Protections for public employees: statutory anti-discrimination programs essay sa...

Sociology, Social Issues

Introduction

The challenges and laws shaping the business sector drawing in corporate social responsibility, good corporate citizenship, and statutory anti-discrimination programs have shifted as political and social climates have changed in New York, the United States, and around the world. One legal issue, which has been borne since the advent of industrialization era, is discrimination (Burk, 2000).

Statutory discrimination is such a broad subject some business people are not aware they are caught in it or promoting it. In the corporate setting, it is likely job discrimination that is zeroed in on. It is an unfavorable action brought against a person because of a characteristic unrelated to job performance. Job discrimination is a major aspect of unfairness. Being fair to people means equity, reciprocity, and impartiality. Fairness revolves around the issue of giving people equal rewards for accomplishing equal amounts of work (Blake, 1991).

The goal of human resource legislation is to make decisions about people based on their qualifications and performance; not on the basis of demographic factors such as sex, race, or age. A fair working environment is where performance is the only factor that counts (equity). Employer-employee expectations must be understood and met (reciprocity). Prejudice and bias must be eliminated (impartiality) (Zack, 2000).

Discriminating against others is illegal as well as unethical. Many federal, state, and local laws prohibit discrimination in all phases of employment. The

obvious situations in which to guard against discrimination are in hiring and promoting people. Job discrimination has been a vital factor in the unemployment rate in the country. Although unemployment occurs among all social and occupational groups, it is especially concentrated among the young, some racial and ethnic minorities, women, and those who live in declining urban areas (Gleason, 1997).

In this regard, affirmative actions have to be designed to help correct past patterns of discrimination in employment. Many governments seek to ameliorate the often-devastating effects of long-term unemployment through Unemployment Insurance and Social-Welfare programs (Zack, 2000).

The Civil Rights Act of 1964

Particularly in the United States, Title VII of the Civil Rights Act of 1964, also known as Equal Employment Opportunity (EEO) mandates, prohibits employers with 15 or more employees from discriminating against applicants and employees in all aspects of employment, including recruiting, hiring, pay, promotion, training and termination, on the basis of race, color, national origin, religion or gender (Zack, 2000).

A case in point is Donna Anastasio’s experience with Toshiba America Information Systems (TAIS). The company faces a gender discrimination trial brought by the 49-year-old leading female sales manager. Her lawsuit claims she was intentionally deceived by TAIS over a four-year period and denied a promised promotion to the executive ranks solely because she is a woman. In a November 2004 sworn affidavit, filed with the court by Blumberg Law

Corp. on behalf of the plaintiff, the former VP of Human Resources confirmed Anastasio’s charges. According to the complaint, Anastasio was an East Coast-based successful computer sales director when TAIS recruited her in 1992 as a regional sales manager. Lured by explicit promises of advancement for achievement, in 1998 she relocated to corporate headquarters in Irvine, CA, and devoted herself to her job as a national field sales vice president. Despite consistently excellent evaluations over the next four years, she was repeatedly passed over for promotion in favor of four men. Even when she tried to resign, TAIS management persuaded her to stay with the false promise that she would be next in line for promotion. It never happened (Hallock, 2001).

Sexual Harassment

We can see that even with the law, there is many loop holes that clever employees can seek. This isn’t the only thing that stands in the way of woman who wants a career. There are many other obstacles. The law is not much use for woman in power as there are so many males above them in any company. If men do not realize women as their equals, then women are overlooked for transfer or promotion, find themselves directed into female job areas and are not offered a challenge. Men use strategies to cope with women such as patronizing them, not listening to them seriously, being over protective and shielding them from dangerous situations so they never have the knowledge of how to cope. The usefulness of the law can be seen however in the fact of precedent where any previous case of a woman taking

a company to court for sexual discrimination or equal pay and winning may be considered in a similar court case (Burk, 2000).

Surveys have shown that many employees do not know what constitutes sexual harassment (Madison & Minichicello, 2001). Derogatory comments, hostility and intimidation directed both at women and men are a form of sexual harassment. In general, the harasser is a supervisor (Burk, 2000).

Two specific legal definitions of sexual harassment have been deduced from the common incidents: quid pro quo and hostile work environment. The former is when something, and it is sexual in nature, is asked for in exchange for something important like some employment decisions. The latter is when the sexual conduct interferes with an individual’s performance in the workplace (Decker, 1997). To place in simpler context, sexual harassment is a form of discrimination that is characterized by conduct of a sexual nature that is unwanted and unwelcome by the receiver (Decker, 1997). It is about the abuse of power and status rather then merely being about sex per se and has to be viewed in the context of institutionalized male power.

In 1980, the Equal Employment Opportunity Commission (EEOC) specified that sexual harassment is a kind of sex discrimination under Title VII of the Civil Rights Act of 1964:

“ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term

or condition of an individual’s employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment (Zack, 2000).”

As is clear from this definition, a wide range of communicative behaviors can constitute sexual harassment, although many women and men see only serious offenses as harassment. However, a person need not suffer severe psychological damage or nextensive adverse work outcomes to be a victim of sexual harassment. It is enough to believe that sexual comments or behaviors create a work environment that is clearly hostile. Thus, understanding and recognizing sexual harassment in the workplace is rarely clear-cut. This is because sexual harassment is not a purely objective phenomenon but one based on an individual’s perception of another’s behavior, which may be affected by any of a number of factors that make up a situational context. That is, as a company policy, one person may be offended by *girlie* calendars hanging on the wall, another might not even notice them. What one person sees as an innocent flirtation, another may construe as sexual harassment (Hallock, 2001).

The Age Discrimination in Employment Act

During the last twenty years, diverse studies have been fulfilled to appraise the relationship between age, experience, and performance. Results were at variance significantly across the studies. At any rate, employers likewise

cannot discriminate on the basis of age by hiring younger employees because they are younger, paying an older person less because the employee is older, or terminating an older employee before a younger employee because the older employee is older. The Age Discrimination in Employment Act, also known as the ADEA, is geared toward protecting individuals over the age of 40 against employment discrimination. The ADEA does say, however, that it is not unlawful for you to observe the terms of a bona fide seniority system (Blake, 1991). Experts are predicting wide-ranging changes to the whole *culture* of workplaces: from advertising jobs and interviewing procedures to the way people conduct themselves in the office.

Lately, measures to improve job opportunities include efforts to reduce unemployment. Under the federal Job Training Partnership Act, state and local governments receive federal funds to provide job training for unskilled, disadvantaged youths and for needy adults. The Job Corps furnishes job training for unemployed people between the ages of 16 and 22. As for the senior members of the workforce, it is not proposed or even implied that retirement is not an issue but there is more to the retirement law than reaching a specified age. Unless an employer can establish a substantial basis for believing that all or nearly all employees above an age lack the qualifications required for the position, the age selected for mandatory retirement less than 70 must be an age at which it is highly impractical for the employer to assure by individual testing that its employees will have the necessary qualifications for the job (Zack, 2000).

Americans with Disabilities Act

Most everyone in the United States and in many other countries is familiar with the international symbol of access for people with disabilities of a person in a wheelchair. Persistent political efforts by individuals with disabilities, their families, and other advocates have resulted in legislation requiring increased access for those with disabilities. One of the most important pieces of civil rights legislation for people with disabilities is Title V of the Rehabilitation Act of 1973 (Zack, 2000). Under this act,

1. Federal agencies must have affirmative action programs to hire and promote qualified people with disabilities.
2. The Architectural and Transportation Barriers Compliance Board was established to enforce the 1968 Architectural Barriers Act. Its activities have been expanded to include communication barriers.
3. All businesses, universities, foundations, and other institutions holding contracts with the U. S. government must have affirmative action programs to hire and promote qualified people with disabilities.
4. Discrimination against qualified people with disabilities in all public and private institutions receiving federal assistance is prohibited.

This act was the first to provide specific protections for people with disabilities in programs receiving federal funding. But no piece of legislation, court decision, or administrative ruling holds more significance for people with disabilities than the Americans with Disabilities Act, passed with overwhelming support by Congress in 1990 and with strong backing from the Bush administration. The definition of disability in this bill is the same as that

in parts of the Rehabilitation Act and in amendments to the Fair Housing Act (Gleason, 1997).

An individual with a disability is one who has a “ physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment” (Chambers and Wedel, 2005). The act goes much farther in requiring private sector compliance than any previous legislation.

The act also broadened prohibitions on employment discrimination for businesses with fifteen or more employees (including Congress but not federal agencies). It includes bans against discrimination in hiring, firing, compensation, advancement, and training, and also requires employers to make *reasonable accommodations* for those with disabilities unless this would cause *undue hardship* . Reasonable accommodations may include providing interpreters or readers, modifying buildings, adjusting work schedules, and purchasing needed devices (Zack, 2000).

Undue hardship is defined as “ requiring significant expense” (Chambers and Wedel, 2005). Just how far must employers go to make reasonable efforts and how much is a significant expense? According to the U. S. Chamber of Commerce, “ this language is an invitation to litigation,” and it has indeed spawned many lawsuits (Chambers and Wedel, 2005). Some social welfare theorists complained that the Americans with Disabilities Act was “ legislation on the cheap, mandating new responsibilities for private employers without offering any new financial assistance either to the

employers or to the disabled people themselves” (Chambers and Wedel, 2005).

Most of us admire people with severe disabilities who succeed against tremendous odds, even if they don’t want to be viewed in this way and feel they are just doing what they have to do. We may be perplexed by the Social Security Administration’s decisions to award disability benefits to one individual and to deny another with a seemingly greater disability. No definition written on paper can really capture the abilities or limitations of a person with a disability, but disability determination personnel are expected to weigh the evidence and make these decisions everyday about individuals whom they generally have never seen (Zack, 2000).

In his extensive considerations of disability policy, historian Edward Berkowitz claims that the structure of financial assistance programs (including those administered by the Veterans administration for service-related disabilities) encourages people to drop out of the workforce rather than seek rehabilitation. From the start, there was controversy over whether SSDI would stifle rehabilitation (Zack, 2000).

The goals of the different waves of disability policy (financial assistance, rehabilitation programs, and civil rights) are often at odds with each other. In fact, the growth of SSDI and SSI seems paradoxical given medical, technological, and civil rights advances that are supposed ti make it easier for people with disabilities to function in the workplace. Discrimination against people with disabilities explains some of the irony, but the structure

of the financial assistance programs also factors into the equation (Zack, 2000).

The Family and Medical Leave Act

On entering office in 1993, President Bill Clinton demonstrated his concern for American families by signing the Family and Medical Leave Act. The Act provides 12 weeks of unpaid leave to workers when a new baby arrives or there is a family illness. This Act allows greater flexibility to many workers who need time away from the job to care for a parent too (Hallock, 2001).

President Bush never signed this bill, because he claimed it would stymie business. But the moral majority has been clearly upset by President Clinton’s strong support of abortion rights and by his support of gay rights (Zack, 2000).

However, the law exempts businesses with less than fifty workers (thereby excluding half the workforce and the vast majority of businesses), and covered businesses are not required to provide leave to upper-echelon employees. A recent United Nations study found that the U. S. had the least generous maternity benefits of all industrialized countries and that of the 152 countries studies, only six (the U. S., Australia, New Zealand, Lesotho, Swaziland, and Papua New Guinea) have no paid leave requirement (Zack, 2000).

The country’s discussion of family values in the context of political life has taken on broader meaning as the president’s extramarital behavior (and that

of some Republican Congress members) has dominated the media. Although the religious right has been rocked from time to time by the scandals of some of its own high profile televangelists, the president’s admitted marital infidelity has given the movement more grist for its mill. Americans have spent a good deal of time contemplating the relationship between personal values and public life (Hallock, 2001).

Conclusion

However, because of the favor that the anti-discrimination laws give the employees, there are times when they do well out of these in dishonest means. Take, for example, the case of a 16-employee machine shop in a Western state. One of its employees, a man approaching retirement age, volunteered in front of witnesses to be laid off if layoffs became necessary. Eventually, business slowed to the point that the employee had to switch jobs in the plant or be laid off, and, the owner says, the employee chose to be laid off. Two years later the laid-off employee sued, charging age discrimination. In 1997, after a year and a half of litigation, the company settled, paying a total of $140, 000 in damages and attorneys’ fees. The owner says that he believed he had no choice. His accountant told him that if he settled for that much, his costs would be no more than they would be if the case went to trial and he won, and there was the very real danger that a jury would find for the plaintiff and give him a large award. But the owner chose to protect the company and the jobs of his people that he cleared up beyond the courts (Goleman, 2001).

Employment decisions, therefore, are forced to be based on business necessity, not on an employee’s or applicant’s membership in a protected class. Biases still having it, there are exceptions though to statutory anti-discrimination programs that allow one to require that an applicant be a certain race, color, religion, or gender. These exceptions are known as bona fide occupational qualifications (BFOQs). BFOQs are rarely used because they are exceedingly difficult to justify. Areas most affected by statutory anti-discrimination programs include job advertisements, job qualifications, hiring decisions, job applications, interviews, discipline, and termination (Burk, 2000).

References

BOOK: Blake, S. (1991). “ Managing Cultural Diversity: Implications for Organizational Effectiveness.” Academy of Management Executive, pp. 35-37, 89-93. New York: Bantam Books.

BOOK: Burk, Martha. (2000). Cult of Power: Sex Discrimination in Corporate America and What Can Be Done About It . Utah: Beacon Press.

BOOK: Chambers, Donald and Kenneth Wedel. (2005). Social Policy and Social Programs: A Method for the Practical Public Policy Analyst, 4 th edition . Pearson Publishing.

BOOK: Decker, P. (1997). Sexual Harassment In Health Care: A Major Productivity Problem . Health Care Supervisor.

BOOK: Gleason, Sandra E. (1997). Workplace Dispute Resolution: Directions for the 21st Century (pp. 5-9). East Lansing, Mich.: Michigan State University Press.

BOOK: Goleman, Daniel. (2001). Business: The Ultimate Resource . Maine: Perseus Publishing.

BOOK: Hallock, Kevin F. (2001). The Gender Gap In Top Corporate Jobs . Mass.: Random House.

JOURNAL (Volume 11): Madison, J. & Minichicello, V. (2001). Sexual Harassment In Corporate-Based Harassers And Rationalizations Of Sex-Based Harassment Behavior , Vol. 11. JONA The Journal of Nursing Administration.

JOURNAL (Volume 11): Zack, Arnold M. (2000). Employee Rights and Employment Policies (pp. 50-64), Vol. 11. Horsham, Penn.: LRP Publications.