Introduction their job applications rejected by potential

ASSIGN BUSTER

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Introduction

Discriminating individuals at the workplace on the basis of their age, creed, gender, disability, race, or national origin is illegal. The 1960s are regarded as ‘ turbulent times’ in as far as the issue of discrimination at the workplace is concerned. In order to overcome this vice, it became necessary to implement certain legislations. Consequently, dramatic changes were made to help curb discrimination at the workplace. Businesses today can now enjoy more diverse and larger pools of employees because they are increasingly adapting procedures and policies that ensure that the hiring and firing processes of employees does not take place along racial, gender, age, disability, nationality, or creed lines (Hernandez, 2009). Legislation to help curb workplace discrimination goes as far back as during the medieval times in Europe, when the feudal systems were still popular.

This was also the time when slavery was enshrined in the European culture. It was also a period of child labor and sweatshops, not to mention indentured servitude. Owing to the various forms of discrimination that employees were exposed to at the workplace, they therefore demanded for legislation to help curb the trend (Hernandez, 2009).

In the United States, legislation took place during the 1960s, a period that is popularly known as ‘ the turbulent 1960s’. There is a need to explore the various legislations regarding discrimination in the workplace and how they have impacted on the welfare of employees.

Equal Pay Act (1963)

The legislation of the Equal Pay Act in 1963 ensured that women received equal pay to that of their male counterparts.

In addition, the Equal Pay Act also allowed minority groups to enjoy equal pay just like their fellow employees from the other larger groups (US Equal Employment Opportunity Commission, n. d.). During this time, there was also discrimination with regard to job advertisements. For example, employment ads would list job descriptions along the gender divide. As a result, there would be ‘ jobs for men’. As can be expected, such jobs were better paying in comparison with similar jobs that targeted women.

This was the case even when the two jobs had more or less the same description, the only difference being the gender. The requirement of the Equal Pay Act is that one sex cannot have their wages lowered as a way of preventing an increase on the wages of another sex. Nonetheless, a number

of employers are still embroiled in a heated debate on what exactly constitutes equal pay.

Accordingly, several employers have even gone to the extent of altering job titles and changing some of the peripheral requirements associated with a given job title in order to ensure that men earn more than their female counterparts (US Equal Employment Opportunity Commission, n. d.). Even during the 1970s, sexual division was very evident in newspapers ads, such as the ‘ Help Wanted’ ads. As such, it became increasingly difficult at the time to establish whether or not the requirements were similar.

In recent decades however, women have continued to enjoy equality at the workplace. Although the Equal Pay Act was faced with numerous problems during the initial implementation stages, on the other hand, it has over the years impacted positively on women’s wages. Although cases of disparity in ages between men and women still remains, nevertheless, the gap that existed during the 1950s has considerably narrowed.

The 1964 Civil Rights Act: Title VII

Prior to the passing of the 1964 Civil Rights Act, employees would have their job applications rejected by potential employers on grounds of their race, gender, religion, or national origin. An employee seeking for promotion at the workplace would often have his/her request turned down on the basis of the aforementioned factors as well. In addition, employers would decide not to award a certain assignment to a specific employee because he/she was white, black, male, female, a Christian, or a Muslim.

This was all illegal. The passing of the 1964 Civil Rights Act was especially a welcome respite for the African-Americans who had hitherto undergone through untold misery and discrimination at the workplace mainly due to the color of their skin. The passing of the 1964 Civil Rights Act was triggered by nationwide demonstrations, although these were more prominent in the South (CongressLink, 2006).

This particular legislation also encompassed Title VII, a wide scale prohibition of workplace discrimination on the basis of sex, race, national origin, color, and religion. Save for several exceptions, the law was for the most part all-inclusive and was very instrumental in helping to amend past issues. With time, human resource department in different organization across the country embraced Title VII and with time, it became the standard operating procedure. However, there were evident gaps on the issue of disability and age and as time went by, the two issues were brought to the forefront. However, with the passing of the 1964 Civil Rights Act by Congress, it became illegal for employers to discriminate employees on the basis of their religion, race, national origin, color, and sex (CongressLink, 2006).

Through this law, employees within an organization are protected from possible discrimination by their employers. In addition, the law also protects job applicants. Further, the law requires that all organizations with over 15 employees abide by the established rules under Title V11 of the 1964 Civil Rights Act. In addition, the law was also instrumental in the establishment of the EEOC (Equal Employment Opportunity Commission), a body charged with the responsibility of implementing this particular law, along with other laws that seeks to protect employees against discrimination at the workplace

(CongressLink, 2006). One might then wonder, how exactly does the 1964 Civil Rights Act protect an employee against discrimination by an employer at the workplace? According to the EEOC, no employer should recruit or fire an employee based on one’s race, gender or national origin, gender. Accordingly, during the process of recruiting candidates for a job vacancy for example, an employer is prohibited from discriminating the candidates on the basis of the aforementioned factors.

The same case applies in when testing the applicants, or while advertising for a given position within the organization. Further, the EEOC stipulates that an employer cannot use a worker’s race, religion, color, gender, or national origin as the yardstick with which to fire or promote him/her. The EEOC also requires employers to desist from using this information at a time when they are involved in the task of allocating duties to workers. In addition employers are not allowed to fringe benefit or retirement leave based on one’s gender, race or religion.

Disparate Treatment vs. Disparate Impact

A disparate treatment occurs when there is evidence to suggest that a member of a certain protected groups has been seen to have received less favorable treatment in comparison to members of another protected group under otherwise similar circumstances based on an impermissible criterion as spelt out by Title VII (Peffer 2009).

The main issue that needs to be addressed here is the motivation behind the intentions of an employer that is, whether or not an employer executed these actions with the intention of discriminating an employee. Nonetheless,

proof of evidence is normally required and in this case, it could be a case of circumstantial evidence, if not indirect/direct evidence. Disparate treatment symbolizes the simplest form of illegal discrimination. A very fundamental question that could find use in testing for disparate treatment is whether the employment decision under investigation would be any different if the employee’s color, gender, race, national origin, religion, disability, and age was different? Title VII prohibits employers from treating a group of employees differently in comparison with the treatment gotten by other employees on grounds that they belong to a different protected class. The same case applies to job applicants (Peffer 2009).

In disparate treatment, the main issue is to decide if the actions of an employer were motivated by the intention to discriminate, and such proof can be obtained through circumstantial or direct evidence. In a case whereby disparate treatment is involved, often times, the claim of the employee is that he/she was treated differently by their employer, in comparison with the other employees under the same working conditions. For instance, Naomi and Paul may skip work one day and the employer decided to fire Naomi and not Paul. In case there is compelling evidence to support the claim that indeed, Naomi was fired because she is female, at that point, this case becomes a form of disparate treatment, on the basis of sex.

It is therefore a violation of Title VII of the Civil Rights Act. On the other hand, if Naomi was fired based on her deteriorating attendance record, then the case becomes a disparate treatment, on the basis of difference in attendance. From such a perceptive, the firing is lawful.

In a case whereby a disparate impact is involved, the employer is deemed to have a practice whose impact is greater on one group in comparison with another. For instance, the employer may fail to hire janitors who lack a high school diploma. Such a decision could impact greatly on the entire African Americans, in comparison with the whites.

Title VII forbids employers from utilizing an employment practice that is facially neutral and in such a manner as to impact negatively on certain members of a protected class. This is the case even if the employer in question is not acting under the motivation of discriminatory intent. Occasionally, disparate impact is labeled unintentional discrimination. Violations of the law under disparate impact could occur due to an intentional error committed by an employer. The underlying principle of disparate impact is evidence that a number of employment decisions, policies or practices impact negatively on a certain class of employee more than it does a different class (Peffer 2009). There is need for employers who are still stuck with different policies and practices in arriving as work-related decisions to be completely wary of any form of statistical disparity on the basis of national origin, sex, or race.

Quid ProQuo/Hostile Working environment

There are two forms of sexual harassment at the workplace.

On the one hand we have sexually harassment acts in which a consideration is involved, better known as “ quid pro quo” (translated, this means something for something. On the other hand, there are acts of sexual harassment that falls under a “ hostile environment”. The two forms of

sexually harassment are illegal at the workplace. In the first forms of sexual harassment (“ quid pro quo”), by and large, persons performing the act are usually those in power, that is, a manger or supervision (Hernandez, 2009).

On the other hand, in “ quid pro quo”, the victim often feels that she or he needs to respond to or perform a sexual advance with the intention of gaining something in return. There is need to appreciate the fact that sexual advance acts should not occur at the workplace. In addition, in order that “ quid pro quo” may apply, victims are not obligated to act or respond to sexual advances. The “ hostile environment” requires the victim to demonstrate the offender’s pattern on conduct. For the most part, the “ hostile environment” form of sexual harassment is usually underreported at the workplace. This is because a majority of the victims are least prepared in as far as the documentation of exercise of the events of sexual harassment is concerned. In order to qualify as sexual harassment, an established pattern needs to be in place (Hernandez, 2009). In addition, it is important to demonstrate that the pattern in question has resulted in a deterioration of the victim’s work setting.

By the same extension, the Supreme Court requires that a form of physical or invasive event must be involved in order that an act of sexual may be categorized as such. Sexual harassment contravenes section 703 of Title VII and as such, it is punishable by law. An employer could be held liable for sexual harassment at the workplace in case there is enough evidence to prove that indeed, he or she has conducted this act. Depending on the nature of the sexual harassment, the perpetrator could be imprisoned or fined, or both.

Conclusion

Prior to the 1960s, discrimination at the workplace on the bass of gender, race, national origin, age creed and disability was quite rampant in the United States. The ‘ turbulent’ 1960s therefore was an important era in the history of the United States because it led to the implementation of various laws aimed at reducing incidences of discrimination at the workplace.

This implementation started with the 1963 Equal Pay Act. Under this Act, women would now enjoy equal pay in comparison with their male counterparts. Although the new law made slow progress, nonetheless, it was a major milestone for women. In 1964, Congress passed the Civil Rights Act. According to Title VII of the United States’ Civil Rights Act, employers are forbidden from using race, religion, color, gender and national origin as a basis for discriminating employees at the workplace. As such, perpetrators of this law are punishable by law. The same case applies to job seekers. This is referred to as disparate treatment.

Title VII also takes into account the issue of disparate impact. The underlying principle of disparate impact is evidence that a number of employment decisions, policies or practices impact negatively on a certain class of employee more than it does a different class. The law also prohibits any of the two forms of sexual harassment at the workplace (Quid ProQuo and hostile working environment). Since it is a violation of the law, there is need for employers to put in place mechanism that shall minimize the occurrences of any form of discrimination at the workplace.

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