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China to Allow Employees to Bring Discrimination Suits Against Employers

Employers in China take note: China has approved a new law that for the first time clearly grants Chinese job-seekers and employees the right to sue employers for employment discrimination in China's People's Courts.

While the definition of employment discrimination and the remedies to redress such discrimination are still unclear, some employers might indeed find themselves in court next year defending unlawful employment discrimination cases.

The China Employment Promotion Law ("CEPL"), passed by the government on August 30, 2007, was enacted with three main purposes in mind: to promote employment; create a fair employment environment; and prohibit employment discrimination.

The CEPL provides that employees have equal rights to employment and shall not be discriminated against on the basis of their ethnicity, race, gender or religious beliefs. Under the law, employers may not use gender to deny women employment or to raise recruitment standards for them. In China, however, employers are prohibited from causing female workers to engage in work that the law deems to be unsuitable, such as working in mine pits and work with Grade IV physical labor intensity. The CEPL also provides that limitations based on women's marital or childbirth status may not be placed in labor contracts.

Under the CEPL, employees of all ethnicities and races also enjoy equal rights to employment. Ethnic minority employees, who do not belong to the Han ethnic group, China's ethnic majority, however, should be "properly better treated" in a recruitment. In this regard, when presented with job applicants who possess the same or similar qualifications, the law states that employment preference should be given to ethnic minority employees. In addition, for the first time in China's labor legislation history, the CEPL declares that the setting of discriminatory restrictions against migrant workers seeking employment in urban areas is unlawful.

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The CEPL also prohibits discrimination on the basis of physical disability and health conditions. For example, discrimination against workers who are carriers of infectious diseases such as Hepatitis B or HIV is prohibited. Workers who are carriers of infectious disease, however, cannot work in certain types of jobs that are regulated by law until they are confirmed to be non-infectious.

Unlike federal and state laws in the U.S., however, the CEPL does not ban employment discrimination based on age.

Although the CEPL's provisions render the above noted types of employment discrimination illegal, there are no corresponding statutorily prescribed penalties against employers that engage in discriminatory employment practices. Notably absent from the CEPL also are specific remedies available to aggrieved employees as there would be under U.S. discrimination laws. Nevertheless, the CEPL permits employees to protect their employment rights by filing lawsuits against employers who have allegedly engaged in unlawful employment discrimination. We will continue to monitor the CEPL, and update you on further developments in the law pertaining to protections, remedies and potential penalties for unlawful discrimination.

The CEPL becomes effective on January 1, 2008. In the months preceding the New Year, it is suggested that employers in China consider at the least the following interim steps: (1) review and update the employer's internal rules and regulations and human resources policies for compliance with the new law; (2) train executive and senior level employees and human resources personnel to better understand the new law and the best practices under the CEPL; and (3) consult with employment and labor counsel with respect to the CEPL and labor law compliance. Employers who take such steps now may have smoother operations when the CEPL goes into effect.

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If you have any questions about the information contained in this Client Alert, please contact Jian Hang in the New York office at (212) 351-4799, jhang@ebglaw.com; Dean Silverberg, Co-Head the Firm's China Initiative, in the New York office at (212) 351-4642, dsilverberg@ebglaw.com; or Michael Levine, Chair of the firm's Corporate Social Responsibility Practice, in the New York office at (212) 351-3730, mlevine@ebglaw.com.

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