

Discrimination in Employment Law

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The 1960-era is one of the most transformational decades in modern American history. Major decisions regarding human rights were being made during this period of time. Influential leaders of minority groups were gathering support at astonishing rates for the promotion of equality for minorities, leading to the passing of laws such as Title VII. This groundbreaking period of time led the way for more equality driven changes to employment specific rights.

Introduction

In 1964, after civil rights movements for participating equally in society and the work environment, Title VII was enacted by Congress. Title VII protects certain class against discrimination during the hiring process, as well as in the employment environment. It became a fundamental part of civil rights protecting minorities. In addition to Title VII several other amendments were added to protect those in need, which were not protected by Title VII like older employees (ADEA) or disabled individuals (ADA). It prohibits employers to discriminate against a protected class, and therefore allows applicants and employees to be treated fair in the work force.

The following paper focuses on the content of Title VII and its amendments by showing cases to better understand hiring and management practices. Employers have to choose their actions carefully making decisions on a daily basis, especially during the recruiting and hiring process. Employees and applicants are protected by Title VII and other amendments, nevertheless employers are being protected as well. An example for employer protection would lay in the ADA. Employers need to make a reasonable accommodation, which means that an employer has to make accommodations that are not causing undue hardship to the company.

Cases shown in the paper are discussed and recommendations are made how to resolve a similar situation in the future and what could have prevented the situation to happen in the first place. It is important for individuals to know how they can protect their privacy and know their rights as an employee.

Title VII

Title VII of the Civil Rights Act was established in 1964 after the civil rights movements of the 1950s and 1960s while Blacks challenged the denial of rights to participate equally in society. The Act protects the classes of race, color, and gender against employment discrimination. Title VII only covers employers/ companies with fifteen or more employees. The prohibitions of discrimination apply in employment practices like recruiting, during the hiring process, job classification, promotions or termination. According to Brown and Kahn (2009) an employee can prove probability of discrimination by showing the following:

1. The individual belongs to a protected class
2. The individual applied for and was qualified for a job opening
3. The individual was rejected by the employer despite being qualified for the job
4. The job remained open and the employer continued to invite applications from similarly qualified employees

If an employee files for discrimination with the employer, the employer does not need to persuade a court, but the individual must prove that the employer intentionally discriminated against the individual.

Enforcement

Title VII is being enforced by the Equal Employment Opportunity Commission (EEOC). The task of the EEOC is to investigate filed charges by individuals. It encourages the parties to settle the conflict outside the court or adequate evidence must be provided. If the dispute cannot be settle further investigation continues by interviewing witnesses, shadowing or visiting the employment site. After the investigation is completed the EEOC makes a decision in either the favor of the individual or the employer. If the decision is in favor to the individual the company/ employer has ninety days to take action to solve the situation. If the EEOC rules in favor t the employer, the individual has receives a right-to- sue letter from the Equal Employment Opportunity Commission which states that the individual can file a law suit against the employer within ninety days.

Supreme Court Debates from October 2009 show certain guidelines the EEOC has to follow during the investigation and ruling. Guidelines cover areas like:

- Hiring and Promotions
- Uniform and Consistently Applied Standards
- Job Related Standards
- Education Requirements
- Employment Testing
- Conviction and Arrest Records
- Diversity and Affirmative Action

The Regulation of Discrimination against Race

One of the protected classes covered by Title VII is race. According to Cohn and Fossett (1995) Black men have a high unemployment rate, remaining unemployed for twice the period of time white men remain jobless. Blacks tend to be assigned jobs that require lower qualifications, that require less training or even jobs that serve minorities (Kaufman 1986, 2002; Resking and Roos 1990).

Studies show that Blacks are less likely to be promoted than Whites and if promotion occurs at lower rates (Baldi and McBrier 1997; Smith 2005). Several other studies have also shown that Blacks receive lower performance evaluations (Greenhaus 1990; Sackett 1991; Elvira and Zatzick 2002). It seems that Blacks have fewer opportunities and have to follow a limited and constraint path in employment (Wilson 1999).

The following cases presented are examples of intentional discrimination against race:

Jones v. Robinson Property Group, L.P.

Situation

Ralph Jones is a black male living in the county of Tunica in the State of Mississippi. He is a certified poker dealer that is well qualified and has skills that are better than average as a poker dealer. The Horseshoe Casino and Hotel opened in 1995, in which R. Jones first applied in late

1994 as a poker dealer. After applying repeatedly and being refused a position, R. Jones filed a complaint with the Human Resource Department's Director Anna West that the decision of refusal to hire was made on a racism basis. Lambert, the poker room manager replied that there were no qualified African-American dealers qualified to work in the poker room. R. Jones had temporarily worked for the Horseshoe Casino in high end poker tournaments, but has never been offered a permanent position, while the Horseshoe did hire poker dealers for permanent positions. Evidence showed that several employees testified that they heard others say or might have even said themselves racial comments about not hiring black people.

Ruling

R. Jones had demonstrated sufficient evidence in this case. The case was referred back to the District Court for further proceedings (Bennett-Alexander and Hartman 6thed).

Jones was persistent in continuing applying for a position that was offered several times during a time period of several years. He gathered enough sufficient evidence to show the EEOC that there was a case. Comments from employed individuals at the Horseshoe Casino and Hotel did make racial comments about not hiring too many blacks for the poker room. The Horseshoe Casino should have offered him a position, especially since R. Jones already worked temporarily at the casino for high end poker tournaments. The manager Lambert had seen his performance and skills that were higher than average. The Horseshoe could have hired him part time with fewer hours, to prevent hiring Jones full time. By hiring Jones the casino could have prevented a case against discrimination against race.

Intentional Discrimination against Blacks in the Fire Department

The New York Times reported on January 14 2010 a federal judge ruled that the Fire Department intentionally discriminated against blacks. Records show that Blacks and other minorities have been underrepresented in the Fire Department. An exam has been used that put these minority groups to a disadvantage with the knowing of the department. With the knowledge the Fire Department still presented the same exam to applicants.

The Fire Department still does mostly employ whites and only a few minority groups like women and blacks. Standards during the hiring process need to be changed, to make the opportunity available to also women to work in the Fire Department. Standards need to rely on fitness data, how an individual can perform certain exercises or overcome stressful situations. Standards for female applicants need to be adjusted. Minorities are not only in the hiring process an issue. A following case presents gender discrimination in the Fire Department as well. Women are not accommodated in the Fire Department regarding shower and restroom facilities as well as uniforms.

Discrimination of National Origin

According to the EEOC it is illegal “to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule”

Immigration Reform and Control Act (IRCA)

The Immigration Reform and Control Act requires companies/ employers to guarantee that employees that have been hired are authorized legally to work in the U.S. If an employer does only request verification of work authorization from applicants that sound different with an accent, or might be from a specific national origin, the employer would violate Title VII and the IRCA as well. Another violation against the IRCA is to hire only U.S. citizens in an American Company, even if other applicants would have legal work authorization and are also qualified for the offered position.

Discrimination of Gender

Discrimination against gender is illegal stated by Title VII. Gender discrimination is expressed many ways including hiring, promotions, termination, and even child care leave. It is also illegal to base hiring decision on gender based height and weight. Dress codes are not prohibited under Title VII. In the case Harper v. Blockbuster Entertainment Corporation male

employees complained about a grooming policy why female employees could wear long hair, but male employees were prohibited. Grooming policies do not fall under gender protection. Logistical concerns, for instance restroom facilities etc. should not exclude any gender.

Wedow v. City of Kansas City, Missouri (8th Cir, 2006)

Situation

Female fire fighters were not given the proper uniform, while male fire fighters were each given two uniforms, females were given only one, which was also male sized. Each fire fighter is given two uniforms due to the fact that one uniform might get steamed or soiled which could cause danger if the fire department is being called to another incident the same day. A male sized uniform can also cause danger to a female, since the helmets are too big and slide, pants are too big and females step on them, and gloves are too big, which prevents having a tight grip around the latter or other supplies and equipment. Wedow made a complaint concerning the uniforms, as well as non acceptable shower facilities for female employees. Females had not been accommodated in the fire department, neither in clothing nor in facilities in the fire house. While the fire department had resources to provide female sized uniforms, the fire department refused to issue them to the employee.

Ruling

The court ruled in favor to Wedow, and found that gender discrimination was applicable.

The case stated that some of other fire stations did have adequate restroom facilities, but they have been used as storage or other usage than a shower and restroom facilities for female firefighters. Some of the stations did not even have facilities. In the majority of fire houses that have been expected facilities were unsanitary.

Fire department should always have adequate facilities. Female fire fighters are still a minority, even though they cannot be excluded. By issuing only one uniform, while the standard is two, and uniforms that are male sized instead of female sized, the fire department is causing hazardous working conditions which also puts female employees at risk.

Employers in general need to address logistical concern as well as hiring practices. A fitness studio for example cannot only hire female instructors, because it is more profitable. If it is a women's fitness, for women only, it would be legal.

Discrimination of Religion

Religion is a protected class of Title VII, it takes also in account that "all aspects of religious observance and practice as well as belief," §707, 42 U.S.C.A. §2000e (i) as well as the requirement of "reasonable" accommodation to the employees religious needs. By including religion in protected classes, government programs may be affected, but religious choices are critical to human dignity and autonomy and therefore should be given special insulation (Estreicher and Harper, 1991).

Trans World Airlines Inc. v. Hardison

Situation

Hardison was hired by TWA as a clerk in 1967. The position required an employee to lead operations 24 hours a day, 7 days a week, and 365 days a year. In 1968 Hardison began to study the religion of the Worldwide Church which required him to observe Sabbath from sunset on Friday evening to sunset Saturday evening. Therefore he could not work over the time period of Sabbath and other religious holidays.

TWA practiced a seniority system, in which Hardison was high on the list due to his earned seniority. The Company managed to accommodate Hardison by finding other employees to make changes to the shift schedule so Hardison could observe Sabbath. After transferring to a different department, Hardison was not able to follow his religious beliefs properly and asked for accommodation again. However the seniority system of the department differed from the previous department. Therefore Hardison did not carry on the previous existing seniority status. After several efforts and proposals that have been made, Hardison could not be accommodate to his satisfaction and did not report to work.

Ruling

After the District Court's ruling in the favor of TWA, Hardison appealed. The appeals court found that TWA was not guilty of violating Title VII which includes religion as a protected class, but TWA performed unlawful employment practices by providing different seniority systems within the company structure.

Hardison in this presented proposals to TWA to accommodate his religious needs by offering to work 4-day weeks or to work overtime to a regular pay rate when needed. However, TWA was not capable of agreeing on proposals. One of the arguments TWA presented that other non religious employees might have important things to do on Saturdays as well and they do not get to be accommodated.

TWA could have accommodated Hardison by providing him a 4-day work week for the time of Sabbath. On the other hand Title VII requires reasonable accommodations. If a company cannot provide reasonable accommodations, then there is no violation of discrimination against reli

Title VII- Regulation of Religious Discrimination in Faith-Based schools

Throughout the history faith-based schools have been excluded from public aid, for that reason, the exclusion of oversight from governmental education (Russo, 2009). Most faith-based were Roman Catholic, that created a school system which allowed them to control all aspects of operations.

All faith-based or religious schools as well as other non-public/ private schools are subject to some parts of civil rights. Title VII may elevate conflicts between employers and leaders to retain legitimate control within their organization, while at the same time Title VII protects the rights of the employee from a discriminating work environment (Russo, 2009). There are several different cases that show that Title VII is not always taking into consideration. The following case shows an example in which the court ruled in the favor of the school: A female teacher claimed that she was dismissed from a Roman Catholic school due to age discrimination. However the school official argued that the employee got dismissed because she married a divorced man, which is violating the values of the Roman Catholic Church.

Another case showed that the nonrenewal of an elementary school teacher at a Catholic school was affirmed by court, because she gave birth to a child six month after she got married. The Catholic Church does not allow premarital sex and in addition the contract stated “by word and example you will reflect the values of the Catholic Church” (Cline c Catholic Diocese of Toledo, 2000).

It is a fine line between the law and regulations religious institution operate by. In a non religious business, Title VII would have covered most employees in cases like the ones named above. Nevertheless, if religious institutions, in this case faith-based schools, do state in their regulations and contract that these values have to be respected; Title VII or other laws would not come into effect.

Pregnancy Discrimination Act of 1978(PDA)

In 1978 Congress passed the Pregnancy Discrimination Act as an amendment to Title VII. The PDA prevents employers to use pregnancy, childbirth or other medical condition related to

pregnancy in hiring processes, promotion or termination. If an employer offers disability benefits, pregnancy needs to be treated as a temporary disability. If it is not included an employer can permit pregnancy leave (Dessler, 2008).

The PDA does not only protect women that are pregnant or just gave childbirth. Employers who do not hire a female or terminate a female employee are liable because of the assumption that the female employee could take too many days or weeks of du to pregnancy or taking care of the children in the future. Under these circumstances an employer would be liable under the PDA (Habig, 2008).

Pregnancy Discrimination occurs when:

- An employer refuses to hire a pregnant applicant, even though the applicant is qualified
- Termination of a female employee due to the fact that she is pregnant
- If the employer does not provide temporary disability benefits to pregnancy leave, while other employees with different medical disabilities receive higher benefits- pregnancy needs to be treated equally to other disabilities
- If the employer does not accommodate the employee by easing duties if needed, while other employees with short term disabilities are being accommodated
- If the evaluation of an employee shows not having performed as well as other employees etc.

Asmo v. Keane, Inc (6th Cir. 2006)

Situation

Asmo was a female employee recruiter working for Keane. In October 2001 she was reporting to Scott Santoro, the Director of Corporate. When she found out she was pregnant she announced her pregnancy in a conference call to the crew. Everyone congratulated her, except Santoro who remained silent and shortly after moved on to the next business topic. Santoro had not spoken about Asmo's pregnancy at any time. In November 2001, Santoro had to make the decision of laying off two of five recruiters working for Keane at the time. His decision was based on three factors: term of employment, number of hires each recruiter had made that year (2001), and forecasted hiring needs in 2002. Asmo was being laid off due to the three deciding facts. Santoro based his decision on a short period of employment of Asmo, that she had lower recruiting numbers than her fellow colleagues and that there will be only little need for recruit form the Midwest. In the time between the announcement of her pregnancy and the termination, Santoro has not spoken about her pregnancy or mentioned support from the company for becoming mothers/ parents or other benefits.

Ruling

The Court ruled in favor to Asmo, because the termination was based on the fact of pregnancy, which is a violation of the Pregnancy Discrimination Act.

Instead of remaining silent about the pregnancy Santoro should have offered Asmo the support of the company, benefit plans for becoming parents, maternity leave and other relevant

assistance. Reasonable accommodations should have been made to “lighten” job requirements, since it is a short term disability. If Santoro would have shown support, no sufficient evidence would have been available for discrimination against pregnancy, which would have made the decision to lay off Asmo due to low recruiting number and a shorter term of employment permissible.

Age Discrimination on Employment Act of 1967 (ADEA)

The Age Discrimination Act enacted as an amendment of Title VII protects older employees (the age of 40 and older) from oppression of the image of stereotypes and of suffering of job performance with older employees. The ADEA prohibits employers to make recruiting, hiring, promotion or termination decision based on the fact of age. The prohibitions apply to employer, including state and political subdivisions.

Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act prohibits discriminating against qualified individuals with disabilities, may it be mental or physical. The Act applies to employers that have fifteen or more employees. The ADA states that if an individual is qualified for a position (education, skills, experience) the employer has to make reasonable accommodations for and individual limitations unless it would inflict unjustified hardship to the employer Dessler, 2008).

Qualified individuals are those who are fulfilling the requirements to carry out necessary functions. The decision if an individual has a disability is made case-by case. Disabilities are defined as impairment of “Major Life Activities” (Bennett-Alexander, Hartman, 2009), which are activities that have vital importance in the daily life.

Conclusion

Because of Title VII and its amendments like the ADA, ADEA and PDA, employees are protected by the law against discrimination in the work environment. As demonstrated in the case above, employees are still discriminated in many different ways, may it be because of their color, race, gender or because of age. These are only a few aspects employees or future employees are discriminated against on a daily base. By conducting the research it was noticeable that many cases that have been brought to the Equal Employment Opportunity Commission were based on discrimination against race. Many cases showed especially black males being discriminated against. Cases involving discrimination of race appeared much more than any other protected class.

One of the other protected Classes is National Origin, which protects applicants and employees from being discriminated against the country of origin or ancestry. Even though there are employers that do try to avoid hiring employees with foreign nationalities, there are also employers that hire employees with the knowledge that these employees are foreign nationals without legal work permission for the United States. The employer is at risk, but at the same time expenses to pay these employees are much lower than for employees that can legally work in the United States.

In today's workforce the number of female employees is still increasing. They are also becoming very successful in their work environment. The number of women in leading positions, CEO for instance, is increasing every year as well. In the cases discussed during the research, gender discrimination mostly occurred within the work environment. Standards,

providing men and women equal opportunities and work conditions, were the most discussed issues.

Another point that was discussed in this paper was the protected class of religion. It was presented that even if it is a protected class, employers can compensate individuals only to a certain point, as it was shown in the case *Hardison v. Trans World Airlines Inc.* In contrast to the non religious business environment, faith-based institutions and organizations are exempt under certain circumstances from Title VII. If a contract states that an individual has to follow the beliefs and values of the particular religion that is practiced in the institution, Title VII and other amendments may not come into effect.

When considering Title VII as a whole it is important to realize that Title VII is creating an equal and balanced work environment allowing the employees regardless of race, religion, gender or national origin to coexist simultaneously in the work environment.

References

- Baldi, S., & McBrier, D.B. (1997). Do the determinants of promotion differ for blacks and whites? *Work and Occupations*, 24, 478-497
- Baker, A., Lyles, T. Schmidt, M. S. (2010). Judge Finds “Intentional Discrimination” Against Blacks in Fire Department Hiring. *New York Times*, 30
- Bennett-Alexander, D. D., Hartman, L. P. (2009). *Employment Law for business 6th edition*
- Cine v. Catholic Diocese of Toledo, 206 F. 3d 651 (6th Cir. 2000)
- Cohn, S., & Fossett, M. (1995). Why racial employment inequality is greater in northern labor markets: Regional differences in white-black employment differentials. *Social Forces*, 74, 511-542
- Dessler, G. (2008). *Human Resource Management*, 33
- Elvira, M.M., & Zatzick, C. D. (2002). Who’s displaced first: The role of race in layoff decisions. *Industrial Relations*, 41, 329-361
- Estreicher, M. Harper, M. C. (1990). *Cases and Materials on the Law Governing the Employment Relationship*, 470-477
- Habig, J. E. (2008). Defining the Protected Class: Who Qualifies for Protection Under the Pregnancy Discrimination Act? *The Yale Law Journal*, 1215-1218
- Kahn, S. C. Berish Brown, B. (2009). *Legal Guide to Human Resources, Vol. 1*
- Kaufman, R. L. (2002). Assessing alternative perspectives on race and sex employment segregation. *American Sociological Review*. 67, 547-572
- Mong, S. N., Roscigno, V. J. (2009). African American Men and the Experience of Employment Discrimination, *Springer*, published online: 4th Nov 2009
- Reskin, B. F., & Roos, P. A. (1990) Job queues, gender queues: Explaining women’s inroads into male occupations. Philadelphia: Temple University Press
- Russo, C. J. (2009). The Law and Hiring practices in faith-based school, *Journal of research on Christian Education*, 18, 256-271
- Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C.A. §§ 2000