

Impact of the Equality Act on the U.S. Equality Law System — Focusing on the equality employment

Kaidian Chen

Economy Law school, Southwest University of Political science and Law Bao Sheng Avenue, Yu Bei Area, Chongqing, 401120, China

**Corresponding author. Email: 2019022001@stu.swupl.edu.cn*

ABSTRACT

As the Equality Act seeks to explicitly prohibit discrimination against lesbian, gay, bisexual and transgender people in public and private settings (LGBTQ), it aims to protect LGBTQ groups employment. Before the introduction of the Equality Act, the legal system on equal employment in the United States mostly revolved around issues such as equal employment for men and women, equal pay for equal work, and the Equality Act legally recognized the right of LGBTQ groups to determine their gender according to their psychological gender. However, the application of an equal legal system presents a series of difficulties. In addition, there are still some deficiencies in the US equality legal system that need to be corrected, and the Equality Act cannot improve it. This paper, by reviewing literature and data, will analyze the above issues through the existing legal system of equality law in the United States and the Equality Act. The paper finds that the Equality Act has had a positive impact on equal employment for LGBT people, but does not remedy the shortcomings of the current equality law system.

Keywords: *Equality Act, equality legal system, employment equality, LGBTQ*

1. INTRODUCTION

On February 25, 2021, the House of Representatives voted 224-206 (the Equality Act), which sought to explicitly prohibit discrimination against gay and bisexual and transgender people (LGBTQ) in public and private places [1]. If approved by the Senate, the Civil Rights Act of 1964 will be amended (including chapters II, III, IV, VI, VII, and IX) to prohibit discrimination based on gender, sexual orientation, and gender identity in employment, housing, public accommodation, education, federally funded programs, credit, and jury services. Besides, companies will be prohibited from refusing hiring or expulsion because of sexual orientation or gender identity [2].

The existing academic research and discussion focused on whether the Equal Act could achieve equal employment for the LGBTQ group, while this paper would focus on whether the Equality Act can achieve employment equality for citizens and the impact on the existing equal employment legal system.

Therefore, this paper aims to investigate whether the Equality Act plays a positive role in employment equality, and whether it has a negative impact on the

legislation governing employment equality in the United States. It hopes to explore the contribution of the Equality Bill to employment equality and its shortcomings.

2. LITERATURE REVIEW

Since the end of the Civil War in the United States, the public and government authorities have long believed that employment is purely a private employment relationship. The government, as a night watchman, does not have to interfere in the personal relationships between employees and employers. As a result, the issue of discrimination in employment has not been brought to the attention of society and the government. Due to the extreme shortage of labour, it was not until after World War II that a large number of women gradually entered the labour market. It raises a large number of issues of employment discrimination [3]. President Roosevelt issued a presidential executive order and established the Fair Employment Measures Commission, which set a precedent for the US government to take the initiative to solve the problem of fair employment.

The Equal Pay Act of 1963 in the United States is an important law that guarantees the equal right to work for both sexes, establishing the principle of equal pay for

men and women for equal work. That is to say, where they perform the same work in terms of skills, difficulties, responsibilities, and under similar working conditions, employers must pay male and female employees at the same wage rate, prohibiting employers from discriminating on the basis of sex against female employees [4].

Title VII of the Civil Rights Act of 1964 prohibits employers from refusing to hire, dismiss, or employ employees in any way that discriminates in wages, working conditions, job treatment, etc., on the basis of factors such as gender, race, creed, etc., and establishes an Equal Employment Opportunity Commission (EEOC) to be responsible for the implementation of the Act. In 1965, a presidential executive decree was issued stipulating that any private enterprise with business dealings with the Federal Government shall not discriminate in any way at all stages of the employment process, and employers with contracts involving \$50,000 or more must submit a written positive action plan in order to take concrete steps to achieve gender equality in the workplace; otherwise, the contract is in danger of being canceled. This is an effective way for the Federal Government to use economic means to constrain private employers to take proactive measures in order to promote gender equality more actively.

The scope of application of each equality law at work is different, such as the U.S. Civil Rights Act of 1964, which only applies to employers who employ more than 15 employees "and are engaged in interstate commerce." The Family and Medical Leave Act of 1993 increased the size of employers to more than 50 employees, which excluded more than half of the nation's employees from the protections of the act. In fact, the smaller the business, the more vulnerable female employees were to harm and unequal treatment. The EU's equality of work law, on the other hand, does not have a minimum employment limit in its application and is broader than the relevant U.S. legal system [5].

The European Union has issued a special part-time work directive to eliminate discrimination against part-time workers. Since the burden of proof is an important issue in sex discrimination cases and since it is often difficult for the plaintiff, the victim, to obtain evidence of discrimination by the employer, the EU has issued a directive on the allocation of the burden of proof in sex discrimination cases, which strengthens the burden of proof on the defendant and facilitates the victim to obtain effective relief. This is the most visible action of the EU to guarantee the implementation of the legal system of equality at work between the sexes. Relatively speaking, the equal work legal system in the United States focuses on the protection of women's promotion to management, and there is still a lack of specific protection content [6].

The equality of people in public law is naturally a basic norm. As far as the state is concerned, it has no

reason to regard an individual as insignificant and to ignore or restrict its rights. The reason is simple: state power comes from the transfer of people's rights, and everyone who makes up society, like everyone else, loses just as many natural rights in the formation of state power. That is to say, for everyone involved in the formation of the state, the "loss" is the same. Naturally, according to the concept of fairness, their "gain" must also be equivalent. In this regard, the state, as a neutral state institution, cannot artificially distinguish among its members of society who it should protect and who should not, otherwise it would be contrary to the rule of law concept advocated by modern society.

Sies, one of the most influential statesmen of the French Revolution, has a wonderful passage about equality in the sense of public law: "I compare law to the center of a vast sphere, in which all citizens, without exception, are at an equal distance from the center in the circumference; all men are equally dependent on the law, and all men are entrusted with the protection of the law for their freedom and property; this is what I call the ordinary rights of citizens, and they are all the same as each other in these things." It can be seen that for the state, it is a legal obligation to treat all members of society equally, and it is also an unquestionable moral responsibility. "The equality of law, that is, the equal legal power that constitutes the essence of man, does not exist in human beings and human groups, but is endowed to man by the rules of law," Radbruch stated emphatically. No one is a natural or born (equal) man—the legal status of slaves proves this.

Naturally, the circumstances of different people are different, so the protection that public law should impose will, of course, also be different. However, such differential treatment must be justified and justified. According to Rawls, "everyone should have an equal right to a similar system of liberty compatible with the broadest system of fundamental freedoms that all people have," which is also known as the "principle of the primacy of liberty." If a reasonable distinction is to be made, a second principle applies, namely that "social and economic inequalities shall be arranged in such a way that they are: (1) in conformity with the principle of the storehouse of justice, appropriate to the best interests of the least beneficiary; and (2) positions and status are open to all subject to conditions of fair and equal opportunity.

It can be seen that even if there will be some unequal arrangements in the system, it is also necessary to emphasize that everyone has equal opportunities in participation, and the result of unequal arrangements can only be to make the smallest few people get the greatest benefits. Conversely, if the majority is benefited, it can be regarded as a "tyranny of the majority", since this is clearly an unjust arrangement based on the denial of minority rights [7].

3. THE THEORETICAL CONCEPT OF EMPLOYMENT EQUALITY

3.1 The Legal Concept of Equality

An equal law is a law that seeks to ensure equal legal treatment or protection for a particular group or class. Equality law is intended to ensure equal treatment of all groups or classes, equality as part of its legislative structure, and was explicitly stated by the United States' founding fathers in the Declaration of Independence [7].

3.2 Relevant equality law theory on employment equality

The quality of people in public law is naturally a fundamental norm. As a state, it has no reason to regard an individual as an insignificant individual and to ignore and restrict its rights. The reason is simple: state power comes from the transfer of people's rights, and everyone forming society, as others, has lost much of their natural rights in the formation of state power. That is to say, everyone involved in the formation of the country, the "lost", is the same. Naturally, according to the concept of fairness, their "income" must also be equal. In this regard, as a neutral state institution, the state cannot artificially distinguish between who should protect it and who should not protect it, otherwise it violates the concept of the rule of law advocated by modern society [8].

On this equality of the public law, Sieyès, one of the most influential politicians of the French Revolution, has a wonderful statement: "I compare the law to the center of a huge sphere, where all citizens without exception maintain an equal distance from the center; all depend equally on the law, and all put their freedom and property to the protection of the law" [7]; this is the ordinary rights of the citizens, in which they are all similar to each other. It can be seen that for the state, the treatment of all members of society on an equal footing is not only a legal obligation that it should fulfill, but also an undoubted moral responsibility. Radbruch made it clear: "The equality of law constitutes the equal legal power of human nature and does not exist in humans and human groups, but is endowed by the rules of law." The legal status of no natural or born (equal) slave has proven this. Naturally, the situation is different, so the protection of public law should apply. This differential treatment, however, must be justified and reasonable [10].

According to Rawls, "everyone should have an equal right to a similar freedom system compatible with the broadest and equal fundamental freedom system that all have" [11], which is the "principle of freedom precedence". To be reasonably differentiated, the second principle applies, as social and economic inequalities should be arranged so as to firstly: be appropriate to the best interests of the least beneficiaries, consistent with the storage principles of justice; and secondly, be open to all

in position and status under conditions of fair and equal opportunity. It can be seen that even if there will be some unequal arrangements in the system, the equal opportunity of everyone in participation should be emphasized, and the result of the unequal arrangement can only be for the greatest benefit of a few people. In turn, it is considered "majority tyranny" if most benefit, because it is clearly an unjust arrangement on the basis of deprivation of minority rights [12].

4. EQUAL EMPLOYMENT STATUS

4.1 Development of the legal system for equal employment

Since the end of the Civil War, the public and government authorities have long believed that employment is purely a private employment relationship, which is the result of the consistent will between the workers and their employers. The government, as a night watchman, need not interfere with the private relationship between the employer and the employee. Therefore, the problem of employment discrimination has not been valued by society or the government. Until after World War II, a large number of women gradually fell into the labor market due to the extreme lack of labor [13].

It has caused a large number of employment discrimination problems. It was only after President Roosevelt issued a presidential executive order and established the Committee on Fair Employment Measures, which was the first time the US government actively solved the problem of fair employment. The Equal Pay Act of 1963 is an important law guaranteeing equal rights at work for both sexes. Employers must pay men and women at the same wage rate under similar labor conditions, establishing the principle of equal pay for technology, difficulty, and responsibilities, and prohibiting employers from discriminating against female employees [14].

Chapter VII of the Civil Rights Act of 1964 prohibits employers from discriminating on sex, race, faith, or other grounds through salary, conditions, and treatment and creates an Equal Employment Opportunity Commission (EEOC) responsible for the implementation of the Act. In 1965, a presidential executive order was issued, stipulating that any private enterprise engaged in business contacts with the federal government shall not commit any discrimination at all stages of the employment process and that employers who sign a contract involving \$50,000 or more must submit a written plan of active action to take specific steps to achieve work equality between the sexes, otherwise the contract is at risk of being cancelled. This is an effective way for the federal government to restrict economic measures from private employers in order to more actively promote gender equality [15].

4.2 Public perception of employment provisions under equality legislation

A Reuters/Ipsos poll conducted in May/June 2019 found that most Americans were unaware of the lack of federal protection for the LGBT population. Only one third of respondents knew that this protection did not exist on a transgender basis, and only one quarter knew that it did not exist on a lesbian, gay, or bisexual basis [16].

The Institute of Public Religion (PRRI) conducted a national and state opinion poll on the issue throughout 2017 as part of the annual Atlas of American Values Survey. According to the survey, 70% of Americans (including the majority of states) support anti-discrimination laws for gay, lesbian, bisexual, and transgender (LGBT) people, while 23% oppose such laws and 8% have no opinion [18]. A 2020 PRRI poll showed that 83% of Americans support such anti-discrimination laws, especially for discrimination in employment, housing, and public facilities. Sixteen percent of Americans oppose such laws. Democrats, independents, and Republicans received 94%, 85%, and 68% approval ratings of such anti-discrimination laws respectively. According to the PRRI survey in 2021, about 22% of Americans support business owners' exemption from anti-discrimination laws based on sexual orientation, while about 76% of Americans oppose the exemption.

An April 2019 poll conducted by Quinnipiac University (Quinnipiac University) found that 92 percent of American voters believe that employers should not be allowed to dismiss someone based on their sexual orientation or sexual identity, while only 6 percent believe that employers should be allowed to do so [17]. Broad and Republican consensus was reached among Democrats and independents on the issue, although Democratic voters are more likely to believe that discrimination should be illegal, with only 1% believing that an employer should be allowed to fire someone based on their sexual orientation or sexual identity.

5. DEFECTS AND ENHANCEMENTS TO THE EQUAL LAW'S EMPLOYMENT PROVISIONS

The scope of equality law per work is different, such as the US Civil Rights Act of 1964, which applies only to employers employing more than 15 employees and engaged in interstate commerce. The Family and Medical Leave Act of 1993 increased the hiring of employers to more than 50, excluding more than half of American employees from the law. In fact, the smaller businesses are, the more vulnerable women will be to injury and unequal treatment. The EU's work equality law has no limit on the minimum number of employees, which is broader than the relevant U.S. legal system [18].

The EU has dedicated the Part-Time Work Directive to eliminating discrimination against part-time workers. Moreover, because the issue of the burden of proof is an important issue in gender discrimination cases and because it is usually difficult for the plaintiff to obtain the discrimination evidence from the employer, the EU has issued a directive on the burden of proof in gender discrimination cases, which strengthens the defendant's burden of proof and helps the victim to get effective relief [19]. This is the most remarkable action by the EU to ensure the implementation of equality at work between both sexes. Protecting female management from discrimination in promotions is one of the distinctive features of equality law in the United States, but there is still a lack of specific protection content for disguised discrimination in promotions [20].

6. CONCLUSION

In conclusion, through a review of relevant literature and data, the paper finds that the Equality Act can achieve the legislative purpose of protecting the equal employment rights of LGBT people, but it cannot protect the equal employment rights of non-LGBT people. At the same time, the Equality Act cannot make up for the shortcomings of the United States' original legal system of equality law. The equality bill should expand the scope of protection and provide more detailed provisions against disguised discrimination. At the same time, provisions on reversal of the burden of proof should also be added.

Most of the polls taken in this paper were published around 2019, while the House passed the Equality Act in early 2021. Therefore, in terms of timeliness, the data referenced in this paper is insufficient. In the future, the public's attitude towards the equality bill and the direction of public opinion can be studied.

REFERENCES

- [1] Eric Bachman, What Is The Equality Act And What Will Happen If It Becomes A Law?, <<https://www.forbes.com/sites/ericbachman/2019/05/30/what-is-the-equality-act-and-what-will-happen-if-it-becomes-a-law/?sh=27dd0d35fe43>>, accessed in Feb 13th2022, page 1-2
- [2] Zhan Juan. Why do 83 percent of Americans support the Equality Act, which Chinese strongly oppose?. <https://m.thepaper.cn/baijiahao_11535080>, accessed in Feb 10th2022, page 1-2
- [3] American Human Resources Training and Employment Policy [M]. People's Publishing House, by Liang Maoxin, 2006: page 198-233
- [4] Contemporary American Social Security Policy [M]. Chinese Social Sciences Press, by

- Huang Annian, 1998:page 267-311
- [5] The American Labor and Employment Law [M].Law Press, Lin Xiaoyun et al., 2007:page 234-278
- [6] Li Bingan.Comparison of the equal legal system between the EU and the United States,page 9-12
- [7] Hu Yuhong. The legal thinking on the concept of equality [J]. Qiushi Journal, 2008 (03): page81-88
- [8] Juell Stewart.Equality Act Exposes Gap in Civil Rights[J]. Planning,2019,85(8):page11-12
- [9] Hu Yuhong.The legal thinking on the concept of equality [J]. Qiushi Journal, 2008 (03): page 81-88.
- [10] American Anti-Employment Discrimination Legislation [J]. Qing stone pine. China's labor. 2008(03) page 23-24.
- [11] American Anti-Employment Discrimination State Law and its Enlightenment to China [J].Ye Ronggui. Legal and economic.2006(08)page 12-15.
- [12]Modern American Women [M]. Oriental Press, (USA) Banner (Banner, L.W.) Author, 1987:page 335-389.
- [13] Contemporary American Social Security Policy [M]. Chinese Social Sciences Press, by Huang Annian, 1998:page 267-311.
- [14] The American Labor and Employment Law [M].Law Press, Lin Xiaoyun et al., 2007:page234-278.
- [15] Zhan Juan. Why do 83 percent of Americans support the Equality Act, which Chinese strongly oppose?.<https://m.thepaper.cn/baijiahao_11535080>,accessed in Feb 10th2022,page 2-3.
- [16] Hu Yuhong.The legal thinking on the concept of equality [J].Qiushi Journal, 2008 (03): page 81-88.
- [17] Eric Bachman , What Is The Equality Act And What Will Happen If It Becomes A Law?,<<https://www.forbes.com/sites/ericbachman/2019/05/30/what-is-the-equality-act-and-what-will-happen-if-it-becomes-a-law/?sh=27dd0d35fe43>>,accessed in Feb 13th2022,page 3-4.
- [18]No employment discrimination [M].Law Press, Weiwei Li, 2006:page432-489.
- [19]Li Bingan.Comparison of the equal legal system between the EU and the United States [J].Journal of Wuhan University (Philosophy and Social Sciences edition), 2004 (03):page 414-418.
- [20]The American Anti-employment Discrimination Regulations and its Enlightenment to our country [J]. Lv Yiwei. Law magazine.2010(01),page1-5.