The benefits and detriments for affirmative action and employment at will

ASSIGN
BUSTER

Introduction

Affirmative action and employment at will are topics of legitimate concern, especially for employers and employees. Previously, but more imperatively, managers and companies should be mindful of the legal justifications and ramifications that may happen if they neglect to properly understand the importance of discrimination in the workplace. Albeit union affiliations, Congress did not have a hand in many cases for discrimination, until 1963, where Martin Luther King Jr. led the civil rights March on Washington. This march encompassed people of all color who peacefully marched to gain and enact proper legislation and to launch job equality for everyone (" Civil Rights Movement", 2019). Previously, employers could discriminate based on age, gender, race, disabilities, religion, and any other categorical reason possible. Businesses were not the only face of discrimination, as other institutions also used these lines of reasoning for not accepting or hiring people.

Beginning with President John F. Kennedy in 1961, an Executive Order was signed to introduce affirmative action law in the workplace and originally only applied to federal jobs; however, 38 states recognized the potential impact and passed laws of their own to avoid litigation under the federal equal employment statute (Kurtlus, 2013). Affirmative action deals with people that have not been hired or even considered for employment due to a plethora of personal characteristics; employment at will is a completely different logistic, as it is under the pretext that employees can terminate their employment with said employer, while the employer can terminate said employee at any time. Although this law comes with some exceptions for

employers that fire employees for reasons such as refusing to violate a law or exercising a legal right (Mayer, Warner, Siedel, Lieberman & Martina, n. d.). Lastly, there may be positive solutions and reasonings behind affirmative action and employment at will and there are also negative connotations.

The Benefits of Affirmative Action Cases

Affirmative action can be an asset for many reasons inside the confines of the workplace and outside those walls. It was meant to bring people together not tear them apart due to inequality calculations. Within company's and a universities confines, it challenges and defines unity, diversity, strength, purpose, and the ability for those to be treated fairly and with respect. The first official case for affirmative action came about in 1974 where Marco DeFunis, a white man was denied admission to the University of Washington Law School due to the fact at that time they were only accepting people who were minorities and less qualified (Kramer, 2019). However, not all cases are within university boundaries. In fact, affirmative action happens within the scope of the business context.

In the late 1990's a new form of discrimination was recognized. Title VII of the Civil Rights Act was descriptive but originally lacked the word sex as a gregarious form of wording in the pretext of the discrimination adage (Bible, 2006). There have been many forms of sexual discrimination that range from people not being hired due to their actual gender to those that have been hired and harassed due to the sexual orientation preference or gender traits (Bible). Many people have paved the way for the Civil Rights Act to be amended or firmly upheld. One such case was Price Waterhouse v. Hopkins.

Hopkins was a senior manager at Price Waterhouse and was asked under pretense of securing more contracts than that of any other coworkers to be a partner with the company; nevertheless, partners praised her for being outstanding as a professional and “ strong character, independence and integrity” (Bible). Consequently, her partners also found that she was too harsh, over compensated for being a woman, used foul language, and would make partner easier if she enrolled in charm school, would dress, and appear more feminine in nature (Bible). All in all, she held out for a year with the company where she was denied for partnership and ultimately resigned; later she would sue for sexual discrimination (Bible). Hopkins won her case where the court found that she was unlawfully discriminated against due to partners comments that “ resulted from sex stereotyping” (Bible). Without a multitude of cases being filed and taken seriously under Title VII, the landscape for everyone might have a much different appearance.

Detriments to Affirmative Action

For every positive there are always negatives associated with laws or concepts in support of affirmative action. One such disadvantage is that of a created stigma for those that are hired (Quain, 2019). This signifies that companies may be viewed for hiring woman, minorities, or other unqualified people to justify a certain ratio or balance instead of hiring based on the persons true qualifications (Quain). If this were to happen, it can actually cause other employees or students to feel that they were not qualified and were excepted or hired based on their gender or cultural background. The second disadvantage is that of reversed discrimination, where a specific dominant group is scrutinized or ostracized such as white males (Quain).

Other hindrances to this law would be companies that hire or fire applicants for those of a younger statute, rejecting an applicant based on race over another qualified applicant, harassment in the workplace due to culture diversity, or not allowing leave after the birth of a child (“ Reverse Discrimination | UpCounsel 2019”, n. d.). One such case against creating a stigma or ratio within the workplace was that of Cynthia Williams that won $850, 000 in damages due to her employer stating she was not a team player and was fired (Goldsmith, n. d.). The jury found that indeed there was collusion for “ setting up a demographic situation” at First Cash and awarded punitive damages of $650, 000 to deter future issues (Goldsmith). The case of General Electric vs. Gilbert was over tuned by Congress statin that if a company did not have benefits that were outside those of a standard disability, then women wanting to take time off after having a child and their job reserved was considered discrimination based on sex (Nowlin & Sullivan, 1988). This specific case enacted the Pregnancy Discrimination act that was later added under Civil Rights Act in 1978 (Nowlin & Sullivan).

Benefits of Employment At Will

As there have been advantages for affirmative action, there are also benefits to employment at will in the workplace. Employment at will under common law refers to the employer being able to fire an employee for any reason without notice (“ At-Will Employee FAQ’s – FindLaw”, n. d.). For individuals or companies there are benefits to being an at will employee or employer. Examples include small business owners that might anticipate fluctuating requirements or simply do not want to hire someone who may be a poor fit (Lovering, n. d.). Employees also have the right to leave a job without notice

and have the ability to regain employment with another entity quickly. This type of employment leaves both the employee and the employer without legal ramifications, along as no documents have been signed such as an employment contract (Lovering).

Two specific cases rules in favor of the business because it has been determined that the employees were indeed at will employees. The case of Franco v. Liposcience, Inc. was brought to court when Franco, Vice President of marketing was terminated and claimed he had a contract with Liposcience (“ FindLaw’s Court of Appeals of North Carolina case and opinions.”, 2009). The court found that Lipscience, Inc. was not at fault and Franco was considered an at will employee (“ FindLaw’s Court”). Another case of Francis v. National Accrediting Commission of Career Arts & Sciences, Inc. was filed due to Francis receiving threats at work, filing a restraining order, and then after the restraining order was issued to the other coworker, was terminated immediately for not “ fitting the vision of the organization” (“ FindLaw’s Supreme Court of Virginia case and opinions.”, 2017). While this may seem extreme on the employee’s behalf, the company was justified as Francis was considered an at will employee.

References

- At-Will Employee FAQ’s – FindLaw. Retrieved from https://employment. findlaw. com/hiring-process/at-will-employee-faq-s. html
- Bible, J. (2006). Disorder in the Courts: Proving Same-Sex Sex Discrimination in Title VII Cases Via “ Gender Stereotyping.” *Employee Relations Law Journal* , *31* (4), 42–72. Retrieved from http://search. proquest. com/docview/194226628/

- Civil Rights Movement. (2019). Retrieved fromhttps://www. history. com/topics/black-history/civil-rights-movement
- Coate, S., & Loury, G. C. (1993). Will affirmative-action policies eliminate negative stereotypes? *The American Economic Review, 83* (5), 1220. Retrieved fromhttps://search-proquest-com. ezproxy2. apus. edu/docview/233030697? accountid= 8289
- FindLaw’s Court of Appeals of North Carolina case and opinions. (2009). Retrieved fromhttps://caselaw. findlaw. com/nc-court-of-appeals/1381463. html
- FindLaw’s Supreme Court of Virginia case and opinions. (2017). Retrieved from https://caselaw. findlaw. com/va-supreme-court/1850239. html
- Goldsmith, L. $855, 000 Jury Verdict Is Upheld In Race Discrimination Case Is Upheld; Retail Chain Was Guilty of “ Setting Up a Demographic Situation” By Denying Black Managers Assignments to Stores in White Areas. Retrieved from http://www. goldsmithfirm. com/resources/articles/article-10/
- Kramer, M. (2019). A Timeline of Key Supreme Court Cases on Affirmative Action. Retrieved from https://www. nytimes. com/2019/03/30/us/affirmative-action-supreme-court. html
- Kurtlus, F. (2013). The Impact of Eliminating Affirmative Action on Minority and Female Employment: A Natural Experiment Approach Using State-Level Affirmative Action Laws and EEO-4 Data. Retrieved from http://gap. hks. harvard. edu/impact-eliminating-affirmative-action-minority-and-female-employment-natural-experiment-approach

- Lawless, L. (2016). Two Recent Federal Court Decisions Explore the Limits of the At-Will Employment Doctrine | Employment Law Worldview. Retrieved from https://www. employmentlawworldview. com/two-recent-federal-court-decisions-explore-the-limits-of-the-at-will-employment-doctrine/
- Lovering, C. Good Things About At-Will Employment. Retrieved from https://smallbusiness. chron. com/good-things-atwill-employment-34594. html
- Mayer, D., Warner, D., Siedel, G., Lieberman, J., & Martina, A. *Business Law and the Legal Environment* . Retrieved fromhttps://resources. saylor. org/wwwresources/archived/site/textbooks/Business%20Law%20and%20the%20Legal%20Environment. pdf
- Nowlin, W., & Sullivan, G. (1988). Legal Trends In Affirmative Action And Employee Rights. *Industrial Management* , *30* (1), 26. Retrieved fromhttp://search. proquest. com/docview/211588057/
- Quain, S. (2019). Advantages and Disadvantages of Affirmative Action in the Workplace. Retrieved from https://smallbusiness. chron. com/advantages-disadvantages-affirmative-action-workplace-18141. html
- Reverse Discrimination | UpCounsel 2019. Retrieved from https://www. upcounsel. com/reverse-discrimination