

Business Ethics Concepts & Cases

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Chapter Seven

The Ethics of Job Discrimination

Definition of Discrimination

- The wrongful act of distinguishing illicitly among people not on the basis of individual merit, but on the basis of prejudice or some other invidious or morally reprehensible attitude.

Types of Discrimination

- Intentional discrimination = conscious and deliberate discrimination.
- Unintentional discrimination = discrimination that is not consciously or deliberately sought, but is brought about by stereotypes or as an unintended outcome.
- Individual discrimination = discrimination of one or a few individuals acting on their own.
- Institutional discrimination = discrimination that is the result of the actions of all or many of the people in an institution and of their routine processes and policies.

What is Affirmative Action?

- Any program designed to ensure that minorities, women, or members of some other group, are adequately represented within an organization and its various levels by taking positive steps to increase their number when underrepresented.
- What counts as “adequate representation” depends on the objectives of the program:
 - some aim at having the same proportion of women or minorities as exists in the pool from which new members are drawn
 - others aim at achieving the diversity needed to meet organizational objectives

Discrimination and the Law

- Civil Rights Act of 1964
 - made it illegal to base hiring, firing, or compensation decisions on race, color, religion, sex, or national origin
 - created the Equal Employment Opportunity Commission (EEOC) to administer the Act
- Executive Order 11246
 - required companies doing business with the federal government to take steps to redress racial imbalance in workforce
- Equal Employment Opportunity Act of 1972
 - gave EEOC increased power to combat “under representation” and to require affirmative action programs

Controversy over Forms of Discrimination

- In the 1960s, discrimination is seen as individual and intentional.
- In the 1970s, it is seen to have institutional and unintentional forms, as indicated by underrepresentation of minorities or women, and to be remedied with affirmative action.
- In the 1980s, some insist discrimination is only individual and intentional.
- In the 1990s, the view prevails it can also be institutional and unintentional.

Prima Facie Indicators of Discrimination

- Average benefits minorities and women receive compared to others.
- High proportions of minorities and women at lowest economic levels.
- Low proportions of minorities and women at highest economic levels.

Discrimination in the United States

- Gap between average family incomes of whites and minorities has not decreased.
- Gaps between average incomes and median earnings of men and women have decreased but are still large.
 - women earn less than less-educated men
 - women earn less in every occupational group
- Gaps between the average earnings of minorities and of whites have hardly narrowed
 - Minorities earn less than less educated whites
 - Percent of minorities in poverty is 2 to 3 times the white percentage

Discrimination in the United States

- Poverty rate of families headed by women is twice that of male-headed families.
- Salaries of “women’s jobs” are significantly lower than “men’s jobs.”
- Top-paying executive positions are filled by men; a “glass ceiling” stops women.
- The earnings gaps are not explained by education, career choices, preferences, work history, training, or absenteeism.

Increasing Problems for Women and Minorities

- Women and minorities make up most new workers, but face significant disadvantages.
- Women are steered into low-paying jobs and face a “glass ceiling” and sexual harassment.
- Minorities need skills and education but lack them.

Arguments Against Discrimination

- Utilitarian
 - Discrimination leads to inefficient use of human resources.
- Rights-based
 - Discrimination violates basic human rights by holding minorities and women as “inferior.”
 - Discrimination cannot be universalized.
- Justice-based
 - Discrimination results in unjust distributions of benefits and burdens.
 - Discrimination violates the formal principle of equality by differentiating between people on the basis of characteristics that are not relevant to job performance.

Sexual Harassment

- Unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature constitute sexual harassment when:
 - (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment
 - (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual
 - (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Moral Objections to Sexual Harassment Guidelines

- Guidelines prohibit “intimidating, hostile, or offensive working environment.”
 - But it is sometimes hard to distinguish this from male rudeness not intended to degrade women.
- Guidelines prohibit “verbal or physical contact of a sexual nature” when it has the “effect of unreasonably interfering with an individual’s work performance.”
 - But this seems to require use of purely subjective judgments.

Moral Objections to Sexual Harassment Guidelines

- Guidelines prohibit “verbal conduct” that creates an “intimidating, hostile or offensive working environment.”
 - But this can conflict with the right to free speech.
- Guidelines hold employer guilty of employee’s sexual harassment even if employer did not know nor could have prevented it.
 - But some respond that eradicating sexual harassment justifies forcing employer to be responsible for preventing it, and it is an “external cost” employers should internalize.

Other Types of Discrimination

- Age, which is protected by the Age Discrimination in Employment Act
- Sexual orientation, which has few protections against discrimination
- Transsexual status, which has few protections
- Disability, which is protected by the Americans with Disabilities Act
- Obesity, which has no protections.

Legal Status of Affirmative Action

- Affirmative action is legal when used to correct a racial or sexual imbalance that is the result of previous discrimination.
- It is also legal when used to correct an egregious, persistent, and manifest racial imbalance not caused by previous discrimination.
- It can be used in hiring.
- Can be used to achieve educational diversity and broadcast diversity.

Legal Status of Affirmative Action

- Cannot use inflexible quotas—must be narrowly tailored to their objectives.
- Cannot be used in layoffs.
- Cannot overrule seniority.
- Cannot be used in government set-aside programs except as a last resort in an extreme case involving previous racial bias by the government.

Compensation Argument for Affirmative Action

- Claims affirmative action compensates groups for past discrimination.
 - Criticized as unfair because those who benefit were not harmed and those who pay did not injure.
 - Some argue in response to criticism that discrimination has harmed all minorities and women, and all whites and males have benefited from it.

Utilitarian Argument for Affirmative Action

- Claims affirmative action reduces need by benefiting minorities and women in need, and so increases utility
 - Criticized on grounds that its costs outweigh its benefits and that other ways of reducing need will produce greater utility.

Equal Justice Argument for Affirmative Action

- Affirmative action will secure equal opportunity by a fairer distribution of jobs, by neutralizing the effects of unconscious bias that affects judgments about minorities and women, and by placing women and minorities in less disadvantaged and more competitive positions in competitions with males and whites.

Equal Justice Argument for Affirmative Action

- Affirmative action is a morally legitimate means for securing equal opportunity.
 - It is not a form of “reverse discrimination” because it is not based on invidious judgments of male inferiority nor aims at destroying equal opportunity.
 - It does not use a non-relevant characteristic since race and sex are relevant in this limited context.
 - It does not harm minorities and women and any harm would be less than the harms inflicted by current unconscious discrimination.

Conclusions

- Valuing and managing a diverse work force is more than ethically and morally correct.
- It's also a business necessity.
- Companies that fail to do an excellent job of recruiting, retaining, developing and promoting women and minorities simply will be unable to meet their staffing needs.