

Example of discrimination in the workplace critical thinking

[Sociology](#), [Racism](#)



Introduction

Common types of discrimination at workplace considered illegal are discrimination based on race, ethnicity, gender (sex), age, religion, disability, genetic information, pregnancy and sexual harassment. Sexual orientation is another form of discrimination. Discrimination refers to less favorable treatment of an employee compared to others because of the said predispositions. The U. S. Department of Commerce refers to these types of discriminations as “REGARDS” denoting race, ethnicity, gender, age, religion, disability and sexual orientation in its report of Best Practices in Achieving Workforce Diversity. These dimensions do not cover lack of intelligence, height or physical attractiveness though it is now illegal to discriminate on the basis of genetic information of employees. Discrimination by itself is not illegal since an employer is justified in discriminating between two applicants based on their intelligence scores. Another point is that it is age discrimination to retire an employee due to old age but by actually informing the employee of downsizing as an excuse. Thus, if a younger worker is employed to replace him, the old age employee can sue his employer for age discrimination. Mostly it is discriminatory if employees are dismissed for genuine reasons such as inefficiency but telling them a different reason as an excuse. Even if an employee is dismissed without any reason, it is discrimination if the employer has lied. Thus, thumb rule is the employer should inform the real genuine justifiable reason for having to discriminate. Employment discrimination law is thus based on the principles that 1) person’s status cannot be changed, his status does not affect his job performance, and 3) he is not liked by the employer. Other types of wrongful

termination for reasons of whistle blowing, public policy violations, breach of contract etc are treated as discrimination at workplace .

Race: According to Dr Laurence J. Peter, author of The Peter Principle, “ racial superiority is a mere figment of imagination”. Being colorblind is wise since the U. S. Supreme Court in its 2009 decision in Ricci V DeStepbano, held it illegal for not promoting white firefighters who scored better than black firefighters in order to achieve greater diversity in workplace. Therefore, race or skin color should never be a ground except in situations mentioned below. Race and color are used interchangeably to mean the same. They also include ethnicity, national origin and ancestry and hence the term “ REGARDS” has some overlapping situations. Title VII of the Civil Rights Act 1964 states

“ it shall be an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin; or limit, segregate, or classify his employees or applicants for employment in any way that would deprive to tend to deprive any individual of employment or opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin” (Civil Rights Act 1964)

Civil Rights Act 1866 as amended by Civil Rights Act of 1991 states that

“ all persons . shall have the same right. To make and enforce contracts. as is enjoyed by white citizens” (Civil Rights Act 1991).

It follows therefore that every citizen has equal employment rights as white citizens. Today's US has no separate black and white society that it is difficult to say to tell the ancestors of the present generation. Equal Employment Opportunity Commission (EEOC) mandates all employers whether small or big to inform the government the racial composition of his workforce on periodical basis. Color blindness does not mean that all people are treated as white. But being color-blind is to remain uninfluenced by whatever race, color, an employee or applicant may be.

Employers are liable for damages for discrimination in the workplace. In *Harris v Forklift Systems Inc (1993)* involves decision to award damages to be paid by employer to employee for psychological injuries suffered by employee due to discrimination. The decision is significant in that there is no need to prove psychological injuries for establishing sexual harassment. It is argued that discrimination in the workplace has been "less as a blanket policy or discrete, identifiable decision than as an obvious hindrance to opportunity and advancement. It has crept into everyday evaluations of job performance thus constantly lurking behind the most honest intentions of equality thus "perpetuating the injustice" the laws are expected to eliminate. Kreiger narrates the case of a young Salvadoran worker who was the only nonwhite employee at a box manufacturing company in California Central Valley. He was not given promotion and later dismissed following consistent oral and written reprimands to justify his dismissal. All his achievements were either ignored or attributed to others' efforts. The worker was convinced he was being systematically overlooked or explained away as there were subtle factors such as the way they looked at him, tone and tenor

of their voice representative of bias which he could not prove but was aware of. But in discovery differential treatment emerged from the time records and personnel files obtained. Under the “ disparate treatment” theory first established in McDonnell Douglas Corp v Green, the worker had to prove that company manager who fired him was a racist and a liar for purposefully treating him differently because of his ethnicity . There are documented evidences of shift in the nature of discrimination There are even arguments critiquing the efficiency of Title VII document to show “ more complex and unconscious form of discrimination”. Title VII which prohibits employment discrimination has not defined “ discriminate”. Originally when discrimination was obvious, employers excluded minorities and women from specific jobs. When such practices became less socially acceptable , blatant discriminatory exclusion started decreasing significantly. Though minorities and women have since entered the workforce, disparities in wages and advancement still exist. They are well documented. In 1995, only 1 % of top-level executives in Fortune 1000 industrial and 500 service enterprise were black. While whites made of 43 % of the workforce, they dominated senior management positions by about 95 to 97 %. Women managers as good as other male counterparts received lesser wages. These subtle forms of racism continuing even today are attributed to what social scientist call as “ aversive racism” after their twenty years of research. According to the scientists Dovidio and Gaertner, aversive racism is subtle but unintentional form of bias that many white Americans show in spite their strong egalitarian values and believe they are not being prejudicial. Aversive racists do not wish to discriminate and believe in equal employment opportunity. The scientists state “ aversive

racism is rooted in normal, often adaptive, psychological process involving cognitive categorization, the desire to maintain power, and a largely automatic internalization of societal values and beliefs” (p97) . It is argued that aversive racists conduct themselves without being conscious of negative feelings while they are able to justify their action in non-racial terms. Prof Charles R. Lawrence, a legal scholar states that discrimination in today’s world has resulted from “ subconscious instincts and motivations rather than conscious, deliberate decisions to exclude or to harm”. His observation is not exclusively from employment context but on broader perspective..

Krieger argues that when a woman who is aggressive and hence denied promotion is justified by the decision maker that women should be demure and soft-spoken or women should rather spend their time with families than take up extensive job-related travels. Sometimes promotion is denied for being too soft-spoken and this too is discrimination based on sex but the decision maker’s cognition about women has resulted in his perception and less favorable evaluation of the candidate though he may not aware of the influence of his cognition in his decision , .

There are also evidences for modern forms of discrimination resulting from group favoritism and out-group favoritism . It stems from the fundamental desire of people to see them in positive light and enhance their self-esteem by favoring people of their own group. Thus, the discrimination has become complex as a human process without being aware of conscious motivation to exclude based on race or sex.

Further, the subtle forms of discrimination in workplace has crept in due to

change in the nature of employment relationship and workplace structure as can be seen from the ongoing reorganization of American workplace. Since 1980s, production jobs moved to low wage countries and American workplaces were dominated by jobs related to information technology, knowledge, and service as a result of which companies began looking for new ways of being competitive. Temporary agencies emerged and number of part-time employees and contractors increased. This brought about flattening hierarchies and blurring job boundaries and work allocation on team basis along with flexible method of evaluation. There has been increase in job changes since 1970s and there is every reason to believe that employment relationship has become so fluid that vertical relationship is no longer the norm for success. It has been estimated that in 1996 at least 25 % of all Americans were engaged in horizontally characterized work structures. Work is more likely to be achieved through teamwork. As job evaluation has become more decentralized , subjective and contextual and redefined in terms of skill sets, customer satisfaction, evaluation has become more amorphous. Many companies have moved to ranking their employees from best to worst or ranking them on a bell curve based on which pay and lay off decisions are taken by them.

Viewed from the human rights policy, it is an employer's duty to create a respectful and discrimination-free workplace . The employer's policy in this connection should take into account of union's role in different complaint situations. The human rights policy in workplace aimed at discrimination-free workplace should not only apply to employees but also non-employees, customers, suppliers, contractors, volunteers who happen to inter-act with

the employer. The employer has to make a human rights policy statement expressing corporate commitment to providing a workplace free from discrimination and harassment. The policy should spell out what the guiding laws are. Definition of discrimination and descriptions of inappropriate behavior should be mentioned. There should be an expression of employees rights and responsibilities such as right to discrimination free workplace. Employees' responsibility to treat other employees with respect. And who should be held accountable or explain when discrimination occurs. Employers are expected to act quickly to the first signs of a problem of discrimination related nature. Common forms of disciplinary action should include a written reprimand, suspension of the erring employee with or without pay. Transfer of the erring employee if it is felt the concerned people cannot work together. It can also include demotion. This is an internal action which may not suffice to satisfy an employer's liability if the employer himself is guilty in which case applicable laws should apply to award damages or reinstatement if the employee has been dismissed sequel to discrimination.

Conclusion

It would seem therefore that discrimination in workplace has now become automatic without being intentional due to changed working atmosphere and employers are becoming less and less responsible for showing bias in the workplace. However, these discriminations cannot escape being noticed in lower level jobs for mass production that includes productivity in service sector also. With the newer systems of working style, anti-discrimination

measures must aim at ways in which employers' choices influence the working of discriminatory bias resulting in discriminatory treatment on the basis of protected characteristics.

References

Dovidio, J. F., & Gaertner, S. L. (1997). *Discrimination and Racism: Historical Trends and Contemporary Approaches* in James M Jones *Prejudice and Racism*. Addison-Wesley Pub. Co.

Gaertner, S. L. (1997). *Does White Racism Necessarily Mean Antiblackness? Aversive Racism and Prowhiteness in OFF WHITE: Readings on Race, Power, and Society* .

Green, T. K. (2003). *Discrimination in Workplace Dynamics: Toward a Structural Account of Disparate Treatment Theory*. *Harvard Civil Rights-Civil Liberties Law Review* , 38, 91-157.

Krieger, L. H. (1995). *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*. *Stanford Law Review* , 47 (6), 1161.

Robinson, D. A. (2013). *Workplace Discrimination: Prevention Manual*. IN: Archway Publishing.

The Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241, enacted July 2, 1964)

The Civil Rights Act of 1991, Title I, US Equal Employment Opportunity Commission < <http://www.eeoc.gov/laws/statutes/cra-1991.cfm> >