

5.5: Concluding Thoughts

Most people find the idea of being judged based on the basis of an “immutable” characteristic such as race, color, or sex grossly unfair. We wish to be judged on the basis of our merit and character, things that we can control. The same is true in the workplace, where most people hold firm to the belief that the hardest working, smartest, and most business-savvy should succeed. Employment discrimination law is meant to address this ideal, but like all laws, it can be a blunt instrument where sometimes a finer approach is called for.

Hyperlink: A Class Divided

<http://www.pbs.org/wgbh/pages/frontline/shows/divided>

On the morning after Martin Luther King Jr. was assassinated, Jane Elliott, a third-grade teacher in an all-white elementary school in Iowa, divided her class into two groups: those with brown eyes and those with blue eyes. It was 1968, four years after Title VII, and the country was still torn by racial discrimination. What Jane Elliott found out that day about the nature of discrimination and the lessons her students took with them after the experiment was over are the subject of this *Frontline* documentary.

In many ways, the debates surrounding what kind of protections against discrimination Americans should enjoy in the workplace mirror larger debates about the role of government in ensuring the equal protection of the laws for its citizens. Since the laws in this area are notoriously difficult to interpret, it falls on judges and juries to decide when illegal discrimination has taken place. Unfortunately for plaintiffs, the result is often less than justice.

It is hard to prove an employment discrimination case, under either disparate treatment or disparate impact cases. For example, the Equal Employment Opportunity Commission (EEOC) collects statistics for each type of charge filed with the commission and how the case is resolved. In 2009, for race-based charges, 66 percent resulted in a finding of “no reasonable cause,” meaning the EEOC found no evidence of discrimination. U.S. Equal Employment Opportunity Commission, “Race-Based Charges FY 1997–FY 2009,” <http://eeoc.gov/eeoc/statistics/enforcement/race.cfm> (accessed September 27, 2010). For religion-based charges, 61 percent resulted in a finding of “no reasonable cause.” U.S. Equal Employment Opportunity Commission, “Religion-Based Charges FY 1997–FY 2009,” <http://eeoc.gov/eeoc/statistics/enforcement/religion.cfm> (accessed September 27, 2010). The proof necessary to win these cases, as well as the reluctance of plaintiffs to come forward when they might be reliant on the employer for a continuing paycheck, mean that many instances of illegal discrimination go unreported. Often, those being discriminated against are among vulnerable populations with no independent means of living if they lose their jobs. To top it off, the low success rates mean that attorneys in employment discrimination cases rarely take their cases on contingency, so victims have to pay expensive hourly fees. The rise of predispute arbitration clauses in the employment setting also means that workers facing illegal discrimination face a huge chasm between the promise of equality under the law and the reality of pursuing that promise.

As we move into the twenty-first century, new workplace discrimination issues will continue to surface. There is already widespread concern about the use of genetic information found in DNA to discriminate against employees because of the chances they might get a certain disease. This concern led to the passage of the Genetic Information Nondiscrimination Act of 2008. In spite of legislative action, however, too many cases of illegal discrimination are still taking place in the workplace. Adequately addressing this injustice will ultimately fall on a new generation of business leaders, such as you.

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