Equity and Legal Implications of Employment Discrimination Issues in Human Work Organizations

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Abstract

An important part of employment law in Nigeria is concerned with deterring employers from discriminating unfairly at any stage in their relationship with an individual worker. It is an area of law which is well established, but which is also unlawful to discriminate on the grounds of sex, marital status, tribe, ethnicity, disability, sexual orientation, religion or belief, union membership or non-membership, that individuals are part-time workers, that individuals are fixed-term workers, and that individuals are ex-offenders whose convictions are spent. This work is a review study that employed qualitative method to analyze the data gathered due to the nature of the investigation. The study revealed that in much discrimination legislations an important distinction is made between direct and indirect discrimination. The former relates to a situation in which someone is discriminated against because of a personal characteristics, the later relates to the setting of a requirement by an employer with which fewer of one group can comply than another. The paper recommended that discrimination law should operate rather differently in the case of each of the above grounds and providing a greater degree of protection to employees in human work place.

Key Words: Equity, Legal, Employment, Employees, Discrimination, Human Resource, Work, Organization.

Introduction

Civil rights laws, judicial interpretation of the laws, and the many sets of guidelines issued by state and federal regulatory agencies, have outlawed discrimination based on tribe, religion, national origin, age, sex and physical disability. In short, they have attempted to frame national policy on "Equal Employment Opportunity", (EEO). Although no law has ever attempted to define precisely the term "discrimination", in the employment context it can be viewed broadly as the giving of an unfair advantage (disadvantage) to the members of a particular group in comparison to the members of other groups (Suherhagen, 1977). The disadvantage, sometimes, known as an "adverse impact" usually results in the denial or restriction of employment opportunities or inequity in the terms or benefits of employment.

It is important to note that whenever there are more candidates than available positions, it is necessary to select some in preference to others. Selection implies exclusion. And as long as the exclusion is based upon what can be demonstrated to be job-related criteria, then that kind of discrimination is entirely proper. It is only when candidates are excluded on some basis not related to the job, e.g. tribe, sex, or any characteristic common to a particular group but not having anything to do with ability to learn and do the work required by the job, that comprises unlawful and unfair discrimination. Equal Employment Opportunity means that organizations must give potential candidates an equal opportunity to be considered for jobs. This implies a number of things.

1. Potential candidates must be apprised that jobs are available.
2. Candidates must be evaluated in terms of characteristics that really do make a difference between success and failure on the job.
3. Employees must be treated equally while on the job, e.g. equal pay, equal benefits, freedom from sexual harassment etc.

Despite federal and state laws on these issues, they represent the basis of an enormous volume of court cases, indicating that stereotypes and prejudices do not die quickly or easily (Stabiner, 1982).

Although National Assembly and State House of Assembly enacts laws, the courts interpret the laws and determine how they shall be enforced. Such interpretations define what is called case law which serves as a precedent to guide future legal decisions. And, of course, precedents are regularly subject to reinterpretation. In the area of employment, a considerable body of case law has accumulated for many years ago. Lawsuits affecting virtually every aspect of employment have been filed.

Forms of Discrimination

Discrimination is a subtle and complex phenomenon that can take at least five different forms:

1. Intentional discrimination is an open expression of hatred, disrespect, or inequality.
2. Minimum qualifications that exclude all members of a particular tribe, sex or age group.
3. Unequal treatment is a form of discrimination that uses one set of standards, procedures, or facilities with respect to a particular group; uses some other set of standards, procedures, and facilities to treat all other groups. According to Sonnenfeld (2000) they are:

(a) Specific tests, specific test conditions, or cut-off scores are used for the members of a particular tribe, sex or age group while different tests, test conditions, or cut-off scores are used for other groups.

(b) Separate job classifications, salary ranges, lists of eligible candidates, or seniority lists on the basis of tribe, sex or age.

4. Unequal effect discrimination is what you get if you could turn unequal treatment discrimination inside out. With unequal effect discrimination, identical standards, procedures, or facilities are applied to everyone, despite the fact that they have an adverse effect on the members of a particular group. Examples are:

(a) Recruitment adverts placed in media that appeal predominantly to the members of particular tribe, sex, or age groups, with a no comparable advertising being placed in other media that appeal to other groups.

(b) Job evaluation procedures that result in different salary levels for the members of particular tribe, sex and age groups.

(c) The only exception is when these standards, procedures, methods, or facilities are demonstrated by legitimate business or operational necessities. Examples of allowable exceptions are:

(i) Recruitment adverts that seek specifically to hire members of a particular religion to teach in a denominational school.

(ii) Licensure requirements, as with registered nurses, that are required by state law.

5. Continuation of past effect discrimination exists in the form of any standard, procedure, or facility that perpetuates the disadvantages suffered by the members of particular group as the result of past discrimination. Examples are:

(a) Word-of-mouth recruitment methods among present employees when, through past unfair discrimination, those employees are all special males.

(b) Maximum-age requirements for employment when particular groups have been denied employment previously due to discrimination on the basis of tribe, sex,

culture, religion, ethnicity, age, etc groups.

6. Retaliation against people who oppose discrimination such as coercion, intimidation, or any other action directed against any person because she or he has opposed discriminatory practices, made charges, or in any manner participated in an investigation proceeding or hearing regarding alleged unlawful discriminatory practices.

Examples are:

(a) Dismissal, suspension, transfer, or demotion of an employee who has filed discrimination complaints.

(b) Permitting employees to intimidate or harass co-workers who have field discrimination complaints (Seberhagen, 1977).

Legal Context of Personnel Decisions

Now that we have understood the meaning of Equal Employment Opportunity, and the several forms that unfair discrimination can take, let use consider the major discrimination issues in human work organizations.

Discrimination on Grounds of Sex or Marital Status

The two major Acts of Parliament that govern sex discrimination matters in Nigerian are the Equal Pay Act and the Sex Discrimination Act. Although both came into effect years ago, they have been subsequently amended in important ways (Okere, 2013). Employer actions are policed to some extent by the Federal Character Commission (FCC) which is required to keep the legislation under review, to conduct formal investigations into employer actions where it has reason to suspect there has been a contravention of the law, to issue code of practice and to provide legal assistance to employees who consider themselves to be victims of unfair discrimination. On many occasions the FCC has itself represented employees before employment tribunals. It also brings its own test cases in a bid to push back the frontiers of sex discrimination law (Okere, 2013). Some of the issues in sex or marital discrimination include:

(1) **Equal Pay Act**

The Equal Pay Act promotes equality at work between men and women. The Act is solely concerned with eliminating unjustifiable differences between the treatment of men and women in terms of their rates of pay and other conditions of employment (Bower and Moran, 2002). It is thus the vehicle that is used to bring a case to tribunal when there is inequality between a man's contract of employment and that of a women. In practice the majority of cases are brought by women and concern discriminatory rates of payment,

although there have been some important cases brought by men focusing on aspects of pension provision.

The Act specifies three types of claim that can be brought. These effectively define the circumstances in which pay and other conditions between men and women should be equal:

(a) Like Work: Where a woman and a man are doing work which is the same or broadly similar, for example, where a woman assembly worker sits next to a male assembly worker, carrying out the same range of duties.

(b) Work Related as Equivalent: Where a man and a woman are carrying out work which, while of a different nature, has been rated as equivalent under a job evaluation scheme.

(c) Work of Equal Value: Where a man are performing different tasks but where it can be shown that the two jobs are equal in terms of their demands, for example in terms of skill, effort, and type of decision making.

In order to bring a case the applicant must be able to point to a comparator of the opposite gender with whom he or she wishes to be compared. The comparator must be employed by the same employer and at an establishment covered by the same terms and conditions (Terborg, 1977). When an equal value claim is brought which an employment tribunal considers to be well founded, an "independent expert" is appointed to carry out a job evaluation exercise in order to establish whether or not the two jobs being compared are equal in terms of the demands they make. According to Ziskind (1976), employers can employ two defenses when faced with a claim under the Equal Pay Act. First, they can seek to show that a job evaluation exercise has been carried out which indicates that the two jobs are not alike, rated as equivalent or of equal value. To succeed the job evaluation scheme in use must be both analytical and free of sex bias. Second, the employer can claim that the difference in pay is justified by a "genuine material factor not of sex". For this to succeed, the employer has to convince the court that there is a good business reason for the unequal treatment and that there has thus, been no sex discrimination. Examples of genuine materials factors that have proved acceptable to the courts are as follows:

1. Different qualifications, e.g. where a man has a degree and a woman does not;
2. Performance, e.g. where a man is paid a higher rate than a woman because he works faster or has received a higher appraisal rating.
3. Seniority, e.g. where the man is paid more because he has been employed for several years longer than the woman.
4. Regional allowances e.g. where a man is paid an Abuja weighting, taking his pay

to a higher rate than that of a woman performing the same job in the Lagos branch.

The courts have ruled that differences in pay explained by the fact that the man and woman concerned are in, separate bargaining groups, by the fact that they asked for different salaries on appointment or because of an administrative error are not acceptable genuine material factor offences (Oslon, 1979). It is possible to argue that a difference in pay is explained by market forces, but evidence has to be produced to satisfy the court that going rates for the types of work concerned are genuinely different and that it is therefore, genuinely necessary to pay the comparator at a higher rate.

(2) **Sex Discrimination Act**

Sex Discrimination Act also was designed to complement the Equal Pay Act by dealing primarily with non-contractual forms of sex discrimination such as employee selection, the provision of training opportunities, promotion, access to benefits and facilities, and dismissal. It also applies outside the workplace, so case law that relates to events which have nothing at all to do with employment can be the source of important precedents. The Act covers all workers whether or not they serve under contracts of employment or are employed and all are job applicants. The only groups excluded are ministers of religion, solders who may serve in front-line duties and people employed to work abroad. It thus remains permissible for firms recruiting employees to work in Saudi Arabia exclusively to select men (Ziskind, 1976). The Act applies equally to men and women, and also protects people from unfair discrimination on the grounds that they are married.

There are three headings under which claims are brought: direct discrimination, indirect discrimination and victimization, the way the law works in each case being rather different (Stabiner, 1982).

Direct Discrimination: Is straightforward. It occurs simply when an employer treats someone unfavourably and when sex or marital status is an important factor in this decision. In judging claims the courts use the "but for test", asking whether the woman would have received the same treatment as a man or vice versa, but for her sex. Examples of direct sex discrimination include advertising for a man to do a job which could equally well be done by a woman rather than her single colleague because she is known to have a working husband (Bowers and Moran, 2002).

If an employer is found to have discriminated directly on grounds of sex or marital status, except in one type of situation, there is no defence. The courts cannot, therefore, take into account any mitigating circumstances or make a judgement based on the view that the

employer acted reasonably. Once it has been established that direct discrimination has occurred, proceedings end with a victory for the applicant. The one exception operates in the area of recruitment, where it is possible to argue that certain jobs have to be reserved for either women or men. For this to be acceptable the employer must convince a court that it is a job for which there is a genuine occupational qualification. The main headings under which such claims are made are:

1. Authenticity, e.g. acting or modeling jobs;
2. Decency, e.g. lavatory or changing room attendants;
3. Personal services, e.g. a counsellor engaged to work in a rape crisis centre.

Direct discrimination on grounds of pregnancy or maternity is assumed automatically to constitute unlawful sex discrimination. This means that there is no defence of reasonableness whatever the individual circumstances. It is thus, unlawful to turn down a job application from a well-qualified woman who is eight months pregnancy, irrespective of her intentions as regards the taking of maternity leave.

Indirect Discrimination: It is harder to grasp, not least because it can quite easily occur unintentionally. It occurs when a requirement or condition is set which has the effect, in practice, of disadvantaging a significantly larger proportion of one sex than the other. In other words, if substantially fewer women than men can comply with the condition, even if it is applied in exactly the same way to both men and women, it is potentially unlawful. A straightforward example is a job advertisement which specifies that applicants should be taller than 5 feet 10 inches. This is indirectly discriminatory because a substantially smaller proportion of women are able to comply than men. The same rule applies in the case of discrimination on grounds of marital status, an example being that of an employer who offers promotion on the basis that the employee must be prepared to be away from home for considerable spells of time, when in reality such absence was never or rarely required.

Victimization: Victimization means the same as it does in other areas of employment law. An employer victimizes workers if it disadvantages them in any way simply because they have sought to exercise their legal rights or have assisted others in doing so. An employee would thus, bring a claim of victimization to a tribunal if he has been overlooked for promotion having recently successfully settled an equal pay claim. Importantly, victimization covers situations in which someone threatens to bring an action or plans to do so even if no case is ultimately brought.

(3) **Positive Sex Discrimination**

Positive sex discrimination involves directly or indirectly discriminating in favour of women in situations where they are underrepresented, usually at senior levels in an organization or in occupational groups which are male dominated. Such practices are unlawful under Nigerian law when they involve actively discriminating against men who are better qualified to fill the positions concerned (Okere, 2013). However, it is lawful to take positive action aimed at encouraging and supporting women provided it stops short of actually discriminating in their favour. It is thus, acceptable to include an equal opportunities statement in a job advertisement as a means of indicating that the organization welcomes applications from women. Similarly, employers can design and offer training courses tailored specifically for women (Sonnenfield, 2000). As long as men are not prevented from participating, such action is lawful.

(4) **Dress Codes**

In relation to dress codes, a tribunal will only find valid a claim of sex discrimination if the applicant or applicants can be shown to have suffered a detriment as a result of the condition being imposed. Merely treating members of the two sexes differently is not in itself sufficient to constitute unlawful indirect discrimination (Gall and Monaghan, 2003). For this reason it is acceptable in principle for employers to impose different dress codes on male and female staff, provided the same broad standard of conventionality is applied. It is thus, lawful, as far as sex discrimination law is concerned, to insist that male employees wear business suits at work, while permitting women more choice about their attire.

(5) **Transsexuals**

Homosexuals have bad great difficulty over the years in persuading the courts that they have rights under sex discrimination law, transsexuals have been protected for some years (Fredman, 2002). It is therefore, unlawful to discriminate against someone on the grounds that he or she is a medically defined transsexual. The rights of people undergoing gender reassignment are now specifically protected by the Sex Discrimination Regulations, that is, Gender Reassignment.

(6) **Sexual Harassment**

While the area of sexual harassment is not specifically covered in the Sex Discrimination Act (Greenlaw and Kohl, 1981), the courts have accepted for some years that allowing someone to be subjected to acts of harassment which has a sexual dimension amounts to unlawful sex discrimination. Although the law applies equally to men and women, the vast majority of cases are brought by women. The employer's liability in harassment cases

arises from the application of the doctrine of vicarious liability, under which employers are held responsible for the commitment of civil wrongs by employees when they are at work.

According to Linenberger and Keaveny (1981), sexual harassment is defined in European Union Code of Practice dating from 1991. It establishes the following:

1. That it consists of unwanted conduct of a sexual nature or based on sex, which affects the dignity of men and women at work;
2. That sexual harassment can be physical or verbal in nature;
3. That the conduct either leads to material detriment, i.e. it affects promotion, pay, access to training, etc, or creates an intimating or humiliating work environment.

In judging cases the courts focus on the reaction of the victim and do not apply any general definitions of what types of conduct do and do not amount to unlawful harassment. Hence, conduct which may not offend one person in the slightest can be found to constitute sexual harassment when directed at someone else who is deeply offended. Macdonald (1998) said that, for an employer the only valid defences relate to the notion of vicarious liability. An employer can, for example, claim ignorance of the incident of which the victim is complaining or can claim that vicarious liability does not apply because it occurred away from the workplace and outside office hours. Finally, the employer can defend itself by showing that all reasonable steps were taken to prevent the harassment from occurring or continuing. In order to succeed here, the employer needs to produce evidence to show that initial complaints were promptly acted upon and that appropriate action, such as disciplining the perpetrators or moving them to other work, was taken (Greenlaw and Kohl, 1981).

In the vast majority of cases on this issue, females rather than males have suffered from sexual abuse at work. Such abuse may constitute illegal sex discrimination (Behman, 1976). It seems like only yesterday that sexual harassment was not a subject for legal action. Linenberger and Keaveny (1981), pointed out that in 1963 one legal commentator expressed the typical male supervisor's attitude toward exploiting sexual consideration from female employees when he said "There is no harm in asking". At that time the courts found that a woman had no legal remedy unless she was actually assaulted or battered. Today, there is a broader view of what constitutes unacceptable behaviour, but it is surprisingly difficult to define sexual harassment. Perhaps the best definition to date according to Finneran (1980) is that proposed by the Michigan Task Force on Sexual Harassment in the workplace, that is, "sexual harassment includes, continual or repeated abuse of a sexual nature including but not limited to, graphic commentaries on the victim's

body, sexually suggestive objects or pictures in the workplace, sexually degrading words used to describe the victim, or propositions of a sexual nature. Sexual harassment also includes the threat or insinuation that lack of sexual submission will adversely affect the victim's employment, wages, advancement, assigned duties or shifts, academic standing, or other conditions that affect the victim's livelihood".

This definition specifies examples of unacceptable conduct in the workplace; it does not rely on the victim's perception of objectionable actions. Also, it limits the bringing of sexual harassment suits based on isolated incidents that are not part of a continual or repeated pattern of behaviour, (Linenberger and Keaveny, 1981). What can an employer do to escape liability for the sexually harassing acts of managers or workers? Several courts have suggested that if the employer has no knowledge of the harassment, liability can be avoided if two conditions have been met: (1) The employer has a policy discouraging sexual harassment, and the employee failed to use an existing grievance procedure, and (2) the sexually harassing situations are rectified as soon as the employer becomes aware of them (Grazulis, 1978).

An effective anti-sexual harassment policy should have three features: (1) A workable definition of sexual harassment; (2) A clear statement of possible sanctions against those who harass others and protection for those who makes charges; and (3) A clear statement that retaliatory action against an employee who makes charges will not be tolerated (Biles, 1981). A grievance procedure should complement such a policy, for the courts have made clear that employers are expected to take remedial action as soon as they become aware of sexual harassment, that is, heterosexual by either sex or homosexual by either sex. Such action is not limited to supervisor – subordinate relationships. The law holds an employer liable even for harassment of an employee by a nonemployee, such as a customer. The grievance procedure should assist the employee in informing management of any problems. In the opinion of Greenlaw and Kohl (1982), management must then take immediate and firm action in order to avoid the legal liability possible under the purview of the law.

Pregnancy

The Equal Employment Opportunity guidelines on the Pregnancy Discrimination Act State: "The basic principle of the Act is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore, protected against such practices as been fired, or refused a job or promotion, merely because she is pregnant or has had an abortion. She usually cannot be forced to go on leave as long as she can still work. If other employees

who take disability leave are entitled to get their jobs back when they are able to work again, so are women who have been unable to work because of pregnancy (Boyle, 1975).

It is important to note that an employer is never required to give pregnant employees special treatment. If an organization provides no disability benefits or sick leave to other employees, it is not required to provide them for pregnant employees (Trotter, Zacur and Greenwood, 1982). While the actual length of maternity level is now an issue to be determined by the women's and/or the company's physician, women will be paid, in most cases, only for the time a doctor certifies they are disabled (Schnack, 1980).

Reproductive Hazards

Another way that sex discrimination may be perpetuated is by barring women from competing for jobs that pose occupational health hazards to their reproductive systems. According to Cocks (1982), in 1980 the Equal Employment Opportunity Commission (EEOC), and the Department of Labor is issued interpretive guidelines on employment discrimination and reproductive hazards. The guideline state: "Employer's policy of protecting female employees from reproductive hazards by depriving them of employment opportunities without any scientific data is a per-se violation of Title VII (ref.23). Employers may therefore not discriminate against women on the basis of potential hazards to their reproductive systems in the absence of sound research data that indicate actual danger (Cohen, 1979).

Women in the Workforce

Feminism was the last focus of the civil rights movement and the more general social activism of the late 1960s. Potentially its constituency was the broadest and deepest, and so were the problems it addressed. Terborg (1977), observed that, in 1972 women questioned the possibility of having a family and holding a job at the same time. By the early 1980s as demonstrated by Fredman (2002), more women, including some of the daughters of the past generation, took it for granted that they should be able to manage both. Five forces accounted for the changed attitudes:

1. **Changes in the Family:** Legalized abortion, contraception, divorce, and a declining birthrate have all contributed to a decrease in the proportion of most women's lives devoted to rearing children. Women are now important providers of family income.
2. **Changes in Education:** Ever since World War II, increasing numbers of women have been attending higher institution. By the early 1980s, about a third of law school, medical school, and MBA students were female (Cocks, 1982).

3. **Changes in Self-Perceptions:** Lower self-confidence is one achievement related characteristic that consistently differentiates women from men (Maccoby and Jacklin, 1974). This is certainly changing as a result of the women's movement, for the goal of affirmative action for women is to raise the consciousness level of both women and men so that women can be given a fair chance to think about their interests and potential, to investigate other possibilities, to make an intelligent choice, and then to be considered for openings or promotions on equal basis with men (Boyle, 1975).

4. **Changes in Technology:** Both in the home e.g. frozen foods, micro-ware ovens, and in the workplace e.g. robotics, advances in technology have reduced substantially the physical effort and time required to accomplish tasks. Thus, more women can now qualify for formally all-male jobs.

5. **Changes in the Economy:** Ever since World War II, there has been a shift away from goods production and toward service related industries, e.g. healthcare, banking, law enforcement etc. Henderson (1992) observed that, by the early 1980s over 50 percent of the workforce was employed in service industries and only 25 percent in manufacturing. Increasing numbers of employees in all types of industry are female.

Seniority

Seniority is a term that connotes length of employment. A "seniority system" is a scheme that, alone or in tandem with "non-seniority" criteria, allots to employees ever-improving employment rights and benefits as their relative lengths of pertinent employment increase. Although the prevalence of seniority clauses in the Act varies by type of industry, about 85 percent of union contracts contain such provisions (Miller, 1980). They are major sources of legal and quasi-legal problems for both unions and management (Gordon and Johnson, 1982). Legal disputes are subject to resolution by state and federal courts. Quasi-legal disputes are subject to resolution by joint union-management committees.

In the realm of quasi-legal affairs, seniority is the subject of many grievances. Collective bargaining contracts frequently require that personnel decisions regarding, for example, layoff or promotion, be based upon a combination of seniority plus ability or qualifications. Grievances over such seniority provisions often are filed because the provisions are seldom precise about the manner of assessing worker ability (Cohen, 1979). In addition, seniority accounts for a substantial number of grievances in declining industries as workers strive to protect their rights to shrinking numbers of jobs (Miernyk, 1980). Unions and

management also have encountered legal problem stemming from the impact of established seniority systems on programmes designed to ensure equal employment opportunity (Gregory Katz, 1979).

Personal History

Frequently job qualification requirements involve personal background information. If the requirements have the effect of denying or restricting equal employment opportunity, they may violate the law. For example, in the Griggs versus Duke Power Co. Case (1971), a purportedly neutral practice such as the high school education requirement that excluded from employment a high proportion of blacks than whites, was ruled unlawful because it had not been shown to be related to job performance. Other allegedly neutral practices that have been strucked down by the courts on the basis of non-job relevance include:

1. Recruitment practices based upon present employee referrals, where the workforce is nearly all white to begin with (EEOC V. Radiator, 1979).
2. Height and weight requirements (Dothard V. Rawlinson, 1977).
3. Arrest records, because they show only that a person has been accused of a crime, not that she or he was guilty of it. Thus, arrests may not be used as a basis for selection decisions (Gregory V. Litton Systems, 1972), except in certain sensitive and responsible positions e.g. police officer, school principal (Webster V. Redmond, 1979).
4. Conviction records, unless the conviction is directly related to the work to be performed, for example, a person convicted of embezzlement applying for a job as a bank teller.

Despite such decisions, it should be emphasized that personal history items are not unlawfully discriminatory per se, but their use in each instance requires that job relevance be demonstrated. In short, the employer should be collecting information on a "need-to-know", not on a "nice-to-know" basis.

Disability Discrimination

The Act is concerned with preventing an employer from discriminating, directly against an individual worker or job applicant who suffers from disability. There is no specific prohibition on the setting of requirements for use in recruitment or promotion processes which might be held to discriminate against disabled people in general (Greenlaw and Kohl, 1982). It is thus, lawful to list "good record of health" as a desirable characteristic in a person specification, that alone cannot constitute discrimination under the terms of the Act. However, this does not mean that employers can safely use language in job

advertisements which could deter disabled people, because the advertisement can later be used by a rejected applicant as evidence in support of a disability discrimination claim. Miller (1980) opined that newspapers and employment agencies which knowingly publish advertisements which are discriminatory may also face fines if successfully prosecuted.

Miernyk (1980) posit that when applicants win their cases at tribunal, there are three possible outcomes:

1. The tribunal issues a declaration affirming the complaint's right, e.g. preventing an employer from making someone, redundant;
2. The tribunal makes a recommendation, e.g. requiring a doorway to be widened to accommodate a wheelchair.
3. The tribunal makes a compensatory award.

In the case of the third outcome, there are no statutory limits on the compensation that can be paid, allowing the courts to fully recompensate people for any past or estimated future losses they may have incurred.

Discrimination on Grounds of Sexual Orientation

The Equity, that is, Sexual Orientation Regulations, gave effect to all nations' law which seeks to protect people from discrimination on grounds of their sexual orientation (Macdonald, 1988). One of the most interesting issues the government had to wrestle with when drawing up the regulation was how to define the term "sexual orientation" (Okere, 2013). After consulting extensively it was decided to define the term narrowly and specifically as meaning "a sexual orientation towards persons of the same sex, persons of the opposite sex, or persons of the same sex and the opposite sex" (Okere, 2013). Importantly, the regulations make it unlawful to discriminate against someone on grounds of sexual orientation, and not simply because of their sexual orientation. This means that treating someone unfaviourably because a relative is gay or because they have gay friends is unlawful.

All workers and job applicants are covered by the regulations. Former employees are also explicitly covered and could bring a claim, for example, were a discriminatory job references to be written. Four types of claim can be brought, reflecting the standard approach to discrimination law which is now being developed in the statutes. The meaning of these terms are the same as for sex discrimination law. These are: (1) Direct discrimination; (2) Indirect discrimination; (3) Harassment; and (4) Victimization.

A major source of complaint, and of litigation, over the years has been differential

treatment given to heterosexual people in the field of employee benefits (Greenlaw and Kohl, 1982). Pension scheme rules are the biggest issue, particularly widows' pensions and survivors' payments under life assurance terms, but some staff discount schemes have similarly been restricted to spouses and heterosexual partners.

Discrimination on Grounds of Religion or Belief

The Employment Equity Regulations also cover the issues of religion or belief. Nigerian government stated from the outset that its intention was to define the term, "religion or belief" narrowly (Okere, 2013). However, the definition that appears in the draft regulations allows plenty of room for interpretation. The wording used is "any religion, religious belief or similar philosophical belief". Specifically, excluded are "philosophical or political beliefs unless those beliefs are similar to a religious belief. The aim is to try to avoid a situation arising in which, for example, a number of a group could make use of the law to protect themselves from discrimination on grounds of their politics but, in the process, the regulations also ensure that people with pacifist or vegetarian convictions, or indeed those committed to any political creed, fall outside their protection (Gall and Monagham, 2003). As elsewhere in discrimination law the regulations on religion or belief permit direct discrimination to occur only where a post carriers with it a Genuine Occupational Requirement (GOR) (Oslon, 1999). This is likely to be one of the major areas in which the case law evolves as there are a number of obvious and common situations in which GORs will be an issue. The regulations permit GORs both where being of a particular religion is a genuine and determining occupational requirement for the job and where the employer has an ethos based on religion or belief. It is pretty clear therefore, that a GOR would apply in the case of clerical roles, such as a hospital chaplain or a Christian outreach worker, but what about posts in denominational schools? More interesting is the case of organizations which do not have a religious purpose, but which claim to run themselves in accordance with a particular religious ethos. There are, for example Christian medical practices, Islamic businesses and Jewish law firms which currently only employ members of a particular religious group, at least in senior roles (IRS, 1993).

Trade Union Discrimination

The freedom to join a trade union and take part in its lawful activities is generally regarded as a fundamental human right. It is included in both the convention on Human Rights and the founding conventions of the International Labour Organization. Although this freedom is not couched in the language of positive rights, it is in practice difficult for a Nigerian employer lawfully to discriminate against people simply because they have joined a union or have taken part in union activities (Maccoby,1974).

According to Miller (1980), there are three basic rights:

1. The right not to be dismissed for a trade union reason;
2. The right not to suffer action short of dismissal for a trade union reason;
3. The right not to be refused a job on trade union grounds.

The first two of these protect people who take part or refused to take part in the activities of an independent trade union at an appropriate time. The protection, however, only extends to employees, that is, people working under a contract of service, and does not apply in the police and armed forces (Fredman, 2002). In the case of dismissals, because trade union reasons are regarded as automatically unfair, there is no qualifying period of service. Full rights thus, apply from the first day someone is employed at a particular establishment. In order to gain the protection of the law in this area the organization an individual joins or with which he or she becomes involved must be one which has been listed as an independent trade union by the Certification Officer (Okere, 2013). Moreover, the activities in which the individual engages must be authorized by the union concerned and must, if they take place during work time, be carried out with the consent of the employer. Industrial action is not included in the definition of the activities of an independent trade union at an appropriate time, but is the subject of other protective legislation.

Discrimination against prospective employees at the recruitment stage simply because they are or are not union members has been an unlawful practice. In the Employment Relations Act rights in this area were extended to cover any discrimination occurring as a result of an individual's past involvement in trade union activity. The aim was to prevent groups of employers from maintaining blacklists of individuals perceived to be union troublemakers (Macdonald, 1998).

Part-Time Workers

Discriminating against a female part-time worker has long been taken by the courts to constitute indirect sex discrimination because the vast majority of part-time workers are female. However, it has not been necessary for part-time workers, of either gender to use sex discrimination law to protect themselves (Bowers and Moran, 2002). The Part-time Workers, Prevention of Less Favourable Treatment Regulations were introduced to ensure that the Nigerian organizations complied with the Part-Time Workers Directive (Okere, 2013). They seek to ensure that part-time workers not just employees are treated equally with full-time workers in all aspects of work, the key features being as follows:

1. Part-time workers who believe that they are being treated less favourable than a comparable full-time colleague can write to their employer asking for an explanation. This must be given in writing within 14 days.
2. Where the explanation given by the employer is considered unsatisfactory, the part-time worker may ask an employment tribunal to require the employer to affirm the right to equal treatment.
3. Employers are required under the regulations to review their terms and conditions, and to give part-timers pro rata rights with those of comparable part-timers.
4. There is a right not to be victimized on account.

Any term or condition of employment is covered by the regulations, as is any detriment caused as a result of failure to be promoted or given access to training. It is also now unlawful to select someone for redundancy simply because they work part-time (Miernyk, 1980).

Fixed-Time Workers

The Fixed-Time Work Directive brought into Nigerian law via the Employment Acts includes a range of important provisions designed to improve the position of the many employees who are employed on temporary contracts (Okere, 2013). The general requirement is that a fixed-term employee should not be treated less favourably than a comparable permanent employee unless less favourable treatment can be objectively justified. This has meant an end to the common practice of avoiding making redundancy payments when-fixed term contracts finish by including a waiver clause in the contract of employment. The statute extends to fixed-term employees the right to receive statutory sick pay (SSP) in the same way as permanent staff and also requires employers to inform fixed-term employees about permanent vacancies in the organization. Thus, the law gives fixed-term employees the right to ask for a written statement of reasons from their employers if they are being treated unfavourably as well as a statement that their contract has become permanent after some years. Where employers fail to honour these rights or to give satisfactory explanations, complaints can be taken to an employment tribunal.

Ex-Offenders

Another group who are given some measure of legal protection from discrimination at work are ex-offenders whose convictions have been spent. The relevant legislation is contained in the Rehabilitation of Offenders Act which sets out after how many years different types of criminal conviction become spent and need not be acknowledged by the perpetrator (Okere, 2013). In the words of Stabiner (1982), in the field of employment,

protection from discrimination extends to dismissal, exclusion from a position and prejudicing some in any way in their employment. In other words, employers cannot dismiss someone, fail to recruit them or hold them back in their occupations simply because they are known or discovered to have a former conviction. Failing to disclose the conviction can also be no grounds for discrimination. Moreover, no one whether the individual concerned or anyone else is under any obligation to tell anyone else about the conviction once it has been spent. Effectively, the slate is wiped clean, allowing the ex-offender to live and work as if no conviction had been received.

Okere (2013) observed that the rehabilitation periods set out in the Act vary depending on the type of sentence that has been received. The tariff is as follows:

1. Imprisonment over 30 months: Never spent
2. Imprisonment 6 to 30 months: Ten years
3. Less than 6 months imprisonment: Seven years
4. Fine or community service order: Five years
5. Detention in a detention centre: Three years
6. Conditional discharge: One year
7. Absolute discharge: Six months

The time of conviction runs from the date of the conviction, the times of being cut in half for those who are under the age of 18 at this time. It is the sentence imposed that is relevant to the Act and not the sentence actually served. Numerous jobs and occupations are excluded from the terms of the Act. Organizations which employ people to work in these positions are entitled to know about spent convictions and can lawfully discriminate against individuals on these grounds. The list includes all jobs which involve the provision of services to minors, employment in the social services, nursing homes and courts, as well as employment in the legal, medical and accountancy professions (Linenberger and Keaveny, 1981).

Age Discrimination Law

This is a wholly new field of law which will require major changes to many existing statutes both within and outside the employment field. In terms of its basic structure and scope, age discrimination law will follow the same approach as has been established for the other types of discrimination law that fall within the area of competence, that is, sex, disability, sexual orientation and religion or belief. It will also extend beyond the world of employment to the activities of trade unions, professional bodies and institutions of further and higher education (Sonnenfield, 2000). However, it appears that in cases of direct age discrimination, that is, treating an individual less favourably because of his age or for a

reason related to his age, defences will be available. So it will remain possible for employers to discriminate on age grounds under certain types of circumstances. According to Olson (1979), the consultation document labels these "exceptional circumstances", but goes on to list situations which appear commonplace, such as:

1. Health, safety, and welfare reasons;
2. Facilitation of employment planning;
3. Encouraging or rewarding loyalty;
4. The need for a reasonable period for employment prior to retirement.

The biggest issue of all in the field of age discrimination is mandatory retirement, and the government has yet to announce how it intends to legislate on this. It is currently acceptable for an employer to require all employees to retire, whether they want to or not, at a predetermined age. This is 60 years for non tertiary institution workers in Nigeria, unless the employer has another normal contractual retirement age (Okere, 2013). The government wants greater flexibility in this area, but also appears anxious to avoid a situation in which elderly people exercise a legal right to continue in jobs which they are no longer capable of carrying out. The likely outcome is a later compulsory retirement age, with lower ages being permitted for certain professions, but until the legislations are finalized employers are not able to plan ahead with confidence.

Baroni (1981) pointed out that, "the Equal Employment Opportunity Commission's 1981 guidelines on age discrimination emphasize that in order to discriminate fairly against employees between 40 to 70 years old, an employer must be able to demonstrate a business necessity for doing so". That is, it must be shown that age is a factor directly related to the safe and efficient operation of a business. To establish a prima facie case of age discrimination, an individual must show that:

1. She or he is within the protected age group;
2. She or he is doing satisfactory work;
3. She or he was discharged despite satisfactory work performance;
4. The position was filled by a person younger than the person replaced (Sonnenfield, 1980).

Conclusions

Discrimination law has grown rapidly in recent years, extending to new grounds such as age, sexual orientation and religion or belief. Equally pay law requires men and women to be paid the same wage for doing work which is the same or which can be shown to be of

equal value unless the employer can justify a difference on grounds of other than sex. In most discrimination legislations an important distinction is made between direct and indirect discrimination. The former relates to a situation in which someone is discriminated against because of a special characteristic, the latter relates to the setting of a requirement by an employer with which fewer of one group can comply than another. Also, harassment claims can be brought against any employer who allows a worker to be subjected to treatment which intimidates or humiliates the victim for reasons related to their sex, sexual orientation, disability etc. The Disability Discrimination Act requires employers to consider making reasonable adjustments to working conditions to accommodate the needs of disabled persons before dismissing them or failing to offer them a job. Also, limited protection from discrimination is given in law to trade union members, employees who do not engage in union activity, part-time workers, fixed term-workers and ex-offenders whose convictions are spent.

Recommendations

The paper recommends the following for improved equality and reduction in employment discrimination in human work organizations.

1. Discrimination law should operate rather differently in each of the discrimination issues, and should provide a greater degree of protection to employees in human workplace.
2. Employees should be treated equally while on the job e.g. equal pay, equal benefits, freedom from sexual harassment etc.
3. Candidates must be evaluated in terms of characteristics that really do make a difference between success and failure on the job in the issues of selection, promotion, or layoff process.
4. There should be laws that provide absolute prohibitions against unfair discrimination.
5. There should be laws that require non- discrimination as a condition for receiving federal and state funds, such as contracts, grants, revenues sharing entitlement.
6. National and State Assembly should interpret the laws and determine how they shall be enforced.
7. Organizations in Nigeria with 100 or more employees must file an annual report with the government detailing the number of women and minorities employed in nine different categories ranging from labourers to managers and professionals.
8. Federal Character Commission (FCC) should issue guidelines on discrimination because of religion, sex etc; guidelines on affirmative action programmes; guidelines on employee selection procedures; and policy statement on pre-employment inquiries.

9. Guidelines on age discrimination should emphasize that in order to discriminate fairly against employees 35 to 60 years old, an employer must be able to demonstrate a business necessity for doing so.
10. Doctrine of Vicarious liability should be applied in sexual harassment, under which employers will be responsible for the commitment of civil wrongs by employees when they are at work.
11. Employers should conduct job evaluation exercise to justify equal pay claim, to indicate differences in jobs or that they are not alike.
12. Disability Act should be concerned with preventing an employer from discriminating directly against an individual worker or job applicant who suffers from a disability.
13. The freedom to join a trade union and take part in its lawful activities should generally be regarded as a fundamental human rights of the employees.
14. There should be no discrimination against a female part-time worker because it constitutes indirect sex discrimination in the law court.
15. Fixed-term workers should not be treated less favourably than a comparable permanent employees, unless less favourable treatment can be objectively justified.
16. Ex-offenders should be protected from dismissal, exclusion from a position and prejudicing someone in any way in their employment.
17. Federal Character Commission should police employer actions to some extent, which is required to keep the legislation under review, to conduct formal investigations into employer actions where it has reason to suspect there has been a contravention of the law, to issue codes of practice and to provide legal assistance to employees who consider themselves to be victims of unfair discrimination.

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