Discrimination in the Workplace
Do Anti-Discrimination Laws Effectively Prohibit Prejudice?

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As a nation that prides itself on tenants of liberty and equality, The United States is constantly engaged in a struggle to ensure that these values are upheld for every citizen, in every corner of the country. However, the American workplace is a setting in which discrimination—of various types and origins—has been permitted. Though federal laws are in place to discourage discriminatory behavior, unfair treatment on the bases of race, sex, sexuality/gender, age, and appearance is still a major issue for working Americans.

Status Quo

In terms of federal law, some steps have been taken to avoid workplace discrimination. First and foremost, Title VII of the Civil Rights Act of 1964 prohibits “discrimination 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” in companies with 15 or more employees.”¹ This act seeks to protect working individuals in all aspects of employment; hiring, firing, promotion, transfer, and pay are several employer-dictated processes that Title VII seeks to rid of discriminatory bias. Title VII also created The U.S. Equal Employment Opportunity Commission (EEOC) to enforce legislation pertaining to the workplace. Like Title VII, The Equal Pay Act of 1963 (EPA), an amendment to the Fair Labor Standards Act of 1938, requires employers to pay employees equal wages for equal work, regardless of their gender.² A more specifically focused act, the EPA targets discrimination based on sex exclusively. In addition to Title VII and the EPA, the U.S. Equal Employment Opportunity Commission enforces The Pregnancy Discrimination Act, The Age Discrimination in Employment Act of 1967 (ADEA), Title I of the Americans with Disabilities Act of 1990 (ADA), Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and The Genetic Information Nondiscrimination Act of 2008 (GINA).³ Even in the presence of federal legislation which seeks to ameliorate workplace discrimination, unfair treatment on the job continues to occur.
1998-2016
Charges Filed with the EEOC

Not including charges filed with local and state offices

In the United States, employers paid $112.7 million for racial discrimination violations between the years 2011 and 2012 only.

The monetary sum above excludes money paid by employers as a result of lawsuits.

EEOC vs. State-level Legislation
While the EEOC is a federal government agency, workplace discrimination laws vary from state to state.

There is no protection against discrimination on the basis of sexuality in 29 out of 50 U.S. states: 58%.

There is no protection against gender-based discrimination in 33 out of 50 U.S. states.

Discrimination Cases According to Type and Year

Despite the institution of several federal laws, the U.S. has seen little decrease in workplace discrimination.
Racial Discrimination

While recent movements, such as “Black Lives Matter,” have brought the issue of American racism to the forefront of popular culture, racism that occurs in the workplace remains an underrepresented issue. In 2014, the EEOC received 31,073 allegations of racial discrimination; 71.4% of these cases were dismissed owing to the absence of “reasonable cause.” Monica Harwell, a former employer of energy utility provider Con Edison, shared her own experience with racial discrimination in an interview with CNNMoney: “[A colleague] repeatedly joked about an offensive racial remark made on the radio by Don Imus about the Rutgers women’s basketball team.” Harwell also confessed, “People had bets on me…They didn’t think I would make it.” In addition to being the object of offensive, racial commentary, Harwell reports failing to achieve a supervisory role in Con Edison, despite earning multiple degrees and certificates in night school; Con Edison repeatedly hired underqualified, white males instead of Harwell. Harwell’s experience in Con Edison is far from unique, as 40%-76% of “ethnic minority employees” report facing at least one undesired, race-driven experience within a 1to 2-year period. In addition, a 2004 study found that resumes with equal qualifications were 50% more likely to inspire callbacks from potential employers if the names on the resume sounded white, as opposed to black. Resumes that featured lesser qualifications, in combination with white sounding names, were 30% more likely to produce callbacks. Similar studies found that black employees were 33% more likely to be fired. In addition, these studies suggested that black and white superiors gave white employees performance reviews that were significantly more positive than those of equally performing black employees. In considering the cause for the implicit bias against non-white, American workers, scientists have credited human psychology as a key factor. Presupposed attitudes or stereotypes towards certain races—such as the notion that black people are lazy or Asian people are smart—could play a role in how employers treat ethnic minorities in the workplace. Statistically, instances of stereotyping and unfair treatment are more prevalent in work spaces than in society as a whole, owing to the tendency of workplace hierarchies to reinforce the power and status orders that already exist amongst Americans of varying races. In spite of the laws regulated by the EEOC, racial discrimination in the workplace continues to affect thousands of working Americans. Possible solutions to amending workplace discrimination based on race include: the formalization of the decision-
making processes that dictate which individuals are hired, promoted, evaluated, and retained by an employer, an increase in accountability and supervision for those in command of these procedures, and the institution of affirmative action programs that focus on increasing diversity in the workplace.12

**Sex-Based Discrimination**

As in the instance of racial discrimination, existing legislation fails to effectively limit sex-based discrimination in the workplace. While laws such as the EPA and The Pregnancy Discrimination Act are in place to protect women- and men-from unequal treatment with regards to their sex, many individuals are still at a disadvantage in American workplaces.

Despite the institution of the EPA and Title VII, both the wage gap and other instances of sex-based discrimination in the workplace continue to affect Americans. Almost 3 in 10 cases that go before the EEOC deal with sex-based discrimination and, in 2014, 26,027 charges of sex-based discrimination were filed.13 Far from uniform, both the victims and the accused in sex-based discrimination cases come from varying backgrounds and experiences. Clients, coworkers, supervisors, customers and subordinates are capable of perpetrating “sexual harassment”- unwanted attention of a sexual nature. Accordingly, male victims of sexual harassment make up almost 18% of sexual harassment charges.14 As in the instance of racial discrimination, sex-based discrimination seems to be more common in places of work- 54% of employees report experiencing some type of sexual harassment in the workplace, and 12% were threatened with termination should they fail to obey the wishes of their harassers.15

In 2012, a Milwaukee medical staffing company was ordered to pay a former employee $148,340 following a case of sex-based workplace discrimination. Roxy Leger, a bookkeeper at the company, alleged that the company directed offensive comments at her during her pregnancy and sent her mail informing her of her termination with the company shortly following the birth of her child. The judge who heard Leger’s case considered the incident both “humiliating” and “degrading.”16 More recently, allegations of sexual harassment and sex-based discrimination were brought against Miki Agrawal, the female co-founder of a company, called Thinx, that makes “period underwear.” While Agrawal’s “period underwear” project is built on “break[ing] taboos” regarding women and their bodies, former Thinx employee Chelsea Leibow has
accused Agrawal of openly discussing sexual exploits, commenting on and touching Leibow’s breasts, and revealing herself to both Leibow and other colleagues on more than one occasion. Furthermore, Leibow accused Agrawal of favoring males in terms of pay raises and allowing ageism to run rampant within the company.\textsuperscript{17}

Leibow’s observation that male colleagues were the only individuals to receive pay raises within Thinx reflects a larger issue known as the wage (or gender pay) gap. In 2015, women who worked full-time jobs made about 80\% of what their male counterparts made, and women of color made even less. Though this 20\% “gap” is slowly disappearing, women aren’t expected to receive equal pay until the year 2059 per the current rate of increase in female salaries.\textsuperscript{18} While it is not disputed that there is a difference between the earnings of men and women, the integrity of the “80\%” estimation is contested; the fact that interested parties calculate this number according to yearly wages fails to account for the fact that women, either due to child-rearing or the nature of statistically female-driven jobs like teaching, work less from year to year. When considering weekly wages, as opposed to yearly numbers, the wage gap does dwindle to 18\%. Yet, should part-time employees be factored into this calculation, the wage gap would likely reflect a more striking discrepancy between male and female earnings.\textsuperscript{19}

Closer monitoring of salaries, empowering male and female employees to fight for equal treatment in the workplace, and amending the EPA to increase both incentive for following the law and awareness regarding the policies in place are effective steps towards ending sex-based discrimination in the workplace.

Sexuality/ Gender-Based Discrimination

Whereas sex-based discrimination involves the unequal treatment of women and men, sexuality/gender-based discrimination involves the mistreatment of individuals according to either their sexuality (their sexual preferences), or their gender (their personal identification as male, female, etc. and not their biological sex). Victims of sexuality/gender-based discrimination include, but are not limited to, members of the LGBTTQQIAAP (LGBTQA+) community.

Unlike issues of racial discrimination and sex-based discrimination, there is no federal legislation in place that prohibits, sexuality/gender-based discrimination. 21 of the 50 U.S.
states offer protection against sexuality-based discrimination. Therefore, it is legal to terminate employees based on sexuality in 29 U.S. States. Similarly, 17 U.S. states out of 50 offer protection against gender-based discrimination. On April 4, 2017, a federal appeals court ruled that sexuality-based discrimination could be prohibited under the same legislation that prohibits sex-based discrimination. However, federal courts have yet to uphold this ruling. Due to the lack of federal legislation, it is the responsibility of individual companies to institute policies that protect employees from sexuality/gender-based discrimination. On the surface, many American companies are fairly attuned to the necessity of avoiding workplace discrimination based on sexuality or gender. For example, in 2014, 91% of Fortune 500 companies had policies in place to protect individuals from sexuality-based discrimination. 61% of companies had similar plans in place for gender-based discrimination, and only 9% of companies had no bans on sexuality or gender-based discrimination. While these percentages seem positive, especially when considering only 65% of Fortune 500 companies banned sexuality-based discrimination in 2004, 0% of CEOs at any of the United States’ 1,000 largest companies are openly gay. The lack of LGBTQ+ individuals in positions of power reflects a cultural issue of heteronormativity—American society has yet to fully embrace members of the LGBTQ+ community.

In an interview with The Huffington Post, a lesbian employee at a Virginia home security company admitted to being fearful about “coming out,” or self-disclosing her sexuality, to her coworkers, even though her employer prohibits sexuality-based discrimination and plans to offer benefits to same-sex partners. The woman, who chose to remain anonymous, attributed her hesitancy to identify as openly lesbian to both the frequency of “gay jokes” and derogatory references in the workplace and the obvious distaste that her boss has for the only openly gay employee in the office. This hesitancy is a popular sentiment amongst employees in the LGBTQ+ community; 54% of closeted employees report hiding their sexual orientation or gender identity because they fear “losing connections with coworkers” or risking “development or advancement opportunities.”

Similarly, 66% of LGBT employees report hearing lesbian and gay jokes at work, 43% of individuals report hearing bisexual jokes, and 40% of individuals report hearing transgender jokes. In accordance with these statistics, more than 50% of LGBT individuals hide their identity in the workplace, and more than 33% of individuals lie about their identity. Nearly 1 in every 10 LGBT employees quit their job, unable to
tolerate the “unwelcoming” environment.”

Within the LGBTQ+ community, transgender individuals are more likely to experience discrimination. Almost 50% of transgender people (individuals whose biological sex conflicts with their personal gender identity) say they were either terminated or denied employment owing to their gender identity, while 90% of the transgender population has either dealt with “harassment or mistreatment on the job” or “[taken] steps to avoid it.”

Age-Based Discrimination

Though sexuality/gender-based discrimination is not prohibited by law, the 1967 ADEA is in place to protect worker 40 years and older from discrimination. Still, the issue of ageism is prominent in the United States. Today, aging workers- and young-workers- face mistreatment because of their age. Ellen Mednick, a 15-year veteran of the Starz movie channel, and the sole supporter of a disabled son, was fired by Starz, even after receiving multiple bonus checks and industry awards for outstanding work. The 66-year-old maintains that she was fired because of her age. Mednick’s lawyer, Diane King, confirms that the oldest employee in each of Starz’ departments was fired during a period of layoffs in what King considers “a pattern of discrimination.” Conversely, Chelsea Leibow accused Thinx co-founder Miki Agrawal of being ageist against younger employees. Leibow reported that younger employees were considered “children,” and older employees were given the title of “nannies;” these nicknames imply a hierarchy that is founded solely on age.

Like the issue of sexuality/gender-based discrimination in the workplace, the issue of age-based discrimination can be attributed to both lacking legislation and a cultural prejudice. In terms of federal law, the 1967 ADEA was hurt tremendously by a 2009 U.S. Supreme Court Case that let the responsibility of proving age-based discrimination fall on employees. Similarly, the U.S. tends towards a general disinterest in the elderly community. Even as the “baby-boomer” generation, and an increase in longevity, contributes to a historically massive elderly population, only 10% of medical schools mandate work in geriatric medicine. Likewise, there are only 7,600 geriatric doctors in the U.S., making up just over 21% of the number of geriatric doctors that the country is projected to need by 2030.

In 2016, the EEOC received 20,857 charges of age-based discrimination. While instances of age-based
discrimination in the workplace seems to be on the decline in the years since its peak at 24,582 cases in 2008, yet under 3% of these cases were deemed as having “reasonable cause.”

Appearance-Based Discrimination

A lesser known trend in the issue of workplace discrimination is appearance-based discrimination. Though there is not one specific group of individuals that is subject to discrimination based on either personal grooming practices or natural features, women as well as religious and ethnic minorities often receive the brunt of appearance-based discrimination in the workplace.

In terms of the value that humans assign to goods, services- and people-aesthetics play a huge role. According to a study done by researchers Kenneth Dion, Ellen Berscheid, and Elaine Walster at the University of Minnesota in 1972, humans are more likely to associate positive personality traits with people who are physically attractive. The study, which asked Minnesota undergraduate students to pair varying personality traits with faces they presumed to possess those traits, also found that people have a tendency to associate negative personality traits with faces that are not physically attractive. Researchers consider this study proof of the “beauty is good” stereotype.

Fifty-five years prior to the study done in Minnesota, Edward Thorndike coined “the halo effect.” In accordance with the findings of Dion, Berscheid, and Walster, Thorndike determined that the human tendency to appraise others was not without bias. Using police officers and their subordinates as an example, Thorndike suggested that people tend to appraise a person’s collective traits based on one, singular trait. Thorndike’s findings confirmed that first impressions dictate how a person, or an object or service, is valued. Therefore, should a boss find a subordinate’s appearance to be preferable, he or she could mistakenly consider all subordinate’s traits to be positive. The contrasting “horns effect” could ensure that employers develop a steady distaste for an employee that doesn’t look appealing.

The issue of appearance-based discrimination is particularly relevant to women, whose role in society has been historically confined to that of maintaining a superficial type of value. Per research done at the University of Colorado Denver, the way a woman looks determines whether she will see success in a specific field of work. For example, women who appear more feminine are more apt to succeed in traditionally female jobs, such as that of a secretary. On the other hand, traditionally feminine women who attempt to work in job fields that are
dominated by men face difficulty. Debrahlee Lorenzana, a thirty-three-year-old single mom and former banker for Citibank, sued her former employers on the grounds that she was unjustly fired. Though Citibank stated that they were dissatisfied with Lorenzana’s performance on the job, Lorenzana maintained that she was fired on the basis of her physical beauty being a distraction to her coworkers.

Lorenzana reports being banned from wearing certain types of clothes—turtlenecks, pencil skirts, three-inch heels, or form-fitting suits—even as her bosses made no such restrictions on other female employees. Lorenzana’s bosses told her ultra-feminine, curvy body type made her exceptionally distracting in the office and that her appearance justified the special treatment. Citibank has refused to comment on the issue.

Though stereotyping based on beauty is impossible to relegate based on the subconscious psychological roots of the “beauty is good” model, the propagation of appearance-based discrimination can be stopped. A massive outlet for appearance-based discrimination exists within the appearance guidelines that many businesses adhere to. While it is not feasible to consider appearance guidelines a violation of personal liberties, certain traditions in mandating workplace attire unsuspectingly perpetuate discrimination. Most companies in the U.S. adhere to appearance guidelines that are unbendingly Anglo-Saxon in their origin. While never explicitly stated, rules exist that force employees to assimilate into a specific standard in appearance that aligns exclusively with white norms and customs. For example, standards in hair style might put individuals with non-white hair textures at a disadvantage. Outside the scope of dress regulations, employers simply prefer seeing individuals who look “nice” and “neat” and “professional.” In the U.S., this ideal is almost exclusively based on traditionally white customs in grooming. Hair pulled back into a traditional ponytail, a clean-shaven face, and a simple outfit are considered most professional and attractive by employers. However, these standards in beauty are also characteristic of Caucasians.

Like the issue of discrimination based on sexuality and gender in the workplace, the issue of appearance-based discrimination is not protected under any specific legislation. Though laws exist to protect employees based on age, disability, or ethnicity, those who are affected by workplace discrimination face the task of proving that their case fits neatly under one of the types of existing legislation.
Conclusion

American workers are not wholly unprotected from workplace discrimination, as evidenced by the passing of Title VII, the EPA, the ADEA, and the creation of the EEOC. However, despite the nation’s attempt at ensuring equality for employees, discrimination on various bases is still an issue within the U.S. Amending the current legislation to provide higher incentive for promoting equality, and harsher punishment for prohibiting equality, could serve to prevent future instances of discrimination. Similarly, the prohibition of both sexuality/gender-based discrimination and appearance-based discrimination through federal legislation could serve to promote more equality in American workspaces. In combination with legal changes, cultural changes are necessary in decreasing workplace discrimination in the U.S. Increased awareness about issues of discrimination against cultural minorities could boost understanding, and therefore acceptance, of those that are consistently discriminated against. Stopping workplace discrimination begins with informed employees; should more Americans become cognizant of unequal treatment, as either a victim or an observer, a more massive initiative could be formed against inequality. While putting an end to workplace discrimination would certainly play a huge role in improving the day-to-day conditions for those who live and work in America, workplace equality is far from a simply philanthropic vision. The U.S. economy could see major increases in productivity should workers be more comfortable on the job. Companies that heavily emphasize employee comfort and benefits, like Google and Marriot, have seen their stocks soar from year to year. Similarly, 78% of transgender individuals report better performance on the job following their transition. Should the U.S. effectively begin limiting the instances of discrimination in the workplace, the nation could see major improvements in not only the lives of individual citizens, but also in the status of the country as a whole.
End Notes

5 Vega
7 Settles, Buchanan, and Yap
8 Settles, Buchanan, and Yap
9 Settles, Buchanan, and Yap
10 Settles, Buchanan, and Yap
11 Settles, Buchanan, and Yap
12 Settles, Buchanan, and Yap
14 “Quick Take: Sex Discrimination and Sexual Harassment”


23 Stuart

24 “Quick Take: Lesbian, Gay, Bisexual, Transgender Workplace Issues”

25 “Quick Take: Lesbian, Gay, Bisexual, Transgender Workplace Issues”

26 “Quick Take: Lesbian, Gay, Bisexual, Transgender Workplace Issues”


28 Malone

29 Fleck


37 Mahajan

38 Mahajan

39 Mahajan

41 “Quick Take: Lesbian, Gay, Bisexual, Transgender Workplace Issues”

**Graphic:**


http://www.catalyst.org/knowledge/lesbian-gay-bisexual-transgender-workplace-issue