

“Discrimination, which thirty years ago was barely recognised in domestic law, is now the subject of wealth of legal attention”. This could be explained by the rapid development of trade relations, globalization policy and drastic change of the working environment. Although there are many discrimination laws, they are not always obeyed. That is why, the employment discrimination tends to be the burning issue of the twenty-first century. This discrimination may happen when an employee is treated unfavorably and dishonestly because of various aspects like race, national origin, skin color, disability, religion, gender and age. However, it is considered to be illegal to discriminate workers, concerning such issues. On the organizational level, discrimination can be noticed on all possible stages, from recruitment to firing. Respectively, people can be offended when choosing the preferred candidates for the position and excluding their opportunity to get prestigious jobs. Apart from that, discrimination can be recognized within dishonest accounting and reduced salaries or lack of benefits and compensations. At non-private organizations the discrimination may happen when assigning maternity leaves, disability leaves and various retirement options. In this essay we are aimed to investigate sex discrimination at workplace and suggest the appropriate laws to establish equality within the organization.

Sex discrimination is the phenomenon that demoralizes thousands of effective workers in America every year. It is the example of unhealthy business ethics. This fact negatively shapes the working environment, where the misbalance can be easily noticed. Although such sex discrimination cases usually affect certain individuals, but not groups of people, they can anyway put the efficiency of the performance in a great danger. The frequent practice of sex discrimination creates the barriers between men and women who begin to perceive each other like opponents and, at times, rivals¹. It can badly influence the company’s overall management. For example, losing some precious and responsible employees, the profitability can be decreased or the poor quality

¹ Crosby Faye J., Stockdale Margaret S, Ropp S. Ann. *Sex discrimination in the workplace: multidisciplinary perspectives*. (Blackwell Publishing Ltd. 2007, 375 p.)

services can be offered. In such a case, the relationships with current and potential clients may be hampered.

Naturally, the employment discrimination affects both sexes, involving the unfair determination or decision making based upon person's sex. Some modern scientists report that almost fifteen percent of employees suffer from sex discrimination at work. Most of such discriminated people are women; men are treated badly not very frequently. There exists the biased practice that males are estimated in accordance with their performance and females' perception is based upon their appearance. If those features are typical for both sexes, it can mean that they are destined to fail when applying for a job. For example, if airlines are interested to have only attractive women in their staff, they discriminate those, who are not quite attractive. Although the employer can justify his intention by the ability and efforts to create the "sexy image of the airline care", he can be accused of treating all candidates unequally and dishonestly. One more bias practice is directly linked to 'sex plus theory', stating that women are perceived in the light of their marital status and child-bearing ability. This way, the employers are often interested in male candidates who will not have any leaves and compensations, performing their functions accurately¹. But the laws, regulating employment discrimination can provide women with the necessary support. On these grounds, women cannot be given a sack if they are pregnant and they are required to be financially supported for the whole period of maternity leaves. Moreover, the bias of exclusively male recruitment is highly criticized and some inspections regularly check recruitment managers for choosing the candidates of approximately equal qualifications. This way, the role of woman in the working environment is promoted.

¹ Deakin Simon F. , Gillian S, Morris. *Labor Law*. (5th ed, 2009. p. 515-530.)

One of the most significant features of sex discrimination is that it is widely connected not only with gender, but also with age, race and disability¹. To the general examples of sex discrimination we may refer hiring (candidate's experience and excellent qualifications are not taken into account by the employer if he has a long-term client or friend who is more suitable for a position), firing (some employees can be forced to leave their jobs, whereas others are promoted to work in the healthy environment), promotion (women are not given the opportunity to climb the career ladder, whereas newly employed men can be provided with such opportunity immediately), job classification (the increased responsibility at work over the course of time can be supported by the decreased payment, negatively influencing the motivation of employees), benefits (women cannot be provided with full payment for maternity leaves, because of employer's fault or inability to cover this kind of compensation), payment (various employees can be provided with different salaries, although possessing the same position) and sexual harassment (this can happen when the male employer is interested to treat females as the potential sex partners)².

Let us focus more profoundly on some other employment discrimination issues. In terms of sexual harassment, the company can be considered as liable for harassment if it does nothing to stop the practice. The determination of this harassment can be estimated according to the degree of its severity and whether it interfered with employee's work performance. If a woman is observed as the object for someone's sexual desires, she cannot be given adequate attention in terms of her skills and qualifications and can be generally discriminated. The lack of interest in women is reported by some scientists to be in direct relation to their appearance. The age discrimination is regulated by the Age Discrimination in Employment Act, which prohibits hiring and firing the employees on the

¹ 'You-can-learn-basic-employee-rights.com Gender Discrimination in the Workplace'. Sex Discrimination. <<http://www.you-can-learn-basic-employee-rights.com/gender-discrimination-in-the-workplace.html>> accessed 23 August 2011

² Crosby Faye J., Stockdale Margaret S, Ropp S. Ann. *Sex discrimination in the workplace: multidisciplinary perspectives*. (Blackwell Publishing Ltd. 2007, 375 p.)

basis of their age. Under this Act, employers are restricted to punish older workers with reduced benefits and force them to retire before age 70 as well as deny various promotions, which are based upon age. The Age Discrimination in Employment Act can be applied to workers aged 40 and older ones. The disabled Americans can also be a subject to employment discrimination. They are supported by the Americans with Disabilities Act. This Act treats disability as possible mental problem or health disorder. The employers are obliged to make the reasonable efforts in order to allow the disabled employee working successfully and effectively. However, sometimes the employers are not interested in hiring disabled people, because of various additional problems like changing and developing the special working schedules, modification of equipment and some others. The whole set of Federal Equal Employment Opportunity laws (hiring and firing are regulated by Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, Title I and Title V of the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991) are developed to control the rest discrimination cases. Under these discrimination laws, employers are not allowed to establish certain recruitment and hiring criteria, which can be based upon personal status of the worker. Moreover, they cannot fire employees on the ground of personal bias. Both male and female employees are protected by the Civil Rights Act of 1964. More importantly, this is a powerful law, which protects both current workers and job applicants. If the current employee is fired and not accommodated or promoted due to sex or gender, he can be supported by the Act. Additionally, all the applicants have the equal recruitment opportunity, not depending on their sex and gender. In terms of benefits, the employer cannot make benefits available for the wives of male employees, which are not made available for female employees and provide such benefits for the husbands of female employees, which are not made available for male employees as well as for the wives and families of male employees, where the same benefits are not made available for the husbands and families of female employees¹. The Pregnancy Discrimination

¹ Holmes, Elias. 'Anti-Discrimination Rights without Equality'. (2005). *Modern Law Review* 68(2) 175-194.

Act is developed to fight the female discrimination within the organizations. The Act observes pregnancy as the temporary disability and is related to the group of medical conditions like severe morning sickness, childbirth and recovery from it, doctor-ordered bed rest and some other related medical conditions. Respectively, under the Title VII of this Act, employers are obliged to provide pregnant employees with the same treatment and benefits as they give to employees with other temporary disabilities.

As we can notice, all necessary laws are enforced to provide many advantages for the employees. Thus, only several American states have laws, making it illegal to discriminate on the grounds of marital status. The majority of states still face this problem. The practice reveals that almost seventy percent of such victims are unmarried women, whereas men constitute only thirty percent. Additionally, the parental status discrimination is regulated only by several states. Although it can coexist with other aspects of sex discrimination like national origin, religion and family status, it would be great if every state implemented the respective regulatory policy to cover this issue. Qualifications discrimination can also be noticed to create the negative gap between males and females. But it can be justified by the nature of the position. If the immobility agency is in dire need of builders, they will definitely choose a man. Or if the hospital needs a new nurse, they will choose a woman. Apart from that, there exist some cases, where the actions cannot be treated as the violation of human rights¹. For example, if the company has the certain dress code, obliging the employees to be always dressed according to their positions, the employer will not break the law if he forces everyone to follow it, although it remains to be optional for him to force or not to force the respective laws. Dress code should be perceived as the integral part of the working atmosphere and healthy environment.

Some scientists state that discrimination at work is seen to happen very frequently. They explain it by the fact that nature of employment discrimination can be direct and indirect. Under

¹ Malcolm Sargeant, David Lewis. *Employment Law*. (Concentrate Law Revision Guide, 2008. 442 p.)

direct discrimination we can understand less favorable treatment of women than men and visa versa. For example, the employer is concerned about the relationships of female employee with her colleague. He transfers her post against her will on the personal grounds, whereas he could not have done this in case it was male employee. If we speak about the indirect discrimination, we may imply the actions that occur when the employer applies for a provision and practice in dishonest way and puts one sex at 'unfair disadvantage'. For instance, the employer is aimed to hire the applicant, which is over six feet tall, although the stature cannot influence the effectiveness of the duties. In this case, the indirect discrimination is obvious, because women tend to have fewer chances to get a position than men do. Some observers distinguish two more forms of sex discrimination apart from direct and indirect discrimination. They are harassment and victimization. The harassment can be understood as the unpleasant behavior directed to violate the human dignity and create the degrading, hostile and intimidating environment for the employees of both sexes. Victimization tends to be the result of the employer's negative perception of the employee. It can usually happen if the person is denied promotion, necessary training and benefits after the personal complaint, which is compared to someone else who is doing the same work. The employers are given the legal opportunity to protect themselves if they really have to apply the reasonably practicable steps to justify their actions.

One more point to consider is the "glass ceiling" discrimination, which can be understood as the inability of female workers to climb the career ladder and get the highest positions in management¹. In case woman feels discriminated and has enough proofs to support it, she can file a claim under state or local anti-discrimination laws. However, those are not only women who have to clarify this point, but also employers who are to examine the subjective and neutral criteria to make sure that they do not have the disproportionate influence on women. Moreover, employers are

¹ 'Promoting employment relations and HR excellence. Sex discrimination.'

<<http://www.acas.org.uk/index.aspx?articleid=1814>> accessed 23 August 2011

obliged to launch some workforce diversity programs in order to eliminate disadvantages and create the working environment, which can be comfortable for all the employees.

Knowing the bases of the sex discrimination, we can also become interested in people who are often discriminated. In USA we can investigate the constant tendency, which is typical for women. During last thirty years, Hispanic and African-American women were badly treated for belonging to another race and were offered mostly odd jobs with small salaries¹. The national and sexual minorities have become the subjects to discrimination as well. Due to the fact that the representatives of such minorities are usually socially isolated, they are not perceived as the valuable members of society. However, the government is aimed at implementing the anti-discrimination programs, where such people will be equal with current workers. Their past images should be modified to create the balance not only within the organization, but within the entire society.

Women's image in terms of work has always been and is currently being blotted as the eternal stereotype. Women were always noticed to have lower incomes than men, though they could perform the same functions in most cases. The statistics shows poor female working results, because many women prefer to take several years off work to raise their small children. Psychologically, many scientists state that mothering experience tends to change women's outlooks, where they give advantage to their families, rather than career. The type-A workaholic behavior is often attributed to men, but not to women who are less likely to get the leading positions within the organizations². The stereotype can, supposedly, be formed, because of the fact that there exists the

¹ Donner Debbie. 'Men & Discrimination in the Workplace'.

<http://www.ehow.com/about_6820601_men-discrimination-workplace.html> accessed 23 August 2011

² Grohol John M. [2009]. 'Gender Discrimination in the Workplace'. By PSYCH CENTRAL NEWS EDITOR. <<http://psychcentral.com/news/2009/10/09/gender-discrimination-in-the-workplace/8868.html>> accessed 23 August 2011

large number of enterprises, where physical strength is obligatory. Unfortunately, in terms of physical contribution, women's role is not essential. Choosing the advanced degrees, women can be often involved in non-prestigious occupations, whereas men are noticed to be engaged mostly in higher paid jobs like positions of business executives or some others. The earning power is the cultural goal for men and not for women. The lack of stimuli can result in a lack of motivation to climb the career ladder, which, finally, results in the negative perception. The women's entrepreneurship skills are considered to be worse than those of men. It is not necessarily true, but the statistics shows practically the complete dominance of men. Let us pay attention to the survey conducted by the US Bureau of Labor Statistics. The research conveys that women, working in offices for 41-44 hours get 15.4% less than men, spending the same number of hours in their offices. Additionally, we can investigate the similar tendency with sixty hours per week, where women receive 21.7% less than men. That is why, it is not strange for us that ¹Equal Opportunity Employment Commission gets approximately 15.000 complaints of sex discrimination annually. And this number is even huger as some employees are frightened by their employers and are afraid to file formal claims. According to the research that was conducted by TNS Research Surveys, sixty-eight percent of women state that sex discrimination exists. In many cases, female discrimination at work may be connected with the stereotypes, which were formed nearly a century ago. Due to these stereotypes, women can not handle pressure like men, they cannot think critically as men can, women cannot lead others as it is done by men, women cannot solve serious problems and take the jobs away from their husbands, because males are considered to be the breadwinners for the family.

In comparison to women, the sex discrimination affects men not so frequently, but the rare cases do exist. According to the survey conducted by global employment opportunities of Kelly

¹ *The U.S. Equal Employment Opportunity Commission. Facts About Compensation Discrimination.* Retrieved 2008-04-23.

Services, almost 35% of men reported that they faced discrimination at work¹. The recent world economic decline had a dramatic effect on male workers. This vulnerable impact can be explained by the fact that approximately three million jobs were lost in construction and manufacturing. Except for that, the sex discrimination of men is that they are more prone to severe or inconvenient working environment. For example, men can be given all the evening-hour shifts in high crime locations or they can simply be selected as the candidates to perform dirtier, harder and more dangerous duties. Furthermore, men are more judged on their job performance than women. Even possessing the same positions as women have, the male workers are always obliged to work an hour longer each day.

Victims of sex discrimination are all seen to lose motivation, which is necessary to perform functions effectively. According to Jodi L. Jacobson, the gender bias can lead to a loss in productivity levels². Female workers can sometimes be treated like the intermediaries between their families and job duties. As the result, they are not widely encouraged to have the full work load, which is required by their position. And this can be understood as sex discrimination, turning women into inferior members of society. Although this practice is considered to be illegal, it is still used in offices nowadays. By all means, any form of sex discrimination drives both sexes in despair. They are very often seen to suffer from depression and psychological disorder. Some weak personalities can even experience the inferiority complex and chronic stresses.

It is obvious that sex discrimination is against the law. Law is seen as the substantial protection for employees from workplace misconduct by their employers and co-workers. In USA this issue is regulated by the number of federal and state laws. The federal law contains Title VII of

¹ Collins H, *Discrimination, Equality and Social Inclusion*. (Modern Law Review 2003. 66(1), 16-43).

² Kyser Chaz [2008]. 'Handling Sex Discrimination in the Workplace'.

<http://www.blackcollegian.com/index.php?option=com_content&view=article&id=184:chaz-kyser&catid=48:workplace-issues&Itemid=124> accessed 23 August 2011

the 1964 Civil Rights Act¹. The Title VII applies to private entrepreneurs, local and state government employers, employment agencies, labor organizations and some joint employer-union apprenticeship programs with at least fifteen employees. If the employer is a public entity like municipality, hospital district, public school district or government agency, he is required to file the administrative complaints and requests for review before going to the courthouse. The Equal Pay Act in terms of federal law stimulates the gender-neutral requirement on employers. If the woman who received lower wages than she expected files the EPA claim, she should definitely indicate her precise salary index and the earning of her employees at the same position. At times, such differences in salaries among employees may arise when they are of different sexes. Recently, the American Census Bureau reported that in 2002 they discovered woman's salary to be nearly 77% of the average salary of the man. This way, she will be provided with equality and will get the full refund, because equal work means certain jobs, which require equal skills, efforts and responsibility. The California State also implemented the federal law to regulate employment discrimination. This discrimination is prohibited by the California Fair Employment and Housing Act, being applied to public employers, labor organizations, state licensing boards, state and local governments that have five or more employees². The other states are noticed to have similar laws, which recognize the employment discrimination to be illegal. The power of state laws is that they not only regulate the employment discrimination, but also retaliate against someone for participating in investigation of sex discrimination or for reporting the sex discrimination³. To be

¹ Brittan, Arthur, *Sexism, racism and oppression*. (Blackwell. p. 236. 1984. ISBN 9780855206748)

² Gabrielle Marks. 'What Constitutes Gender Discrimination in the Workplace?'

<<http://www.sophisticatededge.com/gender-discrimination-in-the-workplace.html>> accessed 23

August 2011

³ Darity William A. Jr and Mason Patrick L. 'Evidence on Discrimination in Employment: Codes of Color, Codes of Gender'. (1998). *Journal of Economic Perspectives* - Volume 12. p. 63-90.

more precise, this retaliation can be noticed when the employee is fired or demoted, is paid to take the unpaid leave of absence, is reassigned to get the undesirable position and if he receives the pay cut. We must remember that in California employees have three hundred days from the act of discrimination to file a formal complaint. In all other states, the number of days is reduced to 180. In case the employees prove to be the victims of discrimination, they can recover some remedies, including back pay, promotion, reinstatement, hiring, front pay, compensatory damages for emotional suffering and punitive damages as the kind of punishment of the employer. Furthermore, at times to such remedies we can refer payments of attorney's fees, expert witness fees and court costs.

Each person should know how to adequately react to employment discrimination. It is advisable to report the discrimination cases if you experience them frequently. Using the employer's internal complaint system, employees are also allowed to file their grievance with union afterwards. Moreover, the employer should be aware that he can explain his confusion and complaints to the federal and state agencies and go to court. In case the employee feels that his rights are violated, he should, first of all, write down what happened. The more precise information is recorded, the more chances to justify themselves the employees have. Involving coworkers to add some facts to personal employee's records will make their notes more appealing, precise and convincing and can generally aid them to achieve the desirable result. The employee should remember that it is strongly recommended to keep his records at home and in a safe place. Furthermore, the employee should be targeted to make complaints to the employer exclusively in a written form. In this case, he can get the written responses as supporting evidence. Reviewing his personal files, he is always given the opportunity to add some materials to it. This can help him clarify the points about his current duties and obligations to support his performance at the given position. Basically, every organization in USA is obliged to implement the sex discrimination policies as the part of the company's employee manual. Following grievance procedures at work also tends to be the necessary point to be taken into account. It is suggested that every conscious employee should be engaged in the union. It means that in case some discrimination cases arise, the

employee can be supported by the union official who can aid him to file the formal complaint and prove its validity. In case the situation forces him to go to the court, he needs to file a formal complaint of discrimination with federal Equal Employment Opportunity Commission or the fair employment agency of the certain state. The federal employees should follow the federal guidelines on lodging the discrimination complaint to be observed by the Federal Labor Relations Authority¹. He should also remember that he cannot bring the lawsuit against his employer in case he filed his formal complaint too late. So, it is advisable not to miss the deadlines and report on the cases immediately. In case he has difficult obstacles to cope with, he can use the lawyer's services to clarify what needs to be done. And, finally, after formal complaint is filed, the employee should also fill the lawsuit, where he can sue for money damages, returning the lost job position and ask the court to force the employer to change his working practices so that the employee could be provided with the healthy environment in the future.

On the management level within the organization, the discrimination cases should be responded as quickly as possible. If the general manager oppresses female workers for their poor performance due to personal bias, the women should react at once and with no signs of hesitation. First of all, it is important to share the case with seniors and let them know how you feel. In case the senior encourages the sex discrimination and is afraid to approach the general manager concerning the following point, it is recommended to address to a higher authority. You can always choose to discuss the issue with the HR manager². If that does not help you, you should approach the trade unions and employment tribunals that are generally seen to support human rights. You should avoid ignorance of sex discrimination within the organization, because it can result in many negative consequences.

¹ Trentham, Susan; Laurie Larwood. 'Gender Discrimination and the Workplace: An Examination of Rational Bias Theory'. (Sex Roles 38 (112): 1–28. doi:10.1023/A:1018782226876, 1998)

² Collins, Ewing and McColgan. *Labour Law text and Materials*. (Chapter 3. Hart Publishing, 2005.)

In conclusion, although the sex discrimination in employment is responded by the implementation of the number of anti-discrimination laws, it still can be faced in offices nowadays. This discrimination is typical for both sexes: males and females. The sex discrimination at work can be traumatic to human psyche and organization. The person can be psychologically and emotionally destroyed when he or she is discriminated by the employer. Additionally, the sex discrimination provides the misbalance within the staff and usually results in unhealthy environment. The negative interaction between departments and the increased number of conflicts may contribute badly to the organizations management displayed in the form of productivity loss and reduced profitability. Despite the existence of sex discrimination practically on every organizational stage from hiring to firing, it should always be given adequate attention by means of regulatory laws. The practice shows that women are mostly discriminated on the family and marital grounds as well as due to certain stereotypes. Men, for their part, are discriminated in terms of their severe workload and the difficult working atmosphere. In case the sex discrimination act happens, we should never leave it. We need to use the complete set of laws to support ourselves.

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