

# Discrimination in the workplace critical thinking

[Business](#), [Employee](#)



## **Introduction**

One of the legally required benefits available to employees is protection against discrimination in their workplace. This is the selected area which this paper proposes to examine. The U. S. Department of Commerce has categorized potential discriminations in the workplace as “ REGARDS” each letter of which refers to race, ethnicity, gender (sex), religion, disability, and sexual orientation respectively as part of best practices in achieving workforce diversity in one of its reports. As such, the most common forms of discrimination in vogue at workplaces are the above said ones in addition to genetic information, pregnancy, and sexual harassment. If an employee is treated less favorably compared to other employees in the workplace, he is deemed to be discriminated against. The list is not exhaustive as there are other forms of discrimination namely lack of intelligence, height or physical attractiveness etc. Any discrimination based on genetic information of employees is also illegal. Not all forms of less favorable treatment are discriminations, as an employer is not deemed to discriminate if he selects an applicant with better intelligence scores. Further, age discrimination is said to occur if an employee is forced to leave his job citing other reasons than old age such as downsizing. If immediately after that, a younger person is employed in his place, the old aged retired employee can sue the employer for discrimination.

It is discrimination if employees' services are terminated for reasons such as inefficiency but under the pretext of some other untrue reason. Even in the absence of any reason, it is discrimination if the employer has stated untrue facts. As such, employer must take care not to disguise the real genuine

justifiable reason if it warrants discrimination. Employment discrimination law guidelines for the employer are that 1) employee's status cannot be altered, 2) his status does not affect his job performance, and 3) it should not appear employee is not liked by the employer. Whistle blowing, public policy violations, breach of contract etc are also discriminations at workplace .

## **Racial Discrimination**

The Peter Principle's author Dr Laurence J Peter rules out racial superiority as such. It is wise for employer to be colorblind so that his decisions do not appear to be color influenced. In Ricci V . Destefano (2009), the U. S. Supreme Court held that favoring black firefighters in order to achieve greater diversity in workplace disregarding the better performance of white firefighters is discriminatory. Race, or skin color are prohibited grounds of discriminations subject to exceptions stated elsewhere. Race or skin color also includes ethnicity, national origin, and ancestry. The term "REGARDS" therefore has some overlapping situations.

" 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).

Thus, every citizen has equal employment rights just as a white citizen The U. S. societies are so fused that it is difficult to tell their ancestors. It has been made mandatory by the Equal Employment Opportunity Commission (EEOC) that all employers regardless of their size must inform the government the racial composition of his workforce in his regular reports. Color blindness is remaining uninfluenced by race, color of an employee or applicant and not simply considering all as whites.

Employers can be held liable to pay damages for psychological injuries suffered by employees as a result of discrimination as held in Harris v Forklift Systems Inc (1993). This decision rules out the requirement to prove psychological injuries for establishing discrimination (in this case sexual harassment).

Discrimination in the workplace has now become as a disguised indisputable decision rather than as an obstacle for opportunities in career advancement. Job evaluations have been dehumanized that discriminations can no more be a grievance which laws prohibit. In a Salvadoran case, the cardboard box manufacturing company where he was employed dismissed him after denying promotion following consistent oral and written warnings to him though none of his achievements was recognized since they were rather attributed to others' efforts. However, the Salvadoran who was the only nonwhite worker was sure that he was systematically ignored or explained away judging by the subtle fact that they looked at him with disgust and the

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way they treated him was a clear evidence of their bias though it could not be proved. His attorney Krieger found in the discovery proceedings that he was under disparate treatment by examining time records and personal files. Green v McDonnell Douglas Corp (1972) which first enunciated the disparate treatment theory, burden of proof was on the worker who had to prove that his ethnicity was the reason for his company manager to fire him as he was a racist and a liar .

There have been shifts in the nature of discrimination which are proved by well-documented evidences. It is argued that Title VII does not define “ discriminate” in that the Title VII can be easily manipulated and thus remaining vulnerable to “ more complex and unconscious form of discrimination”. When discrimination used to be apparent, employers deliberately excluded minorities and women from jobs until it became a socially unacceptable practice and as a result, blatant discriminatory exclusion started decreasing significantly. In spite of it, wage disparities still exist for minorities and women who have since entered the workforce. There are evidences to show that there were only 1 % of top level executives in Fortune 1000 & 500 companies who were black. Whites who were minorities in the overall workforce i. e 43 % occupied 95 to 97 % of the workforce. Women managers of equal caliber received lesser wages. Social scientists label these subtle forms of racism as “ aversive racism” as emerged from their 20 years of research. Aversive racism is not an intentional form of bias which manifests in many white Americans in spite of the fact that they are wedded to egalitarian values and they do not succumb to prejudices as posited by Dovidio and Gaertner. 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” .

It has been explained that aversive racists are not really conscious of negative feelings while they are able to justify their decisions 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..

As argued by Krieger, decision makers are hot and cold. On the one hand they say that they are justified in denying promotion to an aggressive woman as women should be demure and soft-spoken or women should rather spend their time with families than take up extensive job-related travels. On other hand, sometimes promotion is denied for being too soft-spoken.. This is also a sexual discrimination but the decision maker’s understanding of women is such that it has resulted in his less favorable evaluation of the candidate though he may not be aware of the influence of his cognition in his decision , .

Modern forms of discrimination are group favoritism and out-group favoritism . Group favoritism arises due to the fundamental desire of people to see them in positive light and by favoring people of their own group, they enhance their self-esteem. The discrimination has become a complex human process that disregards conscious motivation to exclude discrimination

based on race or sex.

Further, the subtle forms of discrimination in workplace have also been due to changes in the employment categories and workplace hierarchy as evidenced by the ongoing reorganization of American workplace. In the last 30 years, core activities such as production have shifted to low wage countries and American workplaces are characterized by high-level intelligence required for jobs related to information technology, knowledge, and service which forced companies to explore alternative ways to become more competitive. Thus, work in the form of contracts and part-time employments emerged bringing about flattening of hierarchies and blurring of job boundaries. This resulted in work allocation on team basis along with flexible method of evaluation. Since 1970s, job changes have been on the increase which leads one to be convinced why employment relationship has become so fluid that vertical relationship is no longer the norm for success. Since 1996, Americans have occupied horizontally structured work relationships and they form 25 % of American workforce. Teamwork has become the norm that individualized job evaluation has become less significant for decision making. Job evaluations are now in terms of skill sets and customer satisfaction. Further, job evaluation is more subjective than being objective and has become more amorphous. Companies are now 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.

## **Lessons learnt**

Human rights declaration requires that every employer must create a respectful and discrimination-free workplace. Unions' role should be

recognized in different complaint situations. The human rights policy is universally applicable that it applies not only to employees but also non-employees, customers, suppliers, contractors, volunteers who come into contact with employer's business place or his employees. The human rights policy statement which the employer must bring out should expressly state that the company management is committed to providing a workplace free from discrimination and harassment. The policy should also state the applicable laws. Definition of discrimination and descriptions of inappropriate behavior should be mentioned. Employees' rights and responsibilities such as their right against discrimination and their duty to treat other employees and outsiders with equal respect must also be expressly stated. Employees must know who is responsible for discrimination in the workplace and whom should they complain to in case of discrimination. Employers must take swift action to the first signs of a problem of discrimination-related nature. Written reprimand, suspension of the erring employee with or without pay are generally resorted to if discrimination is found. If there are two people in dispute who cannot work together, one of them should be transferred to another location within or outside the present workplace. Demotion is another option as punishment for showing discrimination. This is not the answer 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**

Discrimination in the workplace could not only be on racial grounds but also on the basis of sex, age, disability, sexual orientation which are some of the



protected characteristics. All these can be in subtle forms in view of the changed nature of job evaluations and flattened job hierarchies. It is very difficult to pinpoint intentional discrimination because of aversive discrimination that dominates the field. Yet, an astute lawyer can unearth such subtle forms during discovery and employer also must be more careful to avoid such awkward situations. The so-called aversive discrimination can be prevalent only in services sector which engages people of high intelligence. Employees engaged in production and low-wage jobs can be still victims of blatant discriminations. Hence, either way, discriminations cannot escape being noticed.

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