

A Brief Analysis of the Superiority of Mandatory Human Rights Due Diligence Law from the Perspective of Retirement Right

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Abstract. With the deepening of population aging, the retirement of the aged working population has become the focus of attention. The improvement of the retirement system and the protection of retirement rights have become a severe test. This paper adopts the literature analysis method and comparative research method, combined with the viewpoints of many scholars, and uses the compulsory human rights due diligence law to study the retirement issues, so as to grasp the research progress of the compulsory human rights due diligence law on the policy making and the reasonable protection of human rights in enterprises.

Keywords: Mandatory Human Rights due diligence Act; Retirement; Right to retirement; Mandatory retirement; Extension of retirement age.

1. Introduction

At present, population aging has become a global trend, the retirement of elderly workers and related rights have become an increasingly important issue, which also reflects the modern society's increasing attention to the elderly workers and the protection of human rights. Economic globalization and unfair wealth distribution also make this contradiction amplified, many countries' retirement systems and pensions are facing the risk of instability. At this point, the introduction of mandatory human rights due diligence laws would help strengthen assessment -- the potential risk of age discrimination and the possible financial or social welfare impact -- as well as oversight -- greater public participation and transparency in decision-making, against discrimination -- and measures to mitigate social isolation and marginalization due to retirement. In this paper, literature analysis and comparative research method are adopted. Firstly, combining with the viewpoints of many scholars, whether the compulsory retirement system should be applied in the retirement right, how to apply and extend the retirement age; On this basis, taking the retirement system reform in France as an example, this paper analyzes the superiority of mandatory human rights due diligence law in retirement and the protection of retirement rights.

2. Retirement and the Right to Retire

The term "retirement" has been around since ancient times, but its modern meaning can be traced back to Germany in the 19th century. As a self-explanatory word, "retirement" is used in both oral and formal legal texts. However, no normative legal documents have ever defined the connotation and extension of the concept of retirement, and the academic community has not paid enough attention to it. According to the Modern Chinese Dictionary, retirement refers to "employees who leave their posts due to old age or work-related disability and receive monthly living expenses" [1]. Some scholars believe that retirement refers to the process in which a worker retires from the labor force after the working life of his youth and prime years [2]. Some scholars believe that retirement is a system in which workers who completely lose their ability to work due to old age or disability receive material assistance when they retire from production or work [3]. Some scholars believe that the legal significance of retirement is not only the realization of the right to rest of professional workers, but also the more important significance is the corresponding treatment they get after retirement. The most important treatment is to enjoy a certain amount of monetary income per month, namely the pension [4].

It can be seen that retirement is actually a legal fact, retirement will cause a series of changes in the legal relationship between workers, employers and the state.

Whether retirement is a right or a duty has been controversial in academic circles, but it has the following compound right elements: (1) Retirement is closely related to workers' interests; (2) Retirement can be manifested in many ideas of workers; (3) Retirement is protected by most national constitutions; (4) Retirement has the right to choose, which is a kind of freedom. On this basis, retirement has the attribute of "right" [5].

Therefore, when it comes to what legal system should be adopted to protect workers' retirement rights, the compulsory human rights due diligence law has been discussed more in theory and practice circles in recent years. Mandatory human rights due diligence laws mean that under certain circumstances, a government or business must launch an investigation to determine whether its administrative or operational activities have had a negative impact on human rights and take measures to correct those effects. Such laws require governments or businesses to fulfil their human rights responsibilities in their operations, to ensure that they do not directly or indirectly lead to human rights violations, and to provide relief measures to affected individuals. Mandatory human rights due diligence laws usually address the scope and subject of the investigation, human rights impact assessment, information transparency, remedies, etc.

This paper will start from the attribute analysis of compulsory retirement system and the historical development of compulsory human rights due diligence law, to explore the necessity and feasibility of protecting workers' retirement rights through compulsory human rights due diligence law.

3. An Overview of the Compulsory Retirement System

3.1. Compulsory Retirement System

Compulsory retirement refers to a system in which the company or the country stipulates that employees must retire after reaching a certain age or working years. Under the system, employees must leave their jobs within the specified retirement age and are not allowed to continue working. Whether and how to apply compulsory retirement system in different times and countries has always been a focus of social development. Take the United States as an example. Since the beginning of the 20th century, the issue of compulsory retirement in the United States has gone through four stages. At different stages, the government implemented different policies. That is: the period of "natural alternation" until 1935, the period of compulsory retirement introduced from 1935 to the 1960s, the period of encouraging voluntary retirement from the 1960s to the 1980s, and the period of complete abolition of compulsory retirement implemented from 1987 [6].

3.2. Current Application of Compulsory Retirement System

At present, taking countries and regions as examples, China, Japan and South Korea have adopted compulsory retirement system strictly. Most professions in China have a retirement age of 60 for men and 55 for women [7], some have earlier retirement ages for some industries. Japan, on the other hand, is a typical country with mandatory retirement legislation, namely the so-called "fixed year", which refers to a retirement age system popularized with the lifetime employment system under the long-term employment policy after World War II. However, in the early 1970s, Japan began to consider extending the retirement age. In 1986, when the Special Measures Law on Promotion of Employment for the Middle-aged and Elderly was revised, the Employment Stability Law for the Elderly was promulgated. In 1994, the system was made optional. In 2004, Japan introduced the continuance employment system and abolished the system. In Korea, men retire at 60 and women at 55, and some industries have earlier retirement ages [8].

Countries and regions that adopt relatively relaxed compulsory retirement systems include the United States, Canada, China, Taiwan, etc. In the United States, although federal law does not provide for mandatory retirement, many states and companies have eliminated it. Canada has abolished mandatory retirement in the public service and adapted the rules in other areas. Taiwan's labor

standard legislation stipulates two kinds of retirement: those who have worked for more than 15 years and reached the age of 55, or those who have worked for more than 25 years can retire at their own request; An employer may not force a worker to retire unless he has reached the age of 60 or unless he is mentally or physically incapacitated [9].

3.3. Academic Views on Compulsory Retirement System

There has always been a great controversy in the academic circle over the adoption of strict or relaxed compulsory retirement system. The views supporting compulsory retirement believe that : (1) Compulsory retirement is a humanitarian decision. (2) The retirement of the elderly workers is conducive to the input of new blood to the society. In a period of great changes in economic and social life, it is an important measure for modernization development to import new forces for training and promotion. (3) The introduction of a compulsory retirement system enables employers and employees to plan ahead. Business Machines Corporation has a provision for this: employees in the first three years and two years after retirement can receive \$500 a year for training, or to prepare for reemployment after retirement, or to engage in future interests of their own [10]. (4) Retirement at the specified age will bring less social pressure on employers. Employers no longer need to decide when different employees should retire, reducing the number of conflicts and dissatisfaction among employees.

The arguments against compulsory retirement are as follows: (1) the aging population is becoming increasingly serious, and the slow growth of the middle-aged and young population cannot support the fast growth of the elderly population. Take the United States as an example. Compared with the total population, the number of people over 65 years old in the United States was 1:24.39 in 1900, 1:10 in 1978, 1:8.33 in 1985, 1:7.69 in 2000, and 1:5 in 2030, that is, one elderly person in every five. By contrast, the working population aged 18 to 54 is growing more slowly. In 1945, there were 42 workers for every pensioner; In 1983, the ratio was 3.2 to 1; By 2020, there will be two workers for every pensioner [10]. (2) The deficit in social security payments must be made up. The earlier old people retire, the greater the cost of pensions for a government. (3) Eliminate age discrimination. The mandatory retirement policy itself is based on the stereotypes and outdated regulations of enterprises, which link the ability and work value of employees to their age, thus limiting the progress and development of older employees.

3.4. Human Rights that May be Violated in the Implementation of Compulsory Retirement

First, age discrimination, retirement policies in some countries and regions set a specific age, beyond which one must retire. If the policy does not take into account the actual situation and health status of older persons, it results in younger people having easier access to employment opportunities than older people, thus leading to age discrimination. Second, lack of pension, people who are forced to retire may face the problem of insufficient pension, which will affect their basic living needs and medical security. If the government fails to provide adequate pensions or other benefits to retirees, it will violate their social rights. The elderly should have the right to decide whether they want to continue working and when to retire. If governments restrict the right to self-determination and freedom of older people, such as through forced retirement, they will violate their human rights.

In addition, the adoption of a relaxed compulsory retirement system or its complete abolition may also have a negative impact on young people and society as a whole, with implications for their human rights, such as reduced employment opportunities, reduced work efficiency and an impact on the equitable distribution of resources.

Therefore, regardless of the social context, those in power decide whether or not to apply the compulsory retirement system, or what kind of compulsory retirement system to apply. Once they are biased about the employment rights of young workers, the welfare security of elderly workers, or the resource allocation of the whole society, some human rights problems may occur. On this basis, it is necessary to introduce mandatory human rights due diligence law to regulate the actions of governments and enterprises.

4. Historical Development of Mandatory Human Rights Due Diligence Laws

The origins of mandatory human rights due diligence laws date back to the aftermath of the Second World War, when the international community was shocked and outraged by massive human rights violations in human history. In 1945, the United Nations was founded, and its charter included provisions and principles for the protection of human rights. This was an important milestone in the development of international human rights law. In June 2011, the UN Human Rights Council adopted the UN Guiding Principles on Business and Human Rights (UNGPs), which requires in a non-binding form that enterprises should also bear the obligation to respect human rights and eliminate harm. The scope of this human rights and environmental protection obligation includes human rights and environmental harm resulting from the activities of the enterprise itself and indirect harm arising from commercial relationships, products or services [11]. The human rights due diligence mentioned in UNGPs is the embryonic form of mandatory human rights due diligence law.

On 10 November 2022, the European Commission published guidance on the development of corporate due diligence legislation, in line with the UN Guiding Principles on business and human rights. These laws will require companies to implement due diligence strategies across their business and value chain. When the directive is finalised, Member States will implement legally binding laws to promote responsible corporate behaviour. The laws will require companies operating in Europe to implement due diligence strategies in their business and value chain, including setting up a due diligence system.

France and the Netherlands enacted the Due Diligence Obligation Act in 2017 and the Child Labor Due Diligence Obligation Act in 2019, respectively. In addition, the Netherlands published the Legislative Proposal on Responsible and Sustainable International Business in March 2021. In 2021, the German Bundestag approved the Supply Chain Due Diligence Act to conduct regular risk analyses and to adopt appropriate risk mitigation and corrective procedures to address their possible adverse impact on human rights in the provision of products and services.

Expanding its vision to the world, the influence of the Guiding Principles on Human Rights is not limited to Europe. Under the extensive influence of the EU, countries along the "Belt and Road" have also begun to explore their own human rights due diligence models and mechanisms. The Regional Conference on Business and Human Rights 2021 (RCBHR) was officially opened in Jakarta on 18-19 November 2021. In his keynote speech, Indonesian Deputy Foreign Minister Mahendra Siregar said 2021 marks the 10th anniversary of the United Nations Guiding Principles on Business and Human Rights (UNGPs), in which several milestones were achieved. In addition, the Republic of Kenya in East Africa has enshrined in its constitution the responsibility and obligation of businesses to respect human rights and protect the environment [12].

5. The Superiority of Compulsory Human Rights Due Diligence Law in the Application of Compulsory Retirement

The introduction of a mandatory human rights due diligence law has many benefits in examining whether a society should adopt a mandatory retirement system, including more impartial assessment, protection of citizens' legitimate rights and interests, strengthening social supervision and promoting social progress.

5.1. A More Impartial Assessment

The introduction of mandatory human rights due diligence law can evaluate the human rights record and social status quo of a society, and judge whether a compulsory retirement system is necessary by relying on scientific data and objective facts. Taking whether retirement should be compulsory as an example, we can consider whether it should be introduced by investigating the number of elderly people in a society, the pension security system, and employment opportunities. This can avoid subjective assumptions and malicious manipulation, so as to achieve a more fair evaluation results.

5.2. Protect the Lawful Rights and Interests of Citizens

The introduction of a mandatory human rights due diligence law can clearly define citizens' rights and legitimate interests, and at the same time it can stipulate specific standards and procedures for mandatory retirement systems to avoid illegal acts in the name of retirement. The mandatory human rights due diligence law can protect the legitimate rights and interests of citizens, regulate the obligations and responsibilities of citizens, strengthen the supervision and protection of citizens, and prevent the loss of other rights and interests of citizens due to compulsory retirement.

5.3. Strengthen Social Supervision

The due diligence law can provide for the supervision and evaluation of the compulsory retirement system by all sectors of society to ensure its legality and effectiveness. In this way, social supervision can be strengthened, citizens' rights and interests can be protected, and the system can be improved and perfected in a timely manner based on social feedback. Social supervision can make the formulation and implementation of policies more transparent and open, improve the credibility of policies, strengthen the strength and effect of policy implementation, and make policies more in line with the needs and interests of citizens.

Therefore, the introduction of compulsory human rights due diligence law can provide scientific, fair and clear norms and supervision when examining whether a society should adopt compulsory retirement system, make a more in-depth and detailed assessment of practical problems, protect citizens' basic rights and interests, strengthen social supervision and promote social progress. At the same time, this will also make the formulation and implementation of policies more scientific and more just, win the trust and support of citizens, finally implement human rights protection, and promote social stability and development.

6. Whether Extending the Retirement Age Would Violate the Right to Retire

6.1. Reasons for Extending the Retirement Age

In order to adapt to the changes of social economy and demographic structure, we will provide solutions to aging population, increase pension payments and meet employment demand, so as to protect the rights and interests of workers and the long-term development of the country. Some countries will extend the retirement age [13].

Based on the many benefits of this policy, such as reducing the pressure of pension expenditure, increasing economic vitality, increasing employment rate, strengthening social cohesion and so on. Some experts and scholars have conducted in-depth research and hold supportive views. Andrew (2010) estimated that raising the retirement age from 62 to 65 would prolong the solvency of American trust funds by 5 years. The results showed that 16% of the total personal income would be increased for people who retired 8 years later, and GDP income would be increased by about 5% [14]. But similarly, some scholars are opposed to the issue of extending the retirement age after the survey. Melissa and Richard (2010) believe that the increase of retirement age in the United States will lead to health problems among some elderly people, and will cause poverty among some elderly people who lack labor skills, which is extremely unfavorable to middle and low income people. Unemployment caused by the extension of retirement age becomes more prominent and complicated [15]. Patrick Aubert and Cindy Duc (2013) studied the redistribution effect of the extension of retirement age in France between those with high incomes and long lives and those with low incomes and short lives. The simulation results showed that the redistribution effect of the extension of retirement age was in reverse relationship. That is to say, the extension of retirement age cannot realize the redistribution of income among different income groups [16].

6.2. Based on the Analysis of French Retirement System Reform

6.2.1 The reason for this reform of the French retirement system

The main reason for this reform is that the French retirement system faces financial and sustainability challenges. France's pension system, considered one of the most generous in the world, has come under increasing financial pressure from factors including an aging population and slowing economic growth. It also wants reforms to push back the retirement age so that more young people can enter the workforce, easing unemployment and economic problems. In addition, the government argues that reform would reduce public spending and increase national competitiveness because France's retirement system is too generous and complex for the demands of a modern economy. As a result, the government has proposed reforms aimed at reducing stress, improving sustainability and boosting economic growth.

6.2.2 The process of reforming the French retirement system

2017: One of President Emmanuel Macron's campaign promises that year was to reform the retirement system, proposing to merge the pension systems of several ministries, combining 42 existing systems into one.

2018: The Government launched a broad social dialogue, with extensive consultations with trade union leaders, employers' organisations and other social groups. The main issues being discussed are how to reform the system, how to raise revenue from public borrowing and how taxes should be raised.

2019: The government unveils plans to force French public sector workers to retire later and work longer hours. The plan sparked massive protests, including mass strikes and port closures. However, the government stands by its plans and says it will review them through a nationwide consultation.

January 2020: The government's originally published plans are withdrawn. Mr Macron said the government needed more time to consult with the parties involved and to adopt a more balanced and fair approach to reforming the retirement system.

December 2020: A new retirement reform plan is published, proposing the introduction of a national retirement system that would consolidate all individual pensions and be based on each person's contributions, rather than the contribution commitments made to them by their industry or company.

September 2021: The government suspends retirement reforms and says it will restart talks with unions and other social groups to come up with a plan that has wider support. The government has also promised to increase spending on pensions to help ease the problem of pre-retirement insurance for the young and poor.

6.2.3 The reform of the retirement system may violate human rights

(1) Lack of transparency in the process: The government used Article 49.3 of the Constitution to pass the retirement reform legislation, bypassing the vote of MPS. Such practices lack transparency and democratic participation and may undermine citizens' rights.

(2) Lower pension levels: The reform will consolidate 42 different retirement systems and may result in reduced pension benefits for some people, affecting their basic survival needs.

(3) Raise the legal retirement age: The Government's proposal to gradually raise the legal retirement age from 62 to 64 May force workers to work longer hours than they are physically and psychologically able to handle, thereby affecting their health and well-being.

(4) Change the rules for calculating pensions: The retirement reform could also change the rules for calculating pensions, further reducing the level of pensions and unfairly treating some people.

(5) Limit early retirement: The government intends to limit early retirement through its reform plan, which may limit the options of those who leave the workforce early and may be suspected of depriving people of their basic rights.

(6) The Fight against trade unions and demonstrators: The government has taken measures against trade unions and protesters as it pushes through reforms. For example, the government has resorted

to violent measures against protesters, limiting the freedom to demonstrate and the right of workers to bargain collectively. It may also violate the basic rights of the people.

6.3. Superiority of Mandatory Human Rights Due Diligence Law in Retirement System Reform

The controversial retirement reforms have sparked protests and demonstrations. In this case, mandatory human rights due diligence laws can help in a number of ways, as described below:

(1) Protection of human rights: The mandatory human rights due diligence law integrates human rights concepts into the formulation and implementation of policies and decisions to ensure the rationality of policies and decisions and the respect and protection of human rights. For retirement reform, this means that governments need to actively consider human rights issues when making policies and decisions, and avoid undermining civil rights and freedoms.

(2) Participation in democratic decision-making: Mandatory human rights due diligence laws require governments to consult widely with the public and solicit input and suggestions from stakeholders when formulating policies and decisions. For the reform of the retirement system, the government needs to listen carefully to the opinions and suggestions of trade unions, workers, the elderly, the retired and other stakeholders to ensure that the new system will not cause too much negative impact on the masses.

(3) Openness and transparency: The mandatory Human Rights due Diligence Act requires the government to ensure transparent information when making policies and decisions, timely release relevant information about policies, plans and decisions, and make public authoritative impact assessment reports. In the reform of the retirement system, the government needs to provide detailed information to the public, including the design of policies, plans and decisions, the problems intended to be addressed, the expected impacts and possible shortcomings, etc. In this way, the public can better understand the government's policy making and decision-making process and put forward constructive comments and suggestions.

(4) Protect Vulnerable groups: Mandatory human rights due diligence laws require governments to give priority to vulnerable and vulnerable groups in decision-making and to protect and respect their human rights. For the reform of the retirement system, the government needs to pay more attention to the elderly, the disabled and other vulnerable groups, prioritize their interests in the decision-making process, and provide better protection and support.

(5) Establish effective regulatory and monitoring mechanisms: The mandatory Human Rights Due Diligence Act requires governments to establish effective regulatory and monitoring mechanisms to ensure that policies and decisions are implemented and implemented in accordance with regulations and human rights requirements. In the reform of the retirement system, the government needs to establish and improve the corresponding regulatory and supervisory mechanisms to ensure the smooth implementation and effective implementation of the system reform, while tracking its impact on citizens' rights and freedoms.

(6) Strengthen judicial protection: The mandatory human rights due diligence Law emphasizes that laws, regulations, relevant treaties and other legal provisions must be respected in the formulation and implementation of policies and decisions, and judicial protection must be strengthened to ensure that citizens' legal rights are fully guaranteed. If the reform of the retirement system leads to a series of lawsuits, the government needs to ensure that the judicial organs strictly abide by the law, handle the cases fairly and ensure the legitimate protection of citizens' rights and freedoms.

(7) Promote sustainable development: Mandatory human rights due diligence laws require governments to take sustainable development into account when formulating policies and decisions to ensure that policies and decisions do not cause undue harm to the environment and resources. In the reform of the retirement system, the government should take into account the sustainability of pension payment, avoid severe financial pressure, and ensure the reasonable allocation of resources to ensure the sustainability of the system.

7. The Superiority of Mandatory Human Rights Due Diligence Laws in Relation to Other Retirement Issues

Mandatory human rights due diligence laws not only apply to the review and supervision of mandatory retirement systems and the extension of retirement ages, but can also provide benefits with respect to other retirement rights. Here's a look at some of them:

(1) Ensure adequate return and protection: As a guaranteed right, the right to retirement should be fully rewarded and protected. Governments should take measures to ensure that the coverage and level of pension, health insurance and other retirement benefits are guaranteed. Mandatory human rights due diligence laws can prompt governments to consider more actively the protection of retirement rights and ensure that the safety and dignity of retirees are maintained.

(2) Respect for multiculturalism and gender equality: The right to retirement should also be respected by multiculturalism and gender equality. Policies and decision-making should take measures to address the specific needs of different cultures, religions and genders. Mandatory human rights due diligence laws can ensure that policies and decisions are fully reviewed and measured in these areas so that retirement rights are better respected and protected.

(3) Combat discrimination and exclusion: Retirees should also enjoy equal opportunities and treatment and be protected against discrimination and exclusion. Policies and decision-making should avoid discrimination and exclusion and take measures to alleviate social isolation and marginalization due to retirement. Mandatory human rights due diligence laws can ensure that governments take appropriate measures to avoid discrimination and exclusion of retirement rights.

(4) Strengthen social participation: Retirees should also have the opportunity to participate in social activities and contribute to society. Policies and decisions should encourage retirees to enter community service, volunteer work and other active social roles. Mandatory human rights due diligence laws can ensure that policies and decisions encourage retirees to participate more in society, play their role and contribute.

In conclusion, mandatory human rights due diligence laws can help in a number of ways to ensure that the rights and dignity of retirees are fully protected and respected.

8. Summary

The compulsory due diligence human rights investigation law studies whether a country should apply the compulsory retirement system and conducts reasonable review, strengthens supervision and opposes discrimination on the issue of extending the retirement age. With its unique advantages, it helps the government and enterprises to formulate appropriate retirement systems and reasonably protect the retirement rights of workers. In addition to protecting human rights, ensuring that government activities and business operations do not violate human rights principles, and protecting the human rights of affected individuals and groups, mandatory human rights due diligence law has advantages in promoting fair trade environment protection and preventing corruption. Therefore, it is necessary to strengthen the research on mandatory human rights due diligence law, introduce mandatory human rights due diligence law in various fields, examine various possible harmful behaviors, and restrain the persecution of workers by the government, multinational corporations, large enterprises and other giant business machines.

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