

# 一文读懂新妇保法，企业该做些什么？

## To Understand the Newly Revised Law on the Protection of Women's Rights and Interests, What Enterprises Should Do?

作者：阮谈真 陈晓燕

Author: Iris Ruan Tracy Chen

2022年10月30日，中华人民共和国第十三届全国人民代表大会常务委员会第三十七次会议对《中华人民共和国妇女权益保障法》（简称“妇保法”，本版本称为“新法”）修订通过并公布，该法律自2023年1月1日起施行。

On October 30, 2022, the Law of the People's Republic of China on the Protection of Women's Rights and Interests (hereinafter referred to as "LPWRI", and this version called the "2022 Revision") was revised and promulgated by the Standing Committee of the 13th National People's Congress of the People's Republic of China at its 37th session, which will come into effect on January 1, 2023.

笔者将在本文中对《中华人民共和国妇女权益保障法》的历史沿革及新法的修订亮点进行分析，并且为相关单位和律师工作提供合规建议。

We will analyze the historical evolution of the LPWRI and the highlights of this new revision of LPWRI, and provide compliance suggestions for relevant units and lawyers in this paper.

### I. 历史沿革 Historical Evolution

## 中华人民共和国妇女权益保障法历史沿革



## Historical Evolution of the Law of the People's Republic of China on the Protection of Women's Rights and Interests



## II. 新法亮点 Highlights of the 2022 Revision

### 1. 总则——适应时代发展

#### Chapter I General Provisions——Adapt to the Epoch Development

新法第一条规定: 为了保障妇女的合法权益, 促进男女平等和妇女全面发展,

充分发挥妇女在全面建设社会主义现代化国家中的作用，弘扬社会主义核心价值观，根据宪法，制定本法。

Article 1 of the 2022 Revision stipulates that this Law is formulated in accordance with the Constitution in order to protect women's legitimate rights and interests, promote gender equality and women's all-round development, give full play to women's role in building a socialist modern country in an all-round way, and promote socialist core values.

在此前 3 个版本的妇保法中，总则均规定“充分发挥妇女在社会主义现代化建设中的作用……制定本法”，由此可以看出，随着中国社会主义进程的发展，法律遵循的原则也进行了适应性变革。

In the previous three versions of LPWRI, the general provisions all stipulate that "this Law is formulated ... give full play to women's role in socialist modernization". It can be seen that with the development of China's socialist process, the principles followed by the law have also undergone adaptive changes.

## 2. 第三章 人格和人身权益——完善性骚扰预防和惩处机制

Chapter III Personality and Personal Rights and Interests——Improve sexual harassment prevention and punishment mechanism

2005 年修正版的妇保法中，首次增加了有关“性骚扰”的规定，2008 年修正版法律也保留了该规定，主要涉及两条：“禁止对妇女实施性骚扰。受害妇女有权向单位和有关机关投诉。”和“违反本法规定，对妇女实施性骚扰或者家庭暴力，构成违反治安管理行为的，受害人可以提请公安机关对违法行为人依法给予行政处罚，也可以依法向人民法院提起民事诉讼。”

In the 2005 Amendment of LPWRI, the provisions on "sexual harassment" were added for the first time, and the 2008 Amendment also retained the provisions, which mainly involves two articles: "Sexual harassment against female is prohibited, and female victims have the right to complain to units and relevant authorities" and "In case of sexual harassment or domestic violence against female in violation of the provisions of this Law, which constitutes a violation of the administration of public security, the victim may request the public security organ to impose administrative punishment on the violator according to law, or may file a civil lawsuit with the people's court according to law."

2012 年颁布的《女职工劳动保护特别规定》规定：“在劳动场所，用人单位应当预防和制止对女职工的性骚扰。”

The Special Provisions on Labor Protection of Female Employees promulgated in 2012 stipulates that "in the workplace, employers shall prevent and curb sexual harassment of female employees."

2021 年实施的《民法典》第 1010 条规定：“违背他人意愿，以言语、文字、图像、肢体行为等方式对他人实施性骚扰的，受害人有权依法请求行为人承担民

事责任。机关、企业、学校等单位应当采取合理的预防、受理投诉、调查处置等措施，防止和制止利用职权、从属关系等实施性骚扰。”从而明确了单位负有预防和处置性骚扰的法定义务。

Article 1010 of the Civil Code implemented in 2021 stipulates that: "If sexual harassment is carried out against the will of others by means of words, writing, images, physical acts, etc., the victim has the right to request the perpetrator to bear civil liability according to law. Organs, enterprises, schools and other units shall take reasonable measures, such as prevent, accept complaints, investigate and disposal, etc., so as to prevent and curb sexual harassment by taking advantage of their power and subordination." Thus, it is clear that the units have the legal obligation to prevent and deal with sexual harassment.

前述法律虽然规定了“性骚扰”的预防机制，但是没有规定相应惩处措施和单位责任，新法对此做了补足，具体表现为：

Although the above-mentioned laws stipulate the prevention mechanism of "sexual harassment", they do not stipulate the corresponding punishment measures and the unit responsibilities. The 2022 Revision has supplemented this, specifically as follows,

- 1) 明确了受害人在投诉维权过程中，受理机关必须书面答复

It is clarified that the accepting authority must reply in writing in the process of the victim's complaint and rights protection,

新法第 23 条规定，受害妇女可以向有关单位和国家机关投诉。接到投诉的有关单位和国家机关应当及时处理，并书面告知处理结果。受害妇女可以向公安机关报案，也可以向人民法院提起民事诉讼，依法请求行为人承担民事责任。

Article 23 of the 2022 Revision stipulates that female victims may complain to relevant units and state organs. The relevant units and state organs receiving complaints shall deal with them in a timely manner and inform them of the results in writing. The female victims may report the case to the public security organ or bring a civil lawsuit to the people's court to request the perpetrator to bear civil liability according to law.

相比 2005 年和 2008 年版本中，新法要求有关单位和国家机关在接到投诉后必须及时处理，并书面告知处理结果。

Compared with the 2005 and 2008 Amendment of LPWRI, the 2022 Revision requires relevant units and state organs to deal with complaints in a timely manner after receiving them and inform them of the results in writing.

- 2) 新法第 25 条规定，用人单位应当采取下列措施预防和制止对妇女的性骚扰：

Article 25 of the 2022 Revision stipulates that employers shall take the following measures to prevent and curb sexual harassment of female:

i. 制定禁止性骚扰的规章制度;

to formulate rules and regulations prohibiting sexual harassment;

ii. 明确负责机构或者人员;

to specify the responsible department or personnel;

iii. 开展预防和制止性骚扰的教育培训活动;

to carry out education and training to prevent and curb sexual harassment;

iv. 采取必要的安全保卫措施;

to adopt necessary security and safeguard measures;

v. 设置投诉电话、信箱等, 畅通投诉渠道;

to set up complaint telephone lines, mailbox, etc. and unblock complaint channels;

vi. 建立和完善调查处置程序, 及时处置纠纷并保护当事人隐私和个人信息;

to establish and improve the investigation and disposal procedures, and to handle disputes in a timely manner and protect the privacy and personal information of the parties involved;

vii. 支持、协助受害妇女依法维权, 必要时为受害妇女提供心理疏导;

to support and assist the female victims in defending and exercising their legal rights, and provide psychological counseling for female victims when necessary;

viii. 其他合理的预防和制止性骚扰措施。

Other reasonable measures to prevent and curb sexual harassment.

3) 明确了个人和单位的法律责任

It is clarified the legal responsibilities of individuals and units

新法第 80 条规定, 违反本法规定, 对妇女实施性骚扰的, 由公安机关给予批评教育或者出具告诫书, 并由所在单位依法给予处分。学校、用人单位

违反本法规定，未采取必要措施预防和制止性骚扰，造成妇女权益受到侵害或者社会影响恶劣的，由上级机关或者主管部门责令改正；拒不改正或者情节严重的，依法对直接负责的主管人员和其他直接责任人员给予处分。

Article 80 of the 2022 Revision stipulates that those who violate the provisions of this Law by sexually harassing female shall be criticized, educated or issued a warning by the public security organ and punished by the employer in accordance with the law. Where a school or employer, in violation of the provisions of this Law, fails to take necessary measures to prevent and curb sexual harassment, thus causing infringement of female's rights and interests or a bad social impact, the authorities at a higher level or the competent department shall order it to rectify; if they refuse to make corrections or the violations are serious, the persons directly in charge and other persons directly responsible shall be given sanctions according to law.

### 3. 第五章 劳动和社会保障权益——细化规定就业歧视行为和惩处机制，完善生育保障制度

Chapter V Rights and Interests of Labor and Social Security——Detailed regulations on employment discrimination and punishment mechanism, and improve the maternity security system

#### 1) 明确列举就业歧视的行为类别

Explicitly list the categories of employment discrimination

新法第 43 条规定，用人单位在招录（聘）过程中，除国家另有规定外，不得实施下列行为：

Article 43 of the 2022 Revision stipulates that, unless otherwise stipulated by the state, an employer shall not commit the following acts in the recruitment (employment) process:

#### i. 限定为男性或者规定男性优先；

Restricting candidates to males or stipulating that males shall be given priority;

#### ii. 除个人基本信息外，进一步询问或者调查女性求职者的婚育情况；

Further inquiring or investigating the marital and childbearing information of the female applicants in addition to personal basic information;

#### iii. 将妊娠测试作为入职体检项目；

Taking pregnancy test as an entry physical examination item;

iv. 将限制结婚、生育或者婚姻、生育状况作为录（聘）用条件；

Taking restrictions on marriage, childbearing or marital, childbearing status as conditions for recruitment (employment);

v. 其他以性别为由拒绝录（聘）用妇女或者差别化地提高对妇女录（聘）用标准的行为。

Other acts of refusing to recruit (employ) female on the grounds of gender or raising the standards for the recruitment (employment) of female differently.

## 2) 明确惩处部门

Clarify the punishment department

新法第 49 条规定，人力资源和社会保障部门应当将招聘、录取、晋职、晋级、评聘专业技术职称和职务、培训、辞退等过程中的性别歧视行为纳入劳动保障监察范围。

Article 49 of the 2022 Revision stipulates that human resources and social security departments shall include gender discrimination in the process of recruitment, admission, promotion, advancement, evaluation of professional and technical titles and positions, training, dismissal, etc. into the scope of labor security supervision.

## 3) 明确用人单位的法律责任，新增罚款措施

Clarify the legal responsibility of the employer and add new penalty measures

新法第 83 条规定，用人单位违反本法第 43 条规定的，由人力资源和社会保障部门责令改正；拒不改正或者情节严重的，处 1 万元以上 5 万元以下罚款。

Article 83 of the 2022 Revision stipulates that if an employer violates the provisions of Article 43 of this Law, the human resources and social security departments shall order it to make corrections; If they refuse to make corrections or the violations are serious, they shall be fined a penalty in the range of RMB10,000 – 50,000.

## 4) 完善生育保障制度

Improve the maternity security system

新法第四十八条规定引入了《劳动合同法》相关内容，即：女职工在怀孕以及依法享受产假期间，劳动（聘用）合同或者服务协议期满的，劳动（聘用）合同或者服务协议期限自动延续至产假结束。

Article 48 of the 2022 Revision introduces the relevant contents of the Labor Contract Law, that is, when a female employee is pregnant and enjoys maternity leave according to law, and the labor (employment) contract or service agreement expires, the term of the labor (employment) contract or service agreement shall automatically extend to the end of maternity leave.

需要注意的是，《劳动合同法》第45条的规定更为完善，即：劳动合同期满，女职工在孕期、产期、哺乳期的，劳动合同应当续延至相应的情形消失时终止，即劳动合同应当续延至哺乳期满时终止。

It should be noted that the provision of Article 45 of the Labor Contract Law is more complete, that is, when the labor contract expires, when the labor contract expires, if a female employee is in the pregnancy, maternity or lactation period, the labor contract shall be extended until the corresponding situation disappears, that is, the labor contract shall be extended until the lactation period expires.

新法此处规定并不冲突，旨在强调应保证怀孕、生育女员工就业权利。

The 2022 Revision does not conflict with the above provision, and aims to emphasize that the employment rights of pregnant and childbearing female employees should be guaranteed.

### **III. 单位及律师合规工作建议 Suggestions on compliance work of units and lawyers**

新法的修订大大增加了用人单位的强制性义务，结合上述修订亮点，我们建议用人单位在今后应做好以下几点：

The 2022 Revision has greatly increased the compulsory obligations of employers. In combination with the above highlights of the revision, we suggest that employers shall do the following in the future:

- 1) 在员工手册或内部规章制度中制定“性骚扰”防范和处理机制

Formulate the prevention and handling mechanism of "sexual harassment" in the employee handbook or internal rules and regulations

我们的建议：单位应规定性骚扰行为属于严重违反单位规章制度的行为，单位有权给予员工降级、警告、通报批评等处分措施，或单位有权以此解除劳动合同等更为严厉的惩罚后果。

Our suggestion: The unit shall stipulate that sexual harassment is a serious violation of the rules and regulations of the unit, and the unit has the right to demote employees, warn them, circulate a notice of criticism and other disciplinary measures, or the unit has the right to terminate the labor contract and other more severe punishment consequences.

除前述惩处措施外，还应当强调在处理过程中要注重保护受害员工隐私，



与惩处对象签订保密协议。

In addition to the above-mentioned punishment measures, it should also be emphasized that in the process of handling, attention should be paid to protecting the privacy of the victim employee, and a confidentiality agreement should be signed with the punished employee.

2) 应明确负责处理性骚扰的部门或人员

The department or person responsible for handling sexual harassment shall be specified

我们的建议：可在人事部门新设相应职能或者增设监察部门，或者安排相关人员成立负责小组，专门处理单位内部性骚扰有关的投诉和惩处工作。

Our suggestion: the unit can set up a new function in the personnel department or add a supervisory department, or arrange relevant personnel to set up a responsible group to deal with complaints and punishment related to sexual harassment within the unit.

3) 定期开展预防和制止性骚扰的教育培训活动

Regularly carry out education and training activities to prevent and stop sexual harassment

我们的建议：国家机关、企业、学校等单位，应定期开展预防和制止性骚扰的教育培训活动，培训频次应保证至少一年一次，培训过程中不但要普及法律规定，还应当结合近年频发的一些热点新闻和司法惩戒案例进行宣讲，防止利用职权、从属关系等实施性骚扰。

Our suggestion: state organs, enterprises, schools and other units shall regularly carry out education and training activities to prevent and curb sexual harassment. The training frequency should be guaranteed at least once a year. During the training, not only should legal provisions be popularized, but also some hot news and judicial disciplinary cases that have occurred frequently in recent years should be publicized, so as to prevent sexual harassment by taking advantage of authority, subordination, etc.

培训应当至少达到以下两种效果：

The training should achieve at least the following two effects:

- i. 震慑潜在的违法加害人员；

Deterring potential offenders;

- ii. 引导可能的受害员工遭遇性骚扰情况时，明确知悉单位的内部投诉、处置流程，明确知悉民事、刑事救济手段；

Guide potential victims to know clearly the internal complaint and handling process of the unit and the civil and criminal remedies when encountering sexual harassment;

4) 设置“性骚扰”投诉电话、信箱;

Set up "sexual harassment" complaint telephone lines, mailbox;

5) 必要时为受害者提供心理疏导;

Provide psychological counseling for victims when necessary;

6) 招聘过程中不得限定男士优先,不得询问女性的婚育情况,不得将妊娠测试作为入职体检项目,不得将结婚、生育或者婚姻、生育状况作为录(聘)用条件;

In the recruitment process, male shall not be given priority and female's marriage and childbearing situations shall not be inquired, pregnancy test shall not be included as part of the entry physical examination, and marriage, childbearing or marital, childbearing status shall not be taken as a requirement for employment;

7) 在《劳动合同》中增加对女性员工保护规定的一般性条款,尤其注意 2023 年即将新签或续签的劳动合同。

Add general provisions on the protection of female employees in the Labor Contract, especially pay attention to those to be signed or renewed in 2023.

我们的建议: 劳动合同中可以对应新法的亮点相应增设条款, 例如:

Our suggestion: clauses shall be added to the labor contract corresponding to the highlights of the 2022 Revision, for example,

i. 将“实施性骚扰”行为列为严重违反单位规章制度的情形, 规定单位有权据此解除劳动合同;

List "Sexual harassment" as a serious violation of unit's rules and regulations, and the unit has the right to terminate the labor contract accordingly;

ii. 对于不得就业歧视的规定, 可以增加原则性规定;

Add the principle provisions on non-discrimination in employment;

iii. 对于孕产哺“三期”女员工劳动合同期限的顺延则可在劳动合同期限中相应增述。

For the extension of the term of the labor contract of the female employees

who are in the pregnancy, maternity or lactation period (the Three Phases"), it can be added in the clause of the term of the labor contract.

以上就是关于新法介绍的全部内容啦。法律的修改总是烙上时代印记，从中国妇女权益保障法的历次修订可以看出，早在 1992 年的法律规定中，涉及到“妇女应享有农村责任田、口粮田”、“不得迷信手段残害妇女”、“计划生育”等相关内容，到 2005 年修正时首次增加“性骚扰”的规定、首次要求“国务院制定中国妇女发展纲要，并将其纳入国民经济和社会发展规划”，到而今 2022 年修订大幅增加“性骚扰”、“就业歧视”的相关规定，三十年来，国家经济不断增长，随着中国特色社会主义进程的推进，国家对女性的保护愈加关注，曾经“女性能顶半边天”的口号也随着法律的一次次更新，在中国得到了贯彻与实施。

That's all about the introduction of the revision of the LPWRI. The revision of the laws always bears the imprint of the times. It can be seen from the previous amendments of the LPWRI that as early as 1992, the relevant provisions of "females should enjoy rural responsibility fields and grain ration fields", "females should not be maimed by superstitious means", "family planning" and other relevant contents were involved. By the 2005 Amendment, the provisions on "sexual harassment" have been added for the first time, and the State Council has been required for the first time to formulate an outline for the development of Chinese females and incorporate it into the national economic and social development plan. By 2022, the relevant provisions on "sexual harassment" and "employment discrimination" have been substantially increased. Over the past three decades, the national economy has been growing, and with the advancement of the process of socialism with Chinese characteristics, the state has paid more attention to the protection of females. The slogan "females can hold up half the sky" has been carried out and implemented in China with the updating of laws.

上海如闻律师事务所 Shanghai Rewin Law Firm

阮谈真（律师）

陈晓燕（律师）

Iris Ruan (Attorney)

Tracy Chen (Attorney)

Email: xiaoyan.chen@wlawyers.com.cn

Email: iris.ruan@wlawyers.com.cn

Tel: 13301805376

Tel: 15361684531

扫码关注如闻公众号“如是我闻 Rewin”

Please scan QR Code to follow

WeChat Official Accounts

