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**Gaps between de jure Entitlement
and de facto Benefits:
Drift and the Role of Employers
in China's Maternity Benefit System**

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Gaps between de jure Entitlement and de facto Benefits: Drift and the Role of Employers in China's Maternity Benefit System

WORKING PAPERS ON EAST ASIAN STUDIES, NO. 140, DUISBURG 2025

Abstract

Female workers in China have a de jure right to maternity benefits, as enshrined in policy and legal documents since the 1950s. This article examines why this entitlement is not always de facto guaranteed as stipulated in the legislation. We use the conceptual framework of gradual institutional change by drift to analyze how a changing context, that of marketization, undermined the effectiveness of an institution, namely the individual right to maternity benefits. We trace the historical evolution of maternity benefits and examine their outcomes in terms of coverage and benefit levels. We find that the transition from a command to a market economy led to employer noncompliance in providing benefits. Although maternity insurance was introduced in 1994 to alleviate drift, persistent employer noncompliance, and weak legal enforcement, also help explain why coverage remained uneven well into the 2010s and why this was accompanied by a decline in maternity benefit levels at the same time. In fact, linking female workers' maternity entitlements to a noncontributory insurance scheme that makes employers both contributors and distributors of maternity benefits has reinforced the employers' role and contributed to the gaps between de jure entitlement and de facto benefits. By combining historical research and interviews with quantitative data from statistical yearbooks and the China Labor Dynamics Survey, we add new insights to research on maternity benefits in China by tackling the relationship between drift and the implementation of legislation.

Keywords

maternity benefits, social insurance, employers, legal entitlements, drift, China

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1 INTRODUCTION

Maternity benefits in the People's Republic of China (PRC) involve provisions for maternity leave, benefits during this leave, and associated costs for medical care and hospitalization (Gabel et al., 2019; Hu, 1997). These benefits are comprehensively set out in legal and policy documents, as legal entitlements or individual rights of female workers. However, the main financial mechanism to guarantee these rights is a non-contributory maternity insurance scheme which relies heavily on employers to both finance and distribute benefits. For example, maternity allowance during maternity leave is first paid to the employer by the insurance fund and is then distributed by the employer to the female workers. The present article analyzes the implications of this system and finds substantial gaps between *de jure* entitlements and *de facto* benefits, particularly in terms of coverage and scope of benefits.

Maternity entitlements for female workers in urban China were originally introduced in the 1950s.¹ In the 1980s, under marketization, they became increasingly less effective (Zheng, 2002: 280). To counteract this, the party-state introduced maternity insurance in 1994. In order to analyze the long-term dynamics of *de jure* maternity entitlements, how employers behaved towards this institution, and the *de facto* distributive consequences of their behavior, we draw on the conceptual framework of gradual institutional change by drift (Béland et al., 2016; Hacker, 2005). Drift refers to cases of institutional change that result from the failure of policies to adapt to shifts in their social or economic context and is largely a consequence of inaction (Béland et al., 2016).² To trace the historical evolution of the maternity benefit system, its implementation, and its effects on consolidating women's rights,

1 Although framed as a right for women, maternity entitlements in the relevant policy documents were reserved for female workers, not women *per se*.

our study combines historical research and interviews with quantitative data from statistical yearbooks and the China Labor-Force Dynamics Survey (CLDS).

We find that, in order to minimize social insurance costs, employers, especially small private enterprises, do not always enroll female workers in maternity insurance. Even when female workers are covered, it is likely that employers expect them to contribute part of the insurance premium. In addition, employers influence the generosity of the maternity benefit by underreporting workers' salaries, on which the maternity allowance is calculated. Although employers are legally required to both enroll workers in social insurance and pay full premiums, enforcement by local governments can be problematic because (a) maternity has not been perceived as a threat to social stability and has received little political support at the national level (Müller & ten Brink, 2022), and (b) local officials may tolerate employer noncompliance for the sake of local economic development and their own political careers (Zhang & Zhang, 2023).

With our study, first, by discussing the implementation of maternity benefits and its outcomes we contribute new insights to the research on maternity insurance and benefits in China, which has mainly focused on *de jure* entitlements (Chung et al., 2021; Gabel et al., 2019; Liu & Sun, 2015; Liu et al., 2020; but see UNHRC, 2014, which presents anecdotal evidence that employers in the PRC often evade their obligation to provide maternity benefits; and Zhou

2 Other relevant incremental processes that contribute to change, such as conversion or layering, require more direct and positive action by strategic political actors, whereas drift is largely a consequence of inaction (Béland et al., 2016). Since our empirical focus is on inaction in the implementation of maternity benefits and its outcomes, drift is an appropriate lens for our analysis.

2019, who finds that employers ask women about their marital status during the hiring process). Second, it demonstrates the usefulness of applying the concept of drift to explain gradual institutional change in a non-Western society by highlighting the role of employers and their various tactics to evade or limit their responsibility to provide maternity benefits. Going beyond the prevailing trend of state-centered analyses in research on Chinese welfare, third, we contribute to the literature on employer noncompliance by exposing its effects in undermining female workers' de jure entitlements, which is tolerated by local governments through the inadequate implementation of legislation (Gao & Rickne, 2014; Giles et al., 2013; Jiang et al., 2018; Nyland et al., 2011).

The article is organized as follows: In the next section, we introduce the theoretical perspective by arguing that the legal rights of female workers have been affected by a process of drift. Section 3 describes the method we used. Section 4 discusses the emergence of a maternity insurance scheme as an attempt to alleviate drift. Section 5 then analyzes the uneven expansion of maternity insurance in the 2000s and how this was related to employer behavior, and examines the variation in compliance across different types of employers. Section 6 discusses how, at the same time, the level of benefits gradually declined until the late 2010s, and how, in an ongoing process of drift, employers still seek to avoid the costs of maternity benefits by violating the relevant regulations. Section 7 concludes.

2 FROM COMMAND ECONOMY STRUCTURES TO MARKETIZATION: THE EMERGENCE OF DRIFT

This section analyzes how a process of *drift* in maternity benefits first emerged in China. The concept of drift has been applied to a range of welfare domains, including pensions, health, and long-term care (Béland et al., 2016; Gildiner, 2007; Needham & Hall, 2023; Rocco, 2017). Hacker (2005) and Béland et al. (2016), for instance, promote the concept for analyzing (a) how and why inaction gradually changes the distributive effects of an institution over time, and (b) reforms intended to alleviate drift. In the following, we will analyze both these dimensions.

Drift occurs when a critical mass of actors, referred to as *change agents*, exploit an institution for their own purposes by violating either the letter or the spirit of its distributive rules (Mahoney & Thelen, 2010),³ thus creating a gap be-

tween the original goals and actual distributive outcomes. This is related to an understanding of institutions as being fraught with tensions because they inevitably raise resource considerations and have distributive consequences (Mahoney & Thelen, 2010: 8). In the following, we study female workers' de jure entitlement or individual right to maternity benefits as an institution intended to distribute protection during pregnancy, childbirth, and the postpartum months. In China, the so-called Labor Insurance Program first enforced such legal entitlements for female workers in companies in 1951. The program was noncontributory and enterprises participating in the scheme contributed to a labor insurance fund, which was administered partly by the enterprises and partly by the trade unions. About 30 percent of the contributions were transferred to a higher level of union organization to allow for some redistribution among enterprises with different financial obligations (Chow, 1988: 40). Notably, the program only applied to industrial workers in China's state-owned and collective enterprises, hence it had

3 Change agents do not openly try to displace the institution due to the existence of veto points in the political system. This ties in with China's authoritarian polity, where openly resisting government policy is rarely a feasible course of action.

a relatively small number of beneficiaries (Tang & Ngan, 2001).⁴

In the case of drift, the trigger for change is *context discontinuity*, in other words, the occurrence of environmental shifts that existing institutions are poorly adapted to handle (Hacker et al., 2015). An initial discontinuity occurred in 1969 when the Ministry of Finance issued a regulation that ended social pooling of labor insurance and required enterprises to pay “labor insurance expenses” directly to eligible workers (Lee, 2000: 58; Selden & You, 1997). The end of social pooling represented an important discontinuity for maternity benefits, although the effects did not become apparent until the 1980s.

The decisive context discontinuity occurred in the 1980s with the marketization of the economy (ten Brink, 2019). This process turned employers into change agents. First, enterprises in the public sector increasingly had to shoulder economic risks and the costs of social protection. These risks were very unevenly distributed among the companies, depending on the demographic structure of their workers. In the absence of social pooling, some companies experienced high costs, pressuring them to minimize welfare ex-

penditures, which frequently led to shortfalls in social benefits. Many state-owned enterprises (SOEs) even avoided hiring women or reduced their salaries (Gabel et al., 2019; Zheng, 2002: 280). Second, companies in the emerging private sector, driven by similar incentives of profit maximization, exhibited even lower compliance than public enterprises, as studies by Jiang et al. (2018) or Nyland et al. (2011) show. Thus, on the one hand, *de jure* entitlements to maternity benefits remained in place under marketization to protect female workers during and after pregnancy. On the other hand, employers used various tactics to evade their responsibility to provide these benefits, as they saw maternity benefits as a financial burden.⁵ The distributive consequence of this development has been an erosion of the *de facto* benefits enjoyed by female workers. Faced with changing circumstances (i.e., marketization) around the institution (i.e., individual rights to maternity benefits) and the new effects of these on the ground (i.e., actual benefit receipt), the state introduced maternity insurance in 1994 to alleviate drift. The implementation of this insurance and the problematic features of its distinctive design will be examined in more detail after we have introduced the research method.

3 METHOD

In line with the framework of historical institutionalism, a macro-level process analysis was conducted. Regarding our quantitative data, first, we collected statistical indicators on insurance coverage, rate of beneficiaries, and replacement rates from various years of the Chinese Statistical Yearbook and the China Labor Statistical Yearbook, as well as the CLDS. The replacement rate was calculated by dividing the

average benefit by the average monthly wage in the public and semi-public sectors. The rate of beneficiaries was calculated by dividing the number of beneficiaries by the number of insured persons. The data provide a nationally representative picture of coverage and benefit-levels, showing that the public sector outper-

⁴ A complementary and more generous tax-funded system for civil servants and public service units was introduced in 1952 (Zheng, 2008: 98).

⁵ Mares (2003) qualifies the assumption of business opposition to social insurance by distinguishing the incentives of large firms in skill-intensive industries from those of small firms. Employers in small firms were primarily concerned with reducing their nonwage labor costs while bigger firms were not.

forms the private sector in terms of coverage. The analysis is a description of the development of the indicators over time in the context of our process analysis.

Second, to examine implementation in more depth, we used snowball sampling to recruit participants for interviews through personal networks. Importantly, to minimize bias, we recruited participants based on the principle of encompassing the diversity of existing institutional settings in terms of employment type/sector, education level, gender, and place of residence. We also conducted expert interviews with two junior researchers investigating the subject of maternity and one senior researcher who has conducted studies on maternity insurance. The interviews were semi-structured and focused on coverage, conditionality and level of

benefits, attitudes toward the benefit, and the process of receiving benefits. We encouraged participants to share any information they felt was relevant. Interviews lasted between 30 and 120 minutes and were recorded with consent. In total, we conducted 39 interviews between September 2023 and January 2024. Each participant was assigned an ID number for the purposes of anonymization. The researchers conducted a separate qualitative content analysis (Mayring, 2021) of the interview data and then discussed the findings and their implications together. For example, we coded instances of informal cost sharing and underreporting of salary as employer noncompliance. The analysis was considered complete when theoretical saturation was reached, that is the point at which additional data ceased to provide new insights (Charmaz & Thornberg, 2021).

4 THE INTRODUCTION OF MATERNITY INSURANCE IN THE 1990s TO ALLEVIATE DRIFT

In response to the drift identified in Section 2, the State Council of the PRC issued new regulations in 1988, confirming female workers' entitlement to maternity benefits, and covering all government organs, mass organizations, companies, and public service units (State Council, 1988, § 2). The same document extended the duration of maternity leave from 56 to 90 days. However, the document did not specify how the funding of those benefits was to be ensured, thus further increasing economic pressure on enterprises. In this context, the Ministry of Labor (MoL) began to promote the reintroduction of social pooling for maternity benefits. To this end, it launched an insurance experiment in Jiangsu Province. Subsequently, several cities launched similar experiments (Zheng, 2002: 280), some of which maintained the noncontributory model, while others also experimented with a contributory model, or with sharing maternity costs between the employers of both the husband and the wife (Zhuang, 2019: 110).⁶

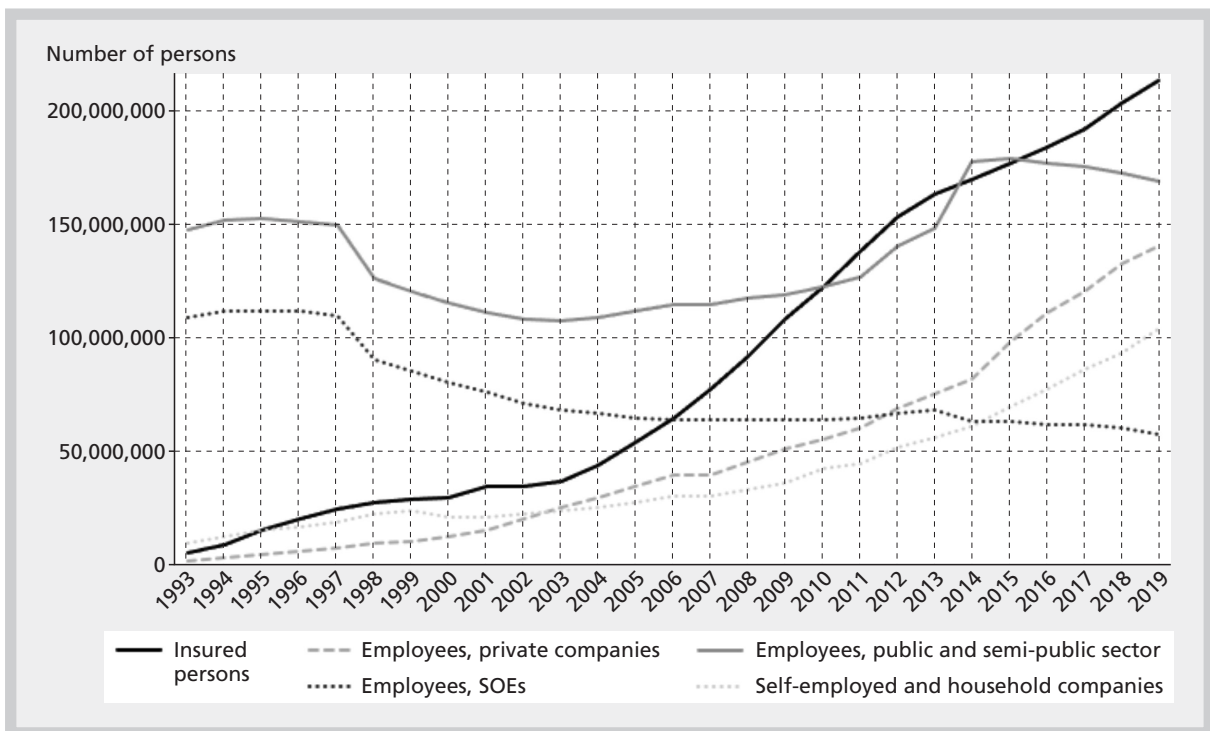
These experiments were part of the preparations for a wider reform of the labor insurance system in the 1990s (Müller, 2016). Maternity insurance was introduced in 1994, but a lack of political consensus in the central government prevented it from expanding rapidly. This was a fundamental problem in a constellation where decision-making at the central level was usually consensus based and characterized by extensive negotiations (Müller, 2016). The lack of consensus is evident in the key reform documents enacted in the 1990s. The 1993 Socialist Market Economy Strategy outlined a basic structure for urban social insurance but left out maternity insurance, only mentioning the other four branches of pensions, unemployment, healthcare, and work accidents (Central Committee, 1993, § 27). The 1994 Labor Law listed maternity as a basis

⁶ By the mid-1980s, many experts and government officials had already recognized the flaws of the noncontributory model of labor insurance (Lee, 2000: 147).

for social insurance benefits, along with retirement, sickness, work accidents, and unemployment. So, there was consensus about the entitlement as an insurance benefit, but not about a separate insurance program. The MoL issued ministerial regulations for a noncontributory maternity insurance system in 1994 (“Trial Employee Maternity Insurance Regulation”, hereafter the 1994 document), but those were less authoritative than regulations by the Central Committee or the State Council (MoL, 1994: 504, § 2),

making implementation at local government levels challenging. Its attempts to have the State Council enact regulations on maternity insurance failed both in 1997/98 and in 2002/03.⁷ No State Council regulations on maternity insurance were ever issued (Hu, 2009: 394f; Zheng, 2002: 283). The lack of political consensus on institutionalizing the insurance scheme was a liability for the implementation and expansion of maternity insurance—and thereby weakened the capacity to alleviate drift.

Figure 1: Employment and maternity insurance coverage



Sources: China Statistical Yearbook 2009, 2011, 2016, 2020; China Labor Statistical Yearbook 2018, 2020.

Note: Public and semi-public refers to the Chinese category of urban, non-private enterprises (*chengzhen fei siying danwei*), which is commonly associated with formal employment. In addition to state-owned and collective enterprises, it includes a range of mixed and foreign ownership types, including foreign private companies. Domestic private enterprises by contrast are a separate category, and commonly associated with informal employment. Employment in private companies was no longer reported in 2018, so the figures for 2018 and 2019 were reconstructed based on other categories. They should therefore be interpreted with an appropriate margin of error.

Figure 1 shows how this liability manifested itself in terms of coverage. It illustrates the number of insured persons, along with the size of different groups of employees in the labor market over time. In 1994, the number of people covered was very small, even relative to SOE workers, and it only grew slowly in the

subsequent years. The lack of political consensus facilitated noncompliance by provincial governments with the 1994 document. For

⁷ These attempts were made strategically at the time of government transition. The content of the proposed regulations is unknown.

example, the provincial jurisdictions of Beijing, Tianjin, and Tibet reported no enrollment in maternity insurance at all before 2005. Coverage in the 1990s and into the 2000s was also still comparatively low in northern China and some provinces in central China (China Labor Statistical Yearbook, various years). Furthermore, several SOEs refused to pay into the social pooling funds usually set up by county or prefectural city governments (see also: Eaton & Kostka, 2017).

Where maternity insurance was not implemented, the status quo of the 1980s remained,

with women's maternity benefits depending on the economic situation of the company when it came to state-owned and collective enterprises, and private companies mostly not providing any benefits at all (Liu, 2010). During the 1990s, the number of insured persons gradually increased, while the number of SOE workers declined dramatically. More generally, the 1990s were characterized by a severe fiscal crisis, a general reluctance to spend on social protection, and a resulting shift of risk from the state to households. Consequently, the coverage of maternity insurance remained low throughout the 1990s.

5 THE UNEVEN EXPANSION OF MATERNITY INSURANCE SINCE THE 2000s AND EMPLOYER NONCOMPLIANCE

The Hu-Wen administration (2003–2013) placed greater emphasis on expanding social protection than the previous administration. This was linked to a constellation of factors: the fiscal crisis of the 1990s had been overcome, SOE reforms had largely been completed, and the economy was booming. The 2010 Social Insurance Law extended coverage of maternity insurance to all public and private enterprise employees. This saw maternity insurance coverage increase substantially, with the number of insured workers exceeding that of SOE employees in 2006, and that of urban public and semi-public sector employees in 2010 (see Figure 1). Coverage was also expanding in the private sector. In the 2010s, China faced a general slowdown in economic growth and a decline in public and semi-public sector employment. However, maternity insurance coverage continued to grow, albeit at a slower pace. By 2019, the number of insured persons significantly exceeded the number of employees in the public and semi-public sector and included a growing share of employees in private companies. In the same year, the State Council issued a recommendation to integrate maternity insurance with health insurance for urban employees.⁸

So was drift successfully alleviated after the 2000s? Using data from the CLDS, Table 1 provides a more disaggregated view of coverage. It illustrates that there is a strong but not deterministic relationship between employer type and coverage and also shows the limits of maternity insurance coverage despite two decades of coverage growth. Overall, maternity insurance coverage in the 2016 sample averaged 22.5 percent of employees (including the self-employed),⁹ ranging from 13.5 percent in the private sector to 45.8 percent in the public and semi-public sector. Coverage was highest in the public and semi-public sectors, led by foreign-invested enterprises

8 In 2019, the State Council recommended that maternity insurance be integrated into health insurance for urban employees. Integrating maternity benefits into health insurance is common international practice, one that is also followed in China's rural health insurance (Müller, 2016).

9 Using figures from the National Bureau of Statistics, Zhuang (2019) estimates coverage of 45 percent in the same year. Differences may be connected to the sampling strategy of the survey. One potential issue is the existence of proxy companies focusing on maternity insurance, which are represented in the NBS data but not in the CLDS survey.

and joint ventures. Conversely, it was lowest in the private and self-employed sectors, with the household and self-employed sectors featuring the lowest coverage levels. Notably, most people now work in the private sector, as the size of the

2016 survey sample indicates. It is also worth noting that the majority of new mothers did not have coverage or receive maternity benefits in 2015, with only 6.4 million recipients for 16.6 million births (National Bureau of Statistics, 2016).

Table 1: Maternity insurance and urban basic medical insurance coverage 2016

| Ownership | Employer type | Maternity | Health insurance | Sample |
|-------------------------------------|-----------------------------------|-----------|------------------|--------|
| Public and semi-public | SOEs | 45.39 % | 73.92 % | 564 |
| | Public service units | 51.84 % | 74.68 % | 841 |
| | Collective enterprises | 24.60 % | 47.37 % | 126 |
| | Foreign-invested & joint ventures | 55.24 % | 54.80 % | 248 |
| Private companies | | 22.72 % | 30.53 % | 2791 |
| Self-employed & household companies | Individual & household companies | 4.26 % | 9.63 % | 1454 |
| | Self-employed | 2.29 % | 5.40 % | 1355 |

Source: China Labor-Force Dynamics Survey 2016.

The outcomes of the 2019 merger of maternity insurance and urban health insurance are ambiguous. Officially, the pooling funds of the two insurances have been merged, whereas premiums for maternity insurance continue to be calculated separately and retain the separate label of maternity insurance benefits (Zheng, 2022: 60). What is more, our interviewees continued to see maternity insurance as an independent program. Table 1 provides information about potential coverage increases, should employers be required to always pay premiums for both programs: coverage would increase markedly in all company types except foreign-invested and joint-venture companies.¹⁰ Urban health insurance coverage was 33.3 percent on average: 19.2 percent in the private sector, and 67.1 percent in the public and semi-public sector. However, for workers aged between 21 and 30—the typical age for childbearing in China—coverage was only 18.6 percent and 20.7 percent, respectively.

The noncompliance of employers in this process featured strongly in our interviews, which re-

veal that employers frequently violate the rules of the institution. Moreover, they support the argument that noncompliance differs substantially across different industries and ownership types.¹¹ In our sample, all public and semi-public sector employees are covered and satisfied, to the extent that one interviewee (#7) employed by a public institution did not even apply for maternity benefits until her employer reminded her to do so, indicating effective benefit implementation. This is in sharp contrast to one interviewee (#3) whose private employer only enrolled her on the condition that she pay the premium out of her own pocket. Although China's Labor Law requires employer contributions to social insurance funds, public sectors (e.g., larger SOEs) are more likely to face an audit and more severe sanctions than private enterprises if they violate the law (Giles et al., 2013). Local governments, which implement the law and administer the social insurance funds, focus primarily on compliance among public enterprises as well as foreign-invested enterprises and very large private

10 A plausible explanation for this could be the greater prevalence of commercial insurance in such companies.

11 From an employer's perspective, covering maternity leave benefits for women of childbearing age in industry sectors that have historically employed a larger share of women and tend not to provide social insurance may be more difficult (Giles et al., 2013).

businesses because these are more financially viable (see Duckett, 2020). Moreover, the costs of strict implementation in smaller private enterprises deters local officials since they have limited resources and need to prioritize economic growth (expert interview #38).

First, the private-sector employees we interviewed still consider exclusion from social insurance the “norm”. One interviewee (#19), who works as a personal trainer in a private gym in central China, told us that it was normal for her employers not to enroll her for social insurance. Commenting on the issue of coverage, she said:

My impression is that this [insurance] is only for employees with formal jobs or certain large enterprises. It's normal for them to have it. I've also asked my friends about it, and they're in the same situation as me. Maybe it's because we're too ordinary.

Second, and referring to the fact that, in 2016, even public service units only provided slightly more than half of their employees with maternity insurance coverage (see Table 1), one interviewee (#26), who used to work in a private dental clinic in Shanghai and had recently resigned from the public hospital in her home county in southwest China due to pregnancy, pointed out the contrast between these two places of work in terms of insurance participation, showing that noncompliance goes beyond the public-private divide:

The director of our hospital said that because the hospital was being upgraded, there was no money for social insurance payment. Only doctors have social insurance. Although I worked in a private dental clinic in Shanghai before coming here [to the hospital], my employer paid for my social insurance.

Third, precarious working conditions and unemployment facilitate rule violation, which, in turn, can increase maternity insurance coverage—albeit in a problematic way. For example, some

people managed to qualify for maternity benefits by utilizing proxy companies, in which they would be registered as formal employees and pay social insurance premiums out of their own pockets. One interviewee (#5), a self-employed father of two in a rural county in central China, shared how his wife received maternity benefits through this arrangement. The family did this because the private company his wife worked for went bankrupt before she gave birth.¹²

The company went bankrupt while she was still pregnant. We wanted to stay in the social insurance system, so we used a proxy company to act as her employer and pay her social insurance [out of our own pocket].

Fourth, the interviewee described another important evasive tactic used by employers—informal burden sharing:

Even before the bankruptcy, her employer wasn't paying the full social insurance premium. We had to split the insurance bill with the employer.

This practice of informally turning the non-contributory scheme into a contributory one was also described by a small business owner (#18). For smaller private companies, maternity insurance (along with other social insurance programs) can be a financial burden, which employers may ask their employees to share in exchange for coverage:

Social insurance is an extra burden for small businesses like ours, and it keeps increasing every year. I talk to my employees before signing a contract with them, informing them they will also have to share the cost of social insurance [the part I pay for them]. By keeping them enrolled, I'm indirectly giving them more money. It's reasonable for them to share the cost.

12 We were unable to identify such arrangements in the survey data.

Such informal evasive strategies are arguably exacerbated by conservative fund management. Through most of the 2000s, maternity insurance funds accumulated high surpluses, as they only spent between 50 percent and 75 percent of their annual revenues. This conservative fund management arguably had detrimental effects on coverage, deterring some companies from registering employees for maternity insurance altogether, and driving others to informally shift to a contributory system in their companies. At times under the Xi administration (2013–), the share of expenditures increased above 100 percent, pointing to more efficient usage of the funds. But overall, conservative fund management contributed to uneven coverage (China Labor Statistical Yearbook, various years).

Last not least, our interviews showed that women and couples without coverage often lack any kind of mechanism to finance maternity leave, and may or may not be entitled to reimbursement of health

costs through their public health insurance. This issue was highlighted by one interviewee (#25), a father of a newborn in southern China, who would like to see more government intervention and financial support to expand coverage:

My wife works for a public school and we had good reimbursement for the hospital delivery. But the other two women my wife shared a room with ... had less protection because only employees from certain enterprises have maternity insurance. The dilemma is that maternity benefits are difficult to obtain in private companies, but most workers are employed by private companies.

In sum, while the government attempted to alleviate drift by consolidating women's legal entitlements through a noncontributory insurance scheme that pools the economic risks of motherhood between employers, the process of drift and related employer noncompliance has facilitated uneven coverage increase.

6 EMPLOYER NONCOMPLIANCE AND THE DECREASING SCOPE OF MATERNITY BENEFITS SINCE THE 2000s

The previous section analyzed how and why maternity insurance coverage has grown unevenly over time, and how evasive practices by employers have led to much lower levels of coverage than required by law. Lack of implementation of legislation by local governments further reduces the capacity to alleviate drift. One expert we interviewed (#38) commented on the issue of inadequate insurance implementation, stating: "The government always prioritizes (*zhua zhong-dian*) when distributing resources, the important groups are those who work for the government and public institutions, and large private enterprises," thus indicating the need to ensure welfare benefits for the core support groups of the state. The situation becomes even more problematic when the scope of benefits is considered. This section shows how benefits became more widely distributed but also less generous

in the 2000s. Again, we find that this is related to employer noncompliance.

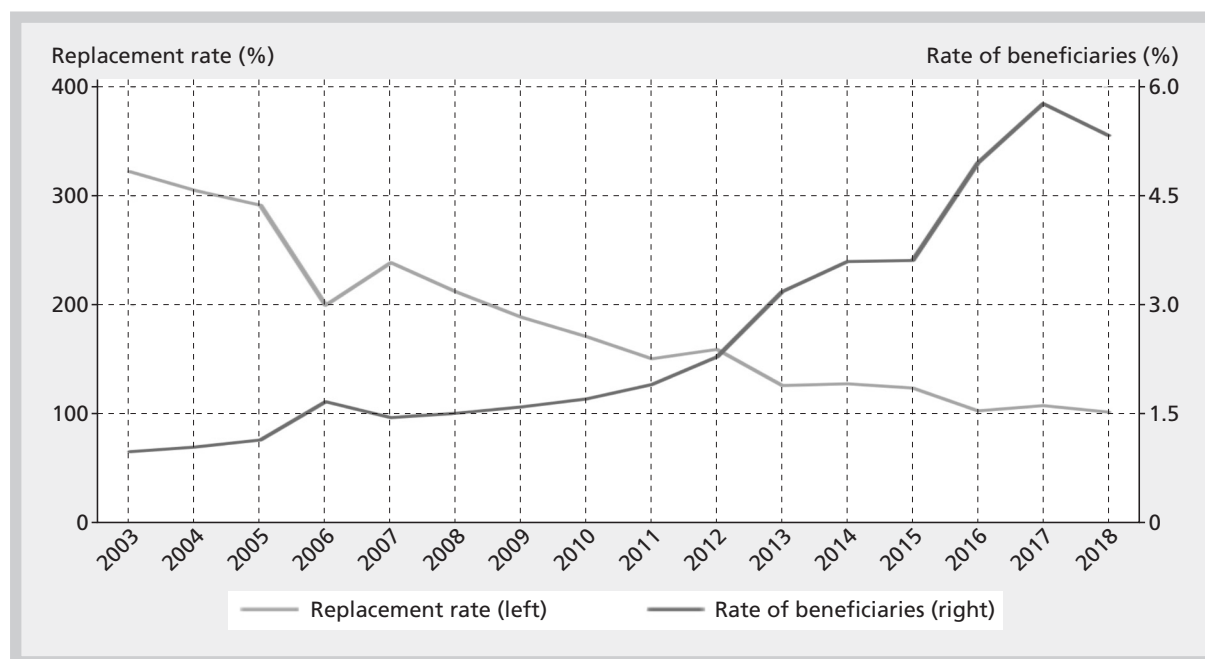
Official data on the financial operations of maternity insurance reveal some basic trade-offs that affected the scope of maternity benefits over the years. Figure 2 illustrates two crucial indicators for the generosity of maternity insurance: the rate of beneficiaries relative to the number of insured persons; and the replacement rate, calculated as the value of the average benefit¹³ relative to a monthly salary. Overall, the rate of beneficiaries has been increasing since the 2000s, whereas the replacement rate has

13 Benefits mainly include maternity allowance and reimbursements for hospital costs. As the hospital costs would otherwise have to be paid out of pocket, we count them as financial benefits here.

been decreasing. The primary reason for the rising rate of beneficiaries is the increasing coverage of younger women under the Hu-Wen administration. Moreover, the 2010 Social Insurance Law entitles non-working spouses to insurance benefits as well (Social Insurance Law, 2010, § 54). In the 2010s, the rate of beneficiaries further increased due to the relaxation of the strict one-child policy, which used to restrict the number of times each insured person could

claim benefits. Ethnic Han in the urban areas were particularly affected by this policy. Since this group also makes up the vast majority of the insured, this policy change has significant potential to change the rate of beneficiaries.¹⁴ Receipt of benefits remains conditional on adherence to birth planning regulations.¹⁵ Furthermore, some localities have experimented with paternity leave policies. Overall, therefore, maternity insurance benefits are distributed more widely.

Figure 2: Scope of maternity insurance benefits



Source: China Labor Statistical Yearbook, various years.

The replacement rate was calculated by dividing the average benefit by the average monthly salary in the public and semi-public sector. Salaries in the private sector may differ from the public and semi-public sector, and as such the estimates should be interpreted with a certain margin of error. The rate of beneficiaries is calculated by dividing the number of beneficiaries by the number of insured persons. Notably, a review of local policy documents indicates that between 40 and 50 jurisdictions at prefecture- or county-level in China have introduced some form of paternity leave since the 1990s. This means that in slightly more than 10 percent of cities and prefectures, men may be included in the count of beneficiaries if they (a) take a paternity leave and (b) receive an income replacement (*hulijia jintie*) from the maternity insurance fund, rather than their regular salary during their paternity leave. These men may induce a negligible bias. Further, the 2010 Social Insurance Law entitles the non-working spouses (*weijiuyue peiou*) of insured men to reimbursement of birth-related medical costs, but not maternity allowance. This arguably contributed to both the rise in the rate of beneficiaries and the declining replacement rate. To our knowledge, there were no precedents to this practice before 2010.

14 The rural population and ethnic minorities in particular were subject to less strict birth planning, and fertility rates here differed from those in urban areas. However, rural dwellers and ethnic minorities are less likely to be integrated into formal urban employment and covered by maternity insurance.

15 The 1994 document stipulates that "birth within plan" (*jihua nei shengyu*) is the precondition for receiving maternity benefits. The Law on Population and Family Planning (2001) states that birth planning is a basic national policy (*jiben guocce*). While the content of birth policies has changed over time (from a one-child to a three-child policy), their legal standing has not (see also: Alpermann & Zhan, 2019).

Conversely, the scope of benefits has been decreasing, as the declining replacement rate in Figure 2 illustrates. While national regulations now entitle women to 98 days of maternity leave, there is considerable variation in terms of generosity (Alpermann & Zhan, 2019). In 2003, the average replacement rate exceeded the value of three monthly salaries, which roughly corresponds to the legal entitlement. The replacement then gradually decreased to about one monthly salary in 2018. Crucial drivers of this trend are the increasing number of young women covered by maternity insurance in the 2000s, and the growing number of beneficiaries that resulted from it. Furthermore, the gradual establishment of benefits for non-working spouses and fathers introduced much lower benefit payments to the equation.

Another important, yet hard-to-measure factor is the underreporting of salaries, the impact of which increased with the expansion of the private sector (Lüthje et al., 2013). We illustrate this by juxtaposing the descriptions of two female interviewees in central China, one employed by a small private company and the other by a large multinational. Inequality of benefits is due in part to differences in salaries, and in part to the strategic behavior of employers:

What I actually receive each month is higher than the amount on which my employer pays my social insurance. The company only pays my social insurance at the lowest level. I know that the maternity allowance is calculated on this figure, so I don't get much. For my first child, I only got about 13,000 RMB. I don't expect it to be much more for my second child.

(Interviewee #35)

My company is very generous. I got about 60,000 RMB for my maternity allowance. I also received my basic salary during my maternity leave. This is an extra benefit that my company doesn't have to provide. If I compare this to the situation in some private companies, I'm satisfied.

(Interviewee #4)

This illustrates that employers, as change agents, underreport wages and thereby game the system. The urban social insurance contribution, based on the average wage, requires a minimum payment for workers equal to that which would be paid by workers earning 60 percent of the local average wage and a maximum payment of 300 percent. If a worker earns less than 60 percent of the local average annual wage, the worker and employer must make the same contribution as a worker earning exactly 60 percent of the average wage (Giles et al., 2013). It is thus no surprise that some employers would rather pay the minimum for social insurance contributions. This affects the generosity of the maternity allowance, which varies from enterprise to enterprise because it is calculated according to the average monthly wage of the company's employees in the previous year. Thus, the extent to which employers are willing to pay the full social insurance contribution determines the generosity of the maternity benefit received by employees.

Of course, if the income replacement rate of the maternity allowance is low, some women will be forced to work during maternity leave or until the day before they give birth, which de facto undermines their legal entitlement to a period of rest. One interviewee (#12) from southern China worked during her maternity leave to compensate for the limited maternity benefit she received because a large part of her salary was based on a performance bonus, which was excluded from maternity allowance calculation.

I work in sales and my salary consists of a base salary and a bonus. I've been working during my maternity leave so my income is not too different from before and I don't want to lose my clients. I'm just grateful that my private employer enrolled me for social insurance.

Underreporting of salaries and high shares of variable payments or bonuses (for more information on this critical part of Chinese labor re-

lations, see, e.g., Lüthje et al., 2013; ten Brink, 2019) have similar effects here. What is more, many women are reluctant to use up their maternity leave entitlement in order to avoid unfavorable evaluations from employers. As mentioned above, the length of maternity leave varies regionally, with the minimum being 98 days. Some cities, such as Shanghai, Suzhou, or Wuhan, have added another 60 days (making 158 days in total). One interviewee (#35), who works for a private company in central China and recently had her second child, explained why she still only took the minimum 98 days of maternity leave.

My company only gives us 98 days of maternity leave even though female workers are entitled to 158 days of leave now. What can I do? I've worked here for almost ten years. I can't confront my boss and I can't quit. I need the maternity benefits and social insurance from my employer, I need to work, right?

Finally, with the extension of benefits to non-working spouses, the perceptions of husbands influence the chances of de facto realizing a de jure entitlement, thus further contributing to drift. Our male interviewees tended not to view maternity benefits as a legal entitlement, which we assume undermines their wives' entitlements. For example, one interviewee (#9) working for an SOE in eastern China associated maternity benefits with social insurance contributions, emphasizing the importance of individual contributions in exchange for benefits. Although the non-working spouses of male employees are entitled to maternity benefits under the 2010 Social Insurance Law, the different perception of entitlement among male workers may lower the chances of non-working women receiving maternity benefits.

I think the benefits I enjoy are closely related to how much I contribute. I don't pay for maternity insurance, it's all paid for by my employer. I didn't even know that maternity insurance also covered male workers. We didn't get any payments

for the birth of our two children, even though my wife wasn't working and could have received some benefits through my insurance. I just didn't take care of it.

Different from other countries, one particularity of Chinese maternity insurance is that the maternity allowance is distributed by the employers, rather than government authorities. The pervasive role of employers in securing female workers' entitlement to maternity benefits led one interviewee (#14) in southern China to suggest decoupling maternity benefits from employers, because this would help improve both the coverage and scope of benefits.

If you really want to improve the welfare of mothers like us, the maternity allowance should be based on the average regional wage [not the average wage of an individual company] and delivered to us directly through the government, not to companies. That way, companies won't find ways to fire women or reduce their social insurance contributions to a minimum.

In sum, in a context of weak employer compliance and poor enforcement by local governments, mothers and fathers cannot truly benefit from the protection mandated by the law. Therefore, the interviewee expected more government intervention to improve employer compliance. Indeed, one study shows that social insurance coverage is positively associated with the presence of a Party branch in private companies (Dong et al., 2016), suggesting that stronger government oversight may lead to better enforcement outcomes. Arguably, the use of maternity insurance to ensure female workers' entitlement to maternity benefits has not proven to be very effective in alleviating the drift induced by the marketization of the economy. This is because, under the current system, both local governments and employers have an incentive not to strictly implement maternity legislation through an insurance program that links the realization of women's legal rights to premium contributions solely from employers.

7 CONCLUSION

Analyzing the entitlements of female workers as an institution and tracing the drift induced by marketization historically, we answer the question of why these entitlements are not fully guaranteed as per the legislation, and with what outcomes. Drawing on a diverse set of data sources, we trace the development trajectory of maternity benefits from the 1950s until the present. In doing so, we identify drift as the main mechanism perpetuating gaps between *de jure* entitlements and *de facto* benefits. To alleviate drift and consolidate maternity benefits, the government introduced maternity insurance in 1994. However, the implementation of maternity insurance did not initially lead to rapid coverage expansion, and, since the 2000s, expansion has been uneven and accompanied by a decreasing level of benefits. These outcomes are associated with persistent employer noncompliance, suggesting that the enactment of new social legislation in and of itself may not be sufficient to reduce drift because what actually matters is whether such legislation is properly implemented (Béland et al., 2016). Our study of the maternity benefit system shows that the implementation of drift-correcting policies can falter when it occurs over a long period of time and involves multiple actors at different levels of government, who may have different incentives and may impede the goals of the insurance program (Béland et al., 2016).

Essentially, the marketization of the economy and the expansion of non-public sectors from the 1980s onward changed the incentives for employers to fund maternity benefits. As employers became more “cost-conscious” in order to survive market competition, the provision of maternity benefits for female workers became a burden. As change agents, employers either refused to pay maternity insurance premiums or stopped hiring female workers, initiating a process of drift. Drift then manifested itself in the gradual erosion of the *de facto* maternity benefits to which female workers are entitled. This

process continued despite the introduction of maternity insurance in 1994, as employers did not always pay statutory maternity insurance contributions, a behavior tolerated by local officials seeking promotion who prioritized local economic growth and their individual career opportunities over worker welfare (see Zhang & Zhang, 2023).

Perhaps, then, one critical source of the uneven coverage and decreasing level of benefits lies in the use of an ill-fitting social insurance system as a means of guaranteeing maternity benefits. Female workers’ entitlements to maternity benefits are thus subject to employers’ compliance with the rules on insurance participation stipulated by law. This approach, however, makes the realization of women’s legal rights dependent on the employer, who has the discretion to decide whom to insure and to what extent, thus disadvantaging some female workers over others (e.g., public/private). While the aim of maternity insurance was to consolidate maternity benefits and alleviate drift, making insurance participation a prerequisite inadvertently reproduces the disadvantaged position of female workers in the labor market, as employers still consider them a liability. We therefore caution against generalizing our findings to other contexts, as very few countries have an independent maternity insurance scheme with benefits contingent on employer contributions (Müller & ten Brink, 2022). Compared to other social insurance programs in China, the role of employers as both contributors *and* distributors of benefits makes maternity insurance distinct. The combination of employer noncompliance and local officials’ tolerance of it reduces the impact of drift alleviation and thus undermines *de jure* entitlements for female workers.

The existing arrangement of maternity benefits being provided as a woman’s right through maternity insurance thus needs to be reconsidered. This is all the more relevant, as the PRC is cur-

rently experiencing low fertility and sees the expansion of maternity benefits as a solution (Central Committee, 2021; Liu et al., 2020). For example, the state's supervisory role in the implementation of maternity benefits could be strengthened (see Dong et al., 2016), helping to narrow the gap between de jure entitlement and de facto benefits. As mentioned above, China integrated maternity insurance with health insurance in 2019 to guarantee workers' insurance benefits and enhance the risk sharing of insurance funds (State Council, 2019). Now that maternity benefits have been integrated with health insurance, will local governments play a more active role in bridging the gap between de jure and de facto

benefits? To reduce the burden on employers and improve implementation (thus alleviating drift), would the state consider subsidizing maternity benefits through public taxes and making maternity protection more inclusive? These are important questions that ultimately depend on implementation. Future research should more systematically examine the effectiveness of the initiative, including across different regions of China (assuming researchers can overcome major data collection challenges), to see whether the coverage and scope of maternity benefits for women, regardless of their employment status or place of residence, can better address China's fertility crisis.

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APPENDICES: INFORMATION ON INTERVIEWEES

| Inter- viewee | Age | Gender | Residence | Education | Employment | Maternity insurance |
|------------------|-----|--------|-----------------|--------------------|-----------------------------|---|
| #1 | 33 | Female | Urban/east | Master | Private/business owner | Insured |
| #2 | 33 | Female | Urban/east | Master | Semi-public/school teacher | Insured |
| #3 | 28 | Female | Urban/central | Bachelor | Semi-public/kindergarten | Insured (proxy company) |
| #4 | 32 | Female | Urban/central | Bachelor | Foreign company | Insured |
| #5 | 31 | Male | Rural/central | Vocational college | Self-employed | Not insured, wife insured (proxy company) |
| #6 | 33 | Female | Urban/northeast | Bachelor | Unemployed | Not insured, husband insured |
| #7 | 31 | Female | Urban/north | Master | Public/research institution | Insured |
| #8 | 30 | Female | Urban/north | Bachelor | Public/hospital nurse | Insured |
| #9 | 33 | Male | Urban/east | Bachelor | Public/SOE | Insured, non-working wife not insured |
| #10 | 31 | Female | Urban/south | Bachelor | Public/SOE | Insured |
| #11 | 32 | Female | Urban/central | Bachelor | Public/SOE | Insured |
| #12 | 32 | Female | Urban/south | Bachelor | Private/sales | Insured |
| #13 | 29 | Female | Urban/south | Master | Public/school teacher | Insured |
| #14 | 28 | Female | Urban/south | Bachelor | Private | Insured |
| #15 | 32 | Female | Urban/east | Master | Public/SOE | Insured |
| #16 | 34 | Female | Urban/east | Bachelor | Public/hospital nurse | Insured |
| #17 | 30 | Male | Urban/central | PhD | Public/university lecturer | Insured |
| #18 | 33 | Female | Urban/central | Bachelor | Private/business owner | Insured |
| #19 | 28 | Female | Urban/central | Bachelor | Private/fitness trainer | Insured (proxy company) |
| #20 | 34 | Female | Rural/east | High school | Unemployed | Not insured |
| #21 | 28 | Female | Rural/southwest | Junior high school | Unemployed | Previously insured |
| #22 | 31 | Female | Urban/east | Vocational college | Public/hospital nurse | Insured |
| #23 | 32 | Female | Urban/east | Master | Public/school teacher | Insured |
| #24 | 27 | Female | Rural/southwest | Junior high school | Unemployed | Not insured |
| #25 | 31 | Male | Rural/east | Master | Self-employed | Not insured, wife insured |
| #26 | 29 | Female | Rural/southwest | Vocational college | Unemployed | Previously insured |
| #27 | 40 | Female | Urban/central | PhD | Public/university professor | Insured |
| #28 | 35 | Female | Urban/east | Master | Public/civil servant | Insured |
| #29 | 27 | Female | Rural/north | Bachelor | Private/part-time worker | Not insured |
| #30 | 28 | Female | Urban/north | Bachelor | Public/SOE | Insured |
| #31 | 30 | Female | Rural/north | Vocational college | Unemployed | |
| #32 | 32 | Female | Urban/north | Bachelor | Private/accountant | Insured |
| #33 | 33 | Female | Urban/north | Bachelor | Public/hospital doctor | Insured |
| #34 | 31 | Female | Urban/east | Master | Semi-public/editor | Insured |
| #35 | 33 | Female | Urban/central | Bachelor | Private/trade company | Insured |
| #36 | 32 | Female | Urban/central | Bachelor | Private | Insured |

YAN / TEN BRINK / MÜLLER: Gaps between de jure Entitlement and de facto Benefits

| Expert interview | Location | Time of interview |
|----------------------------|----------|-------------------|
| #37 (Local researcher) | Shanghai | 2023.09.15 |
| #38 (University professor) | Jiangsu | 2023.09.21 |
| #39 (Local researcher) | Shanghai | 2023.09.25 |

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