



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2008)¹: UNITED STATES

THE ELIMINATION OF DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION (DISC)

REPORTING	Fulfillment of Government's reporting obligations	YES, but no changes to report for the 2001, 2002, 2004, 2005 and 2006 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the United States Council for International Business (USCIB), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) by means of consultation and communication of the government's reports. The updated report under the 2007 AR had been communicated to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Change to Win Federation, and the U.S. Council of International Business. In addition, in keeping with longstanding practice, as well as U.S. obligations under Convention No. 144, the draft report was reviewed by members of the Tripartite Advisory Panel on International Labor Standards, a subgroup of the President's Committee on the ILO.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	No separate observations have been made by the employers' organizations	
	Workers' organizations	2005 AR: Observations by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). Observations by the International Confederation of Free Trade Unions (ICFTU). 2004 AR: Observations by the AFL-CIO.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	The United States has ratified neither the Equal Remuneration Convention, 1951 (No. 100) (C.100) nor the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (C.111).
		Ratification intention	The Government is not actively considering ratification of C.100 ARs 2007-2008: No change AR 2006: C. 111 was submitted to the Senate in 1998 for its advice and consent for ratification. - Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The government is not actively considering ratification of C. 100.
	Recognition of the principle and right (prospect(s), means of action, basic legal	Constitution	YES, The U.S. Constitution recognizes the principle and right of non-discrimination in the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment. Additionally, the Equal Protection Clause precludes any state from denying its citizens «the equal protection of the laws».

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention, please see: www.ilo.org/ilolex

	provisions)	Policy, legislation and/or regulations	<p>Policy: 2003 AR: According to the Government: the United States has a clear national policy supporting the elimination of discrimination in employment and occupation, expressed in the U.S. Constitution, numerous federal and state laws and regulations, and Executive Orders. The general principle of this national policy is reflected in Title VII of the Civil Rights Act of 1964.</p> <p>Executive Order 11478 states that «it is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons,» and requires that all executive agencies «establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment» in accordance with the equal opportunity policy».</p>
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Basic legal provisions	<p>Legislation: According to the Government: several legislative acts protect citizens against discrimination, primarily Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963.</p>
		Grounds of discrimination	<p>2000-2005 ARs: According to the Government: Discrimination with respect to employment and occupation is prohibited on grounds of race, color, religion, sex, national origin, political opinion, social origin, age and disability.</p>
		Judicial decisions	<p>2008 AR: According to the Government: The United States Supreme Court, in the decision of <i>Burlington Northern & Santa Fe Railway v. White</i>, 126 S. Ct. 2405 (2006), announced a broad reading of the anti-relation provision of Title VII, 42 U.S.C. § 2000e-3(a), the principal employment discrimination law. Under the decision, a cause of action for retaliatory employer conduct can be sustained for harms suffered that are not workplace or employment-related, if the harm is such that a reasonable person would be dissuaded from bringing a charge of employer discrimination.</p> <p>2000 AR: <i>Equal Pay Act cases -Brennan v. Prince William Hospital Corp.</i>, 503 F.2d 282, 285, 291 (4th Cir. 1974), cert. denied, 420 U.S. 972 (1975); <i>Shultz v. Wheaton Glass Co.</i>, 421 F.2d 259 (3d. Cir.), cert. denied, 398 U.S. 905 (1970).</p>
		Special attention to particular situations	<p>2003 AR: According to the Government: (i) workers in the public service; (ii) workers in establishments of a certain size; (iii) workers in particular types of employment (part-time, full-time, temporary, and contingent); (iv) agricultural workers; (v) workers engaged in domestic work; (vi) migrant workers; and (vii) workers in the informal economy are provided with statutory protections against discrimination in employment</p>
Exercise of the principle and right	Information/Data collection and dissemination	<p>2008 AR: U.S Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) annually recognizes federal contractor employers who have implemented exemplary programs to eliminate discrimination in the workplace. In fiscal year 2005, legal staff from the Equal Employment Opportunity Commission participated in almost 900 outreach events educating more than 60,000 individuals about the laws prohibiting employment discrimination.</p> <p>2007 AR: According to the Government: the Equal Employment Opportunity Commission (EEOC) filed 417 lawsuits in Fiscal Year 2005. It obtained US\$ 107.7 million in FY 2005 in monetary benefits for employees. These statistics may be found on the EEOC’s website at www.eeoc.gov/stats/enforcement.html</p>	

			<p>2003-2005 ARs: According to the Government: the EEOC compiles statistical data concerning various topics, including the number of individual employment discrimination charge filings. Such data are compiled by the Office of Research, Information, and Planning from the EEOC's Charge Data System</p> <ul style="list-style-type: none"> -EEOC filed 415 lawsuits in fiscal year (FY) 2004, up from 393 in FY 2003. In pre-litigation administrative enforcement, it obtained \$236.2 million in FY 2003, and \$251.7 million in FY 2004 -The Office of Federal Contract Compliance Programs (OFCCP), a component of the Department of Labor, compiles certain information relating to discrimination in employment and occupation concerning federal contractors and subcontractors. <p>2000 AR: The Government stated that the Department of Labor, Women's Bureau had conducted a series of studies concerning the impact of various federal employment laws on working women.</p>
	<p>Prevention/Monitoring, enforcement and/or sanction mechanisms</p>		<p>2007 AR: The Equal Employment Opportunity Commission (EEOC) filed 417 lawsuits in Fiscal Year 2005. It obtained \$107.7 million in FY2005 in monetary benefits for employees. These statistics may be found on the EEOC's Web site at www.eeoc.gov/stats/enforcement.html</p> <p>2000-2005 ARs: According to the Government: the Civil Rights Division of the Department of Justice has principal responsibility for effective enforcement of federal civil rights laws</p> <p>The United States Office of Special Counsel (OSC), an independent federal investigative and prosecutorial agency, is responsible for enforcing section 2302(b) of the Civil Service Reform Act (CSRA) and investigating allegations of prohibited personnel practices and other improper employment practices within its jurisdiction (generally speaking the Executive Branch).</p> <ul style="list-style-type: none"> -When a person is discriminated against by an employer, labor union or employment agency when applying for a job or while on the job, that person may file a charge of discrimination with the EEOC. -The Board of the Office of Compliance is authorized to investigate complaints of alleged violations involving the Legislative Branch and may order certain awards provided under Title VII of the Civil Rights Act of 1964.
<p>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>Involvement of the social partners</p>		<p>2003-2005 ARs: According to the Government: In FY 2001, the EEOC directed the development of a National Enforcement Plan identifying priority issues and setting out a plan for administrative enforcement. This necessitated a broad range of consultations with dozens of employers and workers organizations.</p> <ul style="list-style-type: none"> -Numerous federal agencies, including the EEOC, have undertaken to seek the cooperation of employers' and workers' organizations to realize the elimination of discrimination in employment and occupation. -The United States Department of Justice involves workers' and employers' organizations in the development and implementation of measures regarding the elimination of discrimination by educating such organizations. -The OSC involves government employees, employee representatives and other interested parties in the development and implementation of governmental measures regarding the elimination of discrimination in employment and occupation through outreach programs.
	<p>Promotional activities</p>	<p>Institutions to promote equality</p>	<p>2008 AR: U.S Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) annually recognizes federal contractor employers who have implemented exemplary programs to eliminate discrimination in the workplace. In fiscal year 2005, legal staff from the Equal Employment Opportunity Commission participated in almost 900 outreach events educating more than 60,000 individuals about the laws prohibiting employment discrimination.</p> <ul style="list-style-type: none"> -The EEOC, through the operations of 51 field offices nationwide, coordinates all federal equal employment opportunity regulations, practices, and policies.

			<p>-The Justice Department's Community Relations Service is a vital component of the agency's mission to eradicate employment and occupation discrimination.</p> <p>-The OSC protects federal employees and applicants from prohibited personnel practices, which include employment discrimination.</p>
		Other activities	<p>-To promote the principle regarding the elimination of discrimination in employment and occupation, the EEOC directed the development of a National Enforcement Plan identifying priority issues and setting out a plan for administrative enforcement and litigation of the laws within its jurisdiction.</p> <p>-Executive Order 11246 requires any employer who has a contract with the federal Government to take affirmative action to ensure that applicants are employed, and employees are treated during their employment, without regard to race, color, religion, sex, or national origin.</p> <p>-The Government, consistent with the ADA, has introduced the New Freedom Initiative, as part of a nationwide effort to remove barriers to community living for people with disabilities. In an effort to move toward full integration of individuals with disabilities into the workforce, the New Freedom Initiative promotes compliance with the ADA by small businesses and provides resources annually for technical assistance to help small business to comply with the Act.</p>
	Special initiatives/Progress	NIL	
CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	NIL
		Workers' organizations	<p>2002 AR: The ICFTU highlighted the number of sexual harassment cases, the wage gap between sexes and races, and lack of protection for migrant workers.</p> <p>2004-2005 ARs: The AFL-CIO strongly disagreed with the draft update to the report on the principle of the elimination of discrimination in employment and occupation.</p> <p>2005 AR: According to the ICFTU: discrimination is prohibited by law but does occur in practice: there is still a wage gap between men and women and between different ethnic groups; large differences exist between states with regard to labour legislation and enforcement.</p>
	According to the Government	<p>2008 AR: In Fiscal Year 2006, OFCCP recovered a record \$ 51,525,235 for a record 15,273 American workers who had been subjected to unlawful employment discrimination. Of that record recovery, 88% was collected in cases of systemic discrimination – those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The \$ 51.5 million reflects a 14% increase over recoveries in Fiscal Year 2005 and a 78% increase over Fiscal Year 2001.</p> <p>2000-2005 ARs: The Government has stated that while immigration laws continue to be enforced, anti-discrimination laws will apply to unauthorized migrant workers. The EEOC has issued new guidance that provides basic remedies to this group, stating that such laws apply to all employees in the United States, regardless of citizenship or work status. Similarly, the National Labor Relations Board (NLRB) continues to treat all statutory employees as protected from unfair labor practices and entitled to vote in NLRB elections, without regard to their immigration status. The Department of Labor has also continued to apply legal protections to employees regardless of immigration status.</p>	
TECHNICAL COOPERATION	Request	NIL	
	Offer	NIL	
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) noted the intentions expressed by most governments, including the Government of the United States, to ratify or consider ratification of Conventions Nos.100 and/or 111. They encouraged the governments to accelerate this process so as to make an important step forward towards universal ratification. However, the IDEAs noted that the United States was the only country that reports that it was not actively considering ratification of Convention Nos 100. Given</p>		

	<p>that many countries have requested ILO technical cooperation in the ratification process (on the content of Conventions Nos. 100 and 111, labour law review, ratification process, etc.), the IDEAs requested the Office to strengthen its assistance in this regard (Cf. Paragraphs 66 and 67 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2005 AR: The IDEAs listed the United States among the countries where some efforts are being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labor law reform, preventive, enforcement and sanctions mechanisms and/or ratification. They also considered that the example of regular and constructive contributions by AFL-CIO should be expanded upon, in particular among other national workers' organizations, as well as employers' organizations (Cf. Paragraphs 13 and 190 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs noted that despite receiving very late reports or observations, it had been possible to compile them so as to allow the United States to be taken into account in this annual review. They nevertheless urged the country to send reports within the prescribed time frame, so as to ensure the smooth running of the annual review process (Cf. Paragraph 21 of the 2008 Annual Review Introduction – ILO: GB.289/4).</p>
<p>GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS</p>	<p>NIL</p>