cut three female employees' pay in half after two of them became pregnant and the third had just returned to work after maternity leave. After the three refused to agree to the new salaries, the company removed

their office equipment, revoked their company credentials, and later fired them.

The Law on the Protection of Women's Rights and Interests (妇女权益保障法) states, "No employer shall reduce the pay of female employees, dismiss them, or unilaterally terminate employment contracts or service agreements with them due to circumstances such as marriage, pregnancy (孕期), childbirth (产期) or nursing (哺乳期)." Both the Labor Law (劳动法) and Labor Contract Law (劳动合同法) prohibit the termination of labor contracts during female employees' "pregnancy, childbirth and nursing."

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the company in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 25, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 25, 2021, may be reflected in our forthcoming publications and press work. We would also welcome the opportunity to meet with you or your colleagues to discuss these issues.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch

**Questions:**

1. Can China Railway Logistics confirm that in December 2016, when Lin Jianrong was on maternity leave, the company informed Lin that her labor contract was terminated due to the company's "extreme operational difficulties," even though the company was not experiencing business loss?
2. What steps has China Railway Logistics taken to comply with China's laws relevant to pregnancy-based discrimination in employment? Please provide copies of relevant workplace policies.
3. Have there been complaints filed to China Railway Logistics with regard to gender and pregnancy-based discrimination at the workplace? If so, how has the company responded to such complaints? Please provide a list of all complaints received in the last 2 years and summaries of how they were resolved.
4. Does the company have a union and a collective bargaining agreement? If yes, please provide a copy of the collective bargaining agreement.

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May 11, 2021

Dean Yu Bo

Shanghai Pudong Hospital

2800 Gongwei Road

Pudong New Area, Shanghai

People's Republic of China

### Re: Pregnancy-based Discrimination in Employment in China

Dear Mr. Yu,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women, ILO Violence and Harassment Convention (No.190) and Recommendation (No.206), and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their job advertising and employment practices.

Our research has found that in a September 2020 ad for a clerk on the website of Shanghai Pudong Hospital, the hospital required applicants to be “men” or “married women with child(ren).” China’s Advertising Law (1994, revised 2015) ( ) bans “gender discriminatory content” in advertising, a provision that on its face should apply to job recruitment ads as well as other forms of advertising. For a published advertisement that violates the law, the advertised entity, the advertising agency, and

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the entity that publishes the advertisement can each be fined from 200,000 yuan to one million yuan (\$30,000 to \$150,000) and have their licenses suspended. The Interim Regulations on Human Resources Markets ( ) stipulates that employers can be fined from 10,000 yuan to 50,000 yuan (\$1,500 to \$7,700) if they refuse to rectify publishing gender discriminatory recruitment ads.

In February 2019, nine Chinese central government agencies, including the Ministry of Human Resources and Social Security and the All-China Women's Federation, jointly issued a notice outlining specific measures for implementing existing laws that prohibit gender discrimination in employment. The regulation stipulates that employers are prohibited from inquiring about women's marriage and childrearing status during job interviews, requiring women to take pregnancy tests in the recruitment process, or conditioning employment on their not being pregnant. Employers and recruiters who publish gender discriminatory job ads can face fines of up to 50,000 yuan (\$7,700).

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the hospital in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 25, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 25, 2021, may be reflected in our forthcoming publications and press work. We would also welcome the opportunity to meet with you or your colleagues to discuss these issues.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch

**Questions:**

1. What steps has Shanghai Pudong Hospital taken to comply with China's laws relevant to gender and pregnancy-based discrimination in employment and employment advertising?
2. What policies and procedures does Shanghai Pudong Hospital have to prevent discrimination and ensure equal treatment at work, including as part of the company's hiring processes? Please provide copies of relevant policies and procedures.
3. Have there been complaints filed to Shanghai Pudong Hospital with regard to gender and pregnancy-based discriminatory job ads the hospital published? If so, how has the hospital responded to such complaints? Please provide a list of all complaints received in the last 2 years and summaries of how they were resolved.
4. Does the hospital have a union and a collective bargaining agreement? If yes, please provide a copy of the collective bargaining agreement.

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May 12, 2021

Zhen Ronghui, CEO

51job

Building 3 No.1387, Zhang Dong Road,

Shanghai, 201203

People's Republic of China

## Re: Pregnancy-based Discrimination in Employment in China

Dear Mr. Zhen,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their job advertising and employment practices.

Our research has found job posts with discriminatory content on 51job's website. For example, an advertisement posted in September 2020 on 51job.com for an editor position at an online education company in Beijing said applicants who "already have children are preferred." Another September ad on the site for a manager position in a clothing company in Beijing said, "age between around 30 and 35, already have children, good looking and good disposition."



Chinese government documents concerning pregnancy-based discrimination routinely reference gender discrimination, acknowledging that domestic anti-gender discrimination laws should be applied to cases of pregnancy-based discrimination.

China's Advertising Law (1994, revised 2015) (广告法) bans "gender discriminatory content" in advertising, a provision that on its face should apply to job recruitment ads as well as other forms of advertising. For a published advertisement that violates the law, the advertised entity, the advertising agency, and the entity that publishes the advertisement can each be fined from 200,000 yuan to one million yuan (\$30,000 to \$150,000) and have their licenses suspended. The Interim Regulations on Human Resources Markets (人力资源市场暂行条例) stipulates that employers can be fined from 10,000 yuan to 50,000 yuan (\$1,500 to \$7,700) if they refuse to rectify publishing gender discriminatory recruitment ads.

In February 2019, nine Chinese central government agencies, including the Ministry of Human Resources and Social Security and the All-China Women's Federation, jointly issued a notice outlining specific measures for implementing existing laws that prohibit gender discrimination in employment. The regulation stipulates that employers are prohibited from inquiring about women's marriage and childrearing status during job interviews, requiring women to take pregnancy tests in the recruitment process, or conditioning employment on their not being pregnant. Employers and recruiters who publish gender discriminatory job ads can face fines of up to 50,000 yuan (\$7,700).

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the company in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 26, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 25, 2021, may be reflected in our forthcoming publications and press work.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch

**Questions:**

1. Please provide details on the policies and procedures 51job uses to examine advertisements to ensure they comply with China's Advertising Law and the Interim Regulations on Human Resources Markets.
2. What measures are in place to ensure that 51job does not publish pregnancy-based discriminatory job ads on your websites? Are there any penalties to employers who publish, or ask to publish, such ads?
3. What mechanisms are available for users of 51job's website to report discriminatory job ads?
4. What mechanisms are available to ensure that 51job responds in an adequate and timely manner to complaints pertaining to discriminatory job ads published on your website?
5. Is there data on complaints filed to 51job with regard to pregnancy-based discriminatory job ads, including the number of complaints filed, and 51job's response rate? Please provide us with such data since January 2016, when the two-child policy went into effect.

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May 12, 2021

Liu Jiling, Chief Executive Officer

Haluo Electronic Commerce Co., Ltd

No. 11, Xingzhen Road, Damiao Town,

Xuzhou Economic and Technological Development Zone

Jiangsu province, People's Republic of China

### Re: Pregnancy-based Discrimination in Employment in China

Dear Mr. Liu,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their employment practices.

Our research has found that according to court documents, in April 2020, Haluo Electronic terminated the labor contract of Sha Meng after learning that she was pregnant, citing the company's poor business performance due to the pandemic.

The Law on the Protection of Women's Rights and Interests

( ) states, "No employer shall reduce the pay of female employees, dismiss them, or unilaterally terminate employment contracts or service agreements with them due to circumstances such as marriage,



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pregnancy (孕期), childbirth (产期) or nursing (哺乳期).” Both the Labor Law (劳动法) and Labor Contract Law (劳动合同法) prohibit the termination of labor contracts during female employees’ “pregnancy, childbirth and nursing.”

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the company in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 26, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 26, 2021, may be reflected in our forthcoming publications and press work.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch

**Questions:**

1. Can Haluo Electronic confirm that in April 2020 Haluo Electronic terminated the labor contract of Sha Meng after learning that she was pregnant, citing the company's poor business performance due to the pandemic?
2. What steps has Haluo Electronic taken to comply with China's laws relevant to pregnancy-based discrimination in employment?

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Bruno Stagno Ugarte, *Chief Advocacy Officer*

May 12, 2021

Liu Fei, Editor in Chief

Ma'anshan Daily

No.1100 Hunan East Road, Huashan District

Ma'anshan City, Anhui Province

People's Republic of China

## Re: Pregnancy-based Discrimination in Employment in China

Dear Ms. Liu,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their job advertising and employment practices.

Our research has found that in a June 2020 advertisement for an accountant, *Ma'anshan Daily* required applicants to be between 30 and 45 years old, and, if the applicant was a woman, "be married with child(ren).

China's Advertising Law (1994, revised 2015) (广告法) bans "gender discriminatory content" in advertising, a provision that on its face should apply to job recruitment ads as well as other forms of advertising. For a published advertisement that violates the law, the advertised entity, the

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advertising agency, and the entity that publishes the advertisement can each be fined from 200,000 yuan to one million yuan (\$30,000 to \$150,000) and have their licenses suspended. The Interim Regulations on Human Resources Markets (人力资源市场暂行条例) stipulates that employers can be fined from 10,000 yuan to 50,000 yuan (\$1,500 to \$7,700) if they refuse to rectify publishing gender discriminatory recruitment ads.

In February 2019, nine Chinese central government agencies, including the Ministry of Human Resources and Social Security and the All-China Women's Federation, jointly issued a notice outlining specific measures for implementing existing laws that prohibit gender discrimination in employment. The regulation stipulates that employers are prohibited from inquiring about women's marriage and childrearing status during job interviews, requiring women to take pregnancy tests in the recruitment process, or conditioning employment on their not being pregnant. Employers and recruiters who publish gender discriminatory job ads can face fines of up to 50,000 yuan (\$7,700).

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the company in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 26, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 26, 2021, may be reflected in our forthcoming publications and press work.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch



**Questions:**

1. What steps has *Ma'anshan Daily* taken to comply with China's laws relevant to gender and pregnancy-based discrimination in employment and employment advertising?
2. What policies and procedures does *Ma'anshan Daily* have to prevent discrimination and ensure equal treatment in hiring?
3. Have there been complaints filed to *Ma'anshan Daily* with regard to gender and pregnancy-based discriminatory job ads the newspaper published? If so, how has the newspaper responded to such complaints?

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Bruno Stagno Ugarte, *Chief Advocacy Officer*

May 12, 2021

Rony Kahan, Chairman

Indeed

6433 Champion Grandview Way

Building One

Austin, TX 78750

USA

### Re: Pregnancy-based Discrimination in Employment in China

Dear Mr. Kahan,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their job advertising and employment practices.

Our research has found job posts with discriminatory content on Indeed's Chinese website. For example, an advertisement posted in August 2020 on your website for a nurse in a hospital in Jiangsu province stated, "women, married with children, at least two years of experience." Another advertisement posted in September 2020 for quality control managers at an auto parts manufacturer in Fujian province stated, "no restriction on male or female (females must be unmarried, or married with children, ([schedule] won't interfere with night shifts), age between 18-35."

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China's Advertising Law (1994, revised 2015) (广告法) bans "gender discriminatory content" in advertising, a provision that on its face should apply to job recruitment ads as well as other forms of advertising. For a published advertisement that violates the law, the advertised entity, the advertising agency, and the entity that publishes the advertisement can each be fined from 200,000 yuan to one million yuan (\$30,000 to \$150,000) and have their licenses suspended. The Interim Regulations on Human Resources Markets (人力资源市场暂行条例) stipulates that employers can be fined from 10,000 yuan to 50,000 yuan (\$1,500 to \$7,700) if they refuse to rectify publishing gender discriminatory recruitment ads.

In February 2019, nine Chinese central government agencies, including the Ministry of Human Resources and Social Security and the All-China Women's Federation, jointly issued a notice outlining specific measures for implementing existing laws that prohibit gender discrimination in employment. The regulation stipulates that employers are prohibited from inquiring about women's marriage and childrearing status during job interviews, requiring women to take pregnancy tests in the recruitment process, or conditioning employment on their not being pregnant. Employers and recruiters who publish gender discriminatory job ads can face fines of up to 50,000 yuan (\$7,700).

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the company in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 26, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 26, 2021, may be reflected in our forthcoming publications and press work.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson

China Director  
Human Rights Watch

**Questions:**

1. Please provide details on the policies and procedures Indeed uses to examine advertisements to ensure they comply with China's Advertising Law and The Interim Regulations on Human Resources Markets.
2. What measures are in place to ensure that Indeed does not publish pregnancy-based discriminatory job ads on your Chinese websites? Are there any penalties to employers who publish, or ask to publish, such ads?
3. What mechanisms are available for users of Indeed's website to report discriminatory job ads?
4. What mechanisms are available to ensure that Indeed responds in an adequate and timely manner to complaints pertaining to discriminatory job ads published on your website?
5. Is there data on complaints filed to Indeed with regard to pregnancy-based discriminatory job ads, including the number of complaints filed, and Indeed's response rate? Please provide us with such data since January 2016, when the two-child policy went into effect.

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May 12, 2021

Chukwudozie Daniel Nwanneka  
No.169, Donghouchi, Songnan Village, Liushui Town,  
Pingtan Comprehensive Experimental Zone,  
Fujian Province  
People's Republic of China

### Re: Pregnancy-based Discrimination in Employment in China

Dear Mr. Nwanneka,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their employment practices.

Our research has found that according to court documents, in July 2019, when Lin Jianrong was on maternity leave, Lanshun Food Processing Co. informed Lin that her labor contract was terminated due to the company's "extreme operational difficulties," even though the company was not experiencing business loss.

The Law on the Protection of Women's Rights and Interests  
( ) states, "No employer shall reduce the pay of female

employees, dismiss them, or unilaterally terminate employment contracts or service agreements with them due to circumstances such as marriage, pregnancy (孕期), childbirth (产期) or nursing (哺乳期).” Both the Labor Law (劳动法) and Labor Contract Law (劳动合同法) prohibit the termination of labor contracts during female employees’ “pregnancy, childbirth and nursing.”

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the company in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 26, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 26, 2021, may be reflected in our forthcoming publications and press work.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch

**Questions:**

1. Can Lanshun Food Processing Co. confirm that in July 2019, when Lin Jianrong was on maternity leave, the company informed Lin that her labor contract was terminated due to the company's "extreme operational difficulties," even though the company was not experiencing business loss?
2. What steps has Lanshun Food Processing Co. taken to comply with China's laws relevant to pregnancy-based discrimination in employment?



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Bruno Stagno Ugarte, *Chief Advocacy Officer*

May 12, 2021

Ma Mingzhe, CEO

Ping An Insurance

Ping An International Financial Center, Yitian Rd. No. 5033,

Futian District

Shenzhen, Guangdong Province, 518033

People's Republic of China

### Re: Pregnancy-based Discrimination in Employment in China

Dear Mr. Ma,

Human Rights Watch is an independent international organization that monitors human rights in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in China for more than 30 years.

We are currently preparing a report on pregnancy-based discrimination in employment in relation to the two-child policy in China. The report focuses on the extent to which the Chinese government has complied with domestic anti-gender discrimination laws and fulfilled its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments. The report also examines how companies have complied with domestic laws and regulations in their job advertising and employment practices.

Our research has found that a 2019 advertisement circulated on WeChat for a finance position at Ping'an Leasing, a subsidiary of Ping An Insurance, stated, "no restriction on men or women, [but applicants] married without child(ren) will be rejected."

China's Advertising Law (1994, revised 2015) (广告法) bans "gender discriminatory content" in advertising, a provision that on its face should apply to job recruitment ads as well as other forms of advertising. For a

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published advertisement that violates the law, the advertised entity, the advertising agency, and the entity that publishes the advertisement can each be fined from 200,000 yuan to one million yuan (\$30,000 to \$150,000) and have their licenses suspended. The Interim Regulations on Human Resources Markets (人力资源市场暂行条例) stipulates that employers can be fined from 10,000 yuan to 50,000 yuan (\$1,500 to \$7,700) if they refuse to rectify publishing gender discriminatory recruitment ads.

In February 2019, nine Chinese central government agencies, including the Ministry of Human Resources and Social Security and the All-China Women's Federation, jointly issued a notice outlining specific measures for implementing existing laws that prohibit gender discrimination in employment. The regulation stipulates that employers are prohibited from inquiring about women's marriage and childrearing status during job interviews, requiring women to take pregnancy tests in the recruitment process, or conditioning employment on their not being pregnant. Employers and recruiters who publish gender discriminatory job ads can face fines of up to 50,000 yuan (\$7,700).

As part of our work, and in the interests of thorough and objective reporting, we would appreciate additional information from the company in response to questions raised below, as well as any additional information you wish to provide us on this issue. Human Rights Watch strives to ensure the accuracy of our research and looks forward to your response. Please send all responses by May 26, 2021, to Sophie Richardson, China Director at Human Rights Watch, by email at [redacted] or by fax to [redacted]. Any responses received before May 26, 2021, may be reflected in our forthcoming publications and press work.

Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,

Sophie Richardson  
China Director  
Human Rights Watch

**Questions:**

1. Can Ping An Insurance confirm the publication of the aforementioned advertisement in 2019?
2. What steps has Ping An Insurance taken to comply with China's laws relevant to gender and pregnancy-based discrimination in employment and employment advertising?
3. What policies and procedures does Ping An Insurance have to prevent discrimination and ensure equal treatment in hiring?
4. Have there been complaints filed to Ping An Insurance with regard to gender and pregnancy-based discriminatory job ads the company published? If so, how has the company responded to such complaints?

# “Take Maternity Leave and You’ll Be Replaced”

## China’s Two-Child Policy and Workplace Gender Discrimination

Starting in 2016, the Chinese government allowed all couples to have two children, ending the abusive one-child policy that had been in effect for 35 years. But the two-child policy has made common gender and pregnancy-related discrimination in the workplace.

*“Take Maternity Leave and You’ll Be Replaced”* draws on court documents, surveys, social media posts, and media reports to detail the various forms of pregnancy-related discrimination women have experienced during China’s two-child policy era. Numerous job advertisements specify a requirement or preference for men or for female applicants who already have children, on the assumption that women without children are more likely to take maternity leave. Many women said they were asked about their childbearing status during job interviews or to sign a contract promising no pregnancy. Some employers also fined, sidelined, or fired employees who became pregnant.

Human Rights Watch calls on the Chinese government to fully enforce legal prohibitions against gender and pregnancy-based discrimination in employment, stop regulating the number of children that families are allowed to have, and ensure equitable caregiver leave policies.

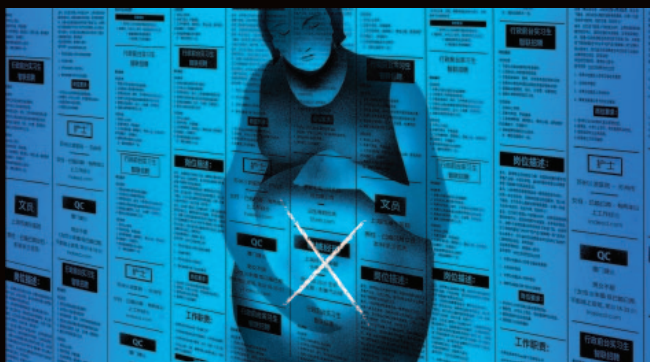


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