

Research on the Law Against Employment Discrimination Against Persons with Disabilities in the United States and Its Reference

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ABSTRACT

The United States has a sound legal system against employment discrimination against persons with disabilities, including the constitution, special laws, and other levels. Through the promulgation of the Rehabilitation Act and the Americans with Disabilities Act, the United States has established a basic legal system against employment discrimination of persons with disabilities, effectively safeguarding the basic right of persons with disabilities to employment. The basic legal system against employment discrimination against persons with disabilities in the United States has important reference significance for the improvement of employment discrimination against persons with disabilities in mainland China. By collecting relevant literature and providing relevant research materials, this paper makes a detailed description of the past, current situation, and reform direction of the legal system against employment discrimination against persons with disabilities in the United States, providing a template for reference for the study of the issue in mainland China. The paper finds that although there are many legal provisions prohibiting employment discrimination against persons with disabilities in mainland China, they cannot solve many problems encountered in practice, which leads to the failure to improve the employment situation of persons with disabilities. Therefore, it is necessary for mainland China to learn from the relevant laws of the United States to improve its anti-disability employment discrimination legislation.

Keywords: *America, disabled persons, employment discrimination, law, reference*

1. INTRODUCTION

Although some existing laws and regulations in mainland China involve employment discrimination of the disabled, their provisions are basically a simple declaration of rights, relatively abstract and lacking specific implementation mechanisms in the procedure, making it difficult to play a role in judicial practice. It is also difficult to truly protect the employment rights of the disabled.

The United States is at the forefront of the world in terms of anti-employment discrimination against people with disabilities. Its laws against employment discrimination against persons with disabilities have been relatively perfect and mature, including special legislation against employment discrimination against persons with disabilities, and provisions against employment discrimination against persons with disabilities are also included in some common laws.

Therefore, in this context, considering the actual situation of employment discrimination against persons with disabilities in Mainland China and the development of anti-discrimination laws against persons with disabilities in the United States, it is necessary for Mainland China to improve its relevant legal system against employment discrimination against persons with disabilities on the basis of learning from the relatively perfect legal basis in the United States.

As a region with the largest number of disabled people, China's employment guarantee for the disabled started late and the relevant system is not perfect. Therefore, it is particularly important to learn from the advanced experience of the United States. This paper provides a clear and valuable experience of the legal system of anti-discrimination employment for disabled people. It aims to improve the employment of disabled people by perfecting mainland China's security system and the fairness of the security system for the disabled,

in order to provide an effective reference for the Chinese mainland's anti-discrimination employment for the disabled.

Although there has been widespread employment discrimination against the disabled in mainland China, it has not attracted much attention. In mainland China, research on the legal system against employment discrimination against persons with disabilities in the United States started late, the level is not high, and there is a lack of systematic research and analysis on the legal system against employment discrimination against persons with disabilities in the United States.

By collecting relevant literature and providing relevant research materials, this paper makes a detailed description of the past, current situation, and reform direction of the legal system against employment discrimination against persons with disabilities in the United States, providing a template for reference for the study of the issue in mainland China.

The legislative system against employment discrimination of the disabled in the United States is a federal country, and its laws are divided into federal laws and state laws. Due to the characteristics of each state, the state laws are complicated. This paper mainly introduces the legislation system against employment discrimination of the disabled in the United States at the federal level.

It hopes to introduce the legal system of the United States against employment discrimination against persons with disabilities as a reference method for Mainland China. The author also found that, in Mainland China, the fight against employment discrimination against the disabled is not an overnight achievement, but a long and arduous process. In order to eliminate the employment disorientation of the disabled, it is necessary to constantly improve the relevant legislation.

2. INTRODUCTION OF CONSTITUTION AND SPECIALIZED LAWS OF THE U.S.

2.1 The constitution

Since the founding of the United States, there has been discrimination and social prejudice against the disabled. This discrimination and prejudice not only deprive the disabled of their social and economic rights and employment in the United States, but the Fifth and Fourteenth Amendments of the U.S. Constitution mainly protect citizens from discrimination, and the Fourteenth Amendment is the most important legislative basis. [1] At that time, this amendment was mainly aimed at racial discrimination and slavery, but with the changes of history, it gradually applied to more and more groups, and became "the main legal means to realize the egalitarian revolution that continues in American society even today." [2]

2.2 Specialized laws

The Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 are the main existing laws against employment discrimination against persons with disabilities in the United States. They are important legal weapons for people with disabilities to safeguard their employment rights and provide a relatively comprehensive solution to the employment discrimination problem.

2.2.1 Rehabilitation Act 1973

The Rehabilitation Act is a social welfare law on the prevention and rehabilitation of disability that forbids employment discrimination against persons with disabilities for the first time at the social welfare level. The Rehabilitation Act requires federal government departments, federal government procurement contractors, or agencies receiving federal funding not to discriminate against people with disabilities who are eligible for work, to exercise a duty of reasonable care, and to take positive measures to employ people with disabilities. [3]

It is made clear that people with disabilities are among the most vulnerable groups in society. That disability is a natural part of the human experience and in no way diminishes the rights of individuals to the following: the right to live independently; the right to self-determination; the option to contribute to society; the right to pursue a meaningful career; and they enjoy full inclusion and integration into the economic, political, social, cultural, and educational mainstream of American society. [2]

2.2.2 Americans with Disabilities Act of 1990

In 1990, a U.S. Congressional survey found that historically, society has tended to isolate and segregate people with disabilities. Today, although this situation has changed, discrimination against people with disabilities is still widespread. Although physical disability does not affect a person's right to participate in all aspects of society, people with physical disabilities are often excluded from these rights because of discrimination, even against people with a previous history of disability, which shows that people with disabilities are seriously disadvantaged in society as a vulnerable group. [4]

As Congress acknowledged when it passed the Americans with Disabilities Act [5], there are "staggering levels of unemployment and poverty" among people with disabilities. In addition, a report by the United States Commission on Civil Rights, which had a major impact on Congress's passage of the law, noted that "inability to hold a regular full-time job because of a

disability is only a small factor in the disability's unemployment [6].

Given the opportunity, most unemployed disabled people can find their rightful place in the job market. " On July 26, 1990, President George Herbert Walker Bush signed the Americans with Disabilities Act (Ada) into law after continuing efforts by disability rights advocates [7]. It took effect in 1992.

3. THE DEVELOPMENT TREND OF THE LAW AGAINST EMPLOYMENT DISCRIMINATION AGAINST THE DISABLED IN THE UNITED STATES

After an analysis of the law against employment discrimination against persons with disabilities in the United States, this paper aims to have a new understanding of the law against employment discrimination against persons with disabilities.

It is necessary to expand the scope of identification of persons with disabilities. According to the current employment discrimination law against people with disabilities in the United States, people with disabilities are defined as having a physical or mental impairment that significantly limits one or more of a person's major life activities [8].

It can be seen from this that the definition of disability in the United States is very broad, including not only the disabled with existing physical or mental impairment, but also the disabled who have had such impairment, and even the disabled who are perceived to have such impairment. But the specific scope of the disability was not determined.

The United States Constitution's Fourteenth Amendment states that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. "No State shall make or enforce any law abridging the privileges or immunities of citizens of the United States; shall not deprive any person of life, liberty, or property without due process of law; nor shall equal protection of the laws be denied to any person under its jurisdiction. "

The rehabilitation mode refers to the comprehensive and coordinated application of various medical, educational, social, and vocational methods so as to restore and rebuild the lost functions of the sick, injured, or disabled as soon as possible and as far as possible; to restore their physical, mental, social, and economic abilities as much as possible, and to reintroduce them to life, to work, and to society. [9]

The social model holds that injury itself does not cause disability, but that such injury, combined with social discrimination and a lack of barrier-free facilities in the community, limits the inherent ability of the

disabled. It is the ideological, cultural, historical, institutional, and technological limitations of society that ultimately create a "disabled community." In addition, there is no clear provision for situations where someone may become disabled. With the continuous progress and development of society, the inclusion of those situations that may become disabled within legal protection is conducive to better realizing the legislative purpose, improving the existing legal system, and protecting the interests of vulnerable groups.

4. REFERENCE FOR IMPROVING THE EMPLOYMENT DISCRIMINATION AGAINST THE DISABLED IN MAINLAND CHINA

Even after mainland China's market economy reform, the gap between rich and poor has widened, increasing employment pressure, and even able-bodied labor agents will face all kinds of discrimination, such as gender discrimination, household register discrimination, and employment discrimination. Discrimination in employment situations is more serious for the disabled, and employment discrimination legislation cannot meet the urgent needs of reality. The perfect legal system against employment discrimination against persons with disabilities in the United States can be used as a reference for the relevant system in Mainland China.

In addition, it is also important to improve relevant laws and regulations and enact anti-discrimination legislation that specifically protects the employment rights of people with disabilities. The Constitution of mainland China clearly stipulates that the government has the obligation to protect citizens' equal rights and labor rights through various means. [6]. While the existing law on the protection of rights and interests of persons with disabilities only legislates from the perspective of the social welfare of persons with disabilities, there is no specific legislation on the discrimination of persons with disabilities in the employment field.

At present, although there are many laws and regulations prohibiting employment discrimination against persons with disabilities in China, there is a lack of special legislation against employment discrimination against persons with disabilities. At the same time, the provisions on equal employment are too general and scattered, and there is no organic legal system.

The employment promotion law "promulgated in 2007, for example, the third chapter on some of the rules of the fair employment promotion law [7] is helpful to improve the social awareness of employment discrimination, but the law is summarized, lacks standards, and the legal responsibility is not clear, and there is no specific appeal procedure, which makes it

difficult to play a role in judicial practice and weakens the protection of victims."

Besides, there are branches of federal and state laws that can be learned. It is a good way to raise labor remuneration and welfare benefits. "The State shall, through various channels, create conditions for employment, strengthen labor protection, improve working conditions and, on the basis of developing production, increase remuneration for work and welfare benefits." [10].

Article 45: "Citizens of the People's Republic of China have the right to material assistance from the state and society in the event of old age, illness, or incapacity to work." The state develops social insurance, social relief, and medical and health services necessary for citizens to enjoy these rights. The state and society provide for the livelihoods of disabled servicemen and subsidize the families of martyrs and give preferential treatment to their families. The state and society help make arrangements for the work, livelihood, and education of blind, deaf-mute, and other disabled citizens. [10]

Article 29: "The state protects the right of disabled persons to work and employment. People's governments at various levels shall make overall plans for the employment of disabled people and create employment conditions for disabled people. People recruited individually shall not discriminate against disabled people." [10]

Given that the law has branches of federal law and state law, each state has its own characteristics and complications. This paper mainly starts from the federal level to introduce the disabled employment discrimination law, the development trend of disabled employment discrimination in the United States, and put forward suggestions to improve China's disabled employment discrimination law related suggestions.

5. CONCLUSION

In conclusion, this paper provides a detailed description of the past, current situation, and reform direction of the legal system against employment discrimination against persons with disabilities in the United States, providing a template for reference for the study of the issue in mainland China.

The paper finds that the legislative system against employment discrimination against persons with disabilities in the United States is meticulous and well combined with theory and practice. The general direction of reform should also be based on specific law enforcement and judicial practices, with specific cases as guidance for the improvement of legislation. For the progress of anti-employment discrimination law in mainland China, we first need to reach a consensus that

we need to continue equal rights reform, strive to explore and construct the coherence of the law, and use the general theory of anti-employment discrimination law to continuously integrate the concept of equality and build consensus for reform.

The constitution of the United States in this paper is to improve the disabled people's experience of discrimination in employment and the role of the weak position without any in-depth research, and the constitution of the United States for the value of equality view will be of great help to the disabled employment discrimination. It is the cornerstone of the disabled employment discrimination and a powerful legal weapon. Future research should attach great importance to the great significance of the constitutions of various countries in combating employment discrimination against persons with disabilities.

Systematic research on anti-discrimination against disabled people in mainland China has just begun, and there are still many problems to be solved. Under such circumstances, it is particularly important to learn from the advanced experience and valuable lessons of other countries. The legal system of the United States against employment discrimination against persons with disabilities provides a method for Mainland China to learn from.

Employment is the foundation of people's livelihoods. For the disabled, employment is even more important. Anti-discrimination laws against people with disabilities are not only to protect their right to work and employment, but more importantly, to respect their dignity and protect their human rights so that they can realize their value through employment and participation in social activities.

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