

COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW

United States - 2023

THE ELIMINATION OF DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT

Ratification

Ratification intention

What are the prospects for ratification of Convention No. 100?

No indication

What are the prospects for ratification of Convention No. 111?

No indication

What, if any, are the impediments to the ratification of Convention No. 100 and/or Convention No. 111?

No change. In October 1985, the President's Committee on the International Labor Organization (PC/ILO) adopted three ground rules providing that no ILO convention will be sent to the Senate for its advice and consent to ratification unless or until U.S. law and practice, at both the federal and state levels, are in full conformity with its provisions. These ground rules were incorporated in a Senate declaration adopted in 1988, at the time the Senate gave its advice and consent to United States ratification of ILO Convention No. 144 on Tripartite Consultation. The ground rules provide that:

- Each convention will be examined on its merits on a tripartite basis.
- If there are any differences between the convention and federal law and practice, these

	differences will be dealt with in the normal legislative process. - There is no intention to change state law and practice by federal action through ratification of ILO conventions, and the examination will include possible conflicts between federal and state law that would be caused by such ratification. By necessity, the legal review process undertaken by Tripartite Advisory Panel on International Labor Standards (TAPILS) prior to ratification is complex, thorough, and in many instances very lengthy. Only when TAPILS has completed its review of a given convention, is it possible or appropriate to make precise judgments about the conformance of U.S. law and practice with that instrument.
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Recognition of the principle and right (prospect(s), means of action, basic legal provisions) Recognition of the principle and right (prospect(s), means of action, basic legal provisions)

Policy, legislation and/or regulations

Policy initiatives	On March 15, 2022, President Biden issued Executive Order 14069 which instructs the Federal Acquisition Regulatory Council, in consultation with DOL, to consider issuing proposed rules that would limit or prohibit Federal contractors and subcontractors from seeking and considering information about job applicants' and employees' existing or past compensation when making employment decisions. On March 1, 2023, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) acted to protect workers from discrimination and safeguard principles of religious freedom by rescinding the rule, "Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption." 78 Published in December 2020 and effective Jan. 8, 2021, the rule adopted new standards for applying the religious exemption in Executive Order 11246 that were at odds with the weight of legal authority.
Legislative developments	On December 29, 2022, President Biden signed into law the Pregnant Workers Fairness Act (PWFA) as part of the Fiscal Year 2023 Omnibus Spending Bill.⁷⁹ The PWFA requires covered employers to provide reasonable accommodations to employees or applicants with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless providing the accommodation would cause the employer an undue hardship. The PWFA also prohibits covered employers

	from interfering with any individual's rights under the PWFA and from retaliating against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding. The PWFA went into effect on June 27, 2023, and the Equal Employment Opportunity Commission (EEOC) is accepting charges of discrimination under the new statute. During the reporting period, state and local governments continued to expand protections against employment discrimination and pay inequities.
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Judicial decisions

	In <i>Kennedy v. Bremerton School District</i>,⁹² a football coach at a public high school was disciplined and eventually lost his job after he knelt midfield after a game to offer a personal prayer. For years, the coach had engaged in personal prayers after games, sometimes as part of motivational talks with groups of students. Although the coach ultimately stopped leading group motivational talks, the school district placed him on administrative leave after he continued praying alone on field after games. The coach sued the school district claiming that the school district violated his First Amendment rights. The Supreme Court held that the First Amendment protects an individual engaging in a personal religious observance from government reprisal. The Court found that the coach was not offering his prayers while acting within his duties as a coach, and that his private religious exercise was not impermissible government coercion of students to pray, nor could it have been construed by outside observers as the school district's endorsement of religion.
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Exercise of the principle and right

Information/ Data collection and dissemination/Research

Information/data compilation	The EEOC holds commission meetings on current topics of employment discrimination. During its meetings, the Commission receives information from experts and those affected by topical employment discrimination issues. Members of the public are often given the opportunity to submit written comments on topics addressed during the meeting. The information gathered at these meetings provides the Commissioners, Commission staff, and the public with valuable insight into current and emerging federal employment discrimination issues and topics. For example, on January 31, 2023, the EEOC held a meeting on employment discrimination and artificial intelligence. The transcript from the proceedings and the written statements of witnesses are publicly available
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Research

In March 2022, the Department of Labor released a report titled "Bearing the Cost: How Overrepresentation in Undervalued Jobs Disadvantaged Women During the Pandemic." The report details how women, especially women of color, were impacted by the COVID-19 economic crisis, the role of occupational segregation, and how the Department of Labor is committed to addressing these disparities to create a more equitable economy.

In March 2023, the Department of Labor's Women's Bureau (WB) produced two Issue Briefs relating to equal pay and pay transparency: "Understanding The Gender Wage Gap" and "Equal Pay in the United States: Salary History Bans." In addition, the WB maintains and regularly updates a Data and Statistics webpage that includes data visualizations of earnings ratios, such as "Employment and Earnings by Occupation," "Earnings and earnings ratios by sex, race, and occupation group," and "earnings ratios by race, ethnicity, age, and educational attainment." The WB also regularly updates two interactive maps of state and federal protections: "Equal Pay and Pay Transparency Protections" and "Employment Protections for Workers Who Are Pregnant or Nursing."

Promotional activities

Training

OFCCP's Contractor Compliance Institute (CCI) provides training on a variety of topics that allow contractors to acquire skills needed to ensure their organization's compliance with their affirmative action and equal employment opportunity obligations. Since its launch in 2020, 6,528 users have registered to take courses in CCI. In FY 2022 1,185 new users registered and 608 users completed four courses in CCI: The Path to Compliance (235 users); Affirmative Action Programs (130 users); Compliance Evaluations (134 users); and Construction Compliance Review for Contractors (109 users). CCI is a training resource for contractors to ensure they stay current with OFCCP programs and initiatives through free, on-demand, online courses.

The U.S. Department of Labor's Office of Disability Employment Policy (ODEP) funds a variety of technical assistance and policy development centers that provide training on a range of topics, including accessibility, workplace inclusion, mental health at work and other topics. ODEP's Job Accommodation Network (JAN) is the leading source of free, expert, and confidential guidance on workplace accommodations and disability employment issues. Between July 2022 and June 2023, JAN responded to over 41,900 technical assistance requests from private employers of all sizes, government agencies, employee representatives, and service providers, as well as people with disabilities and their families (including veterans). JAN also held 115 training sessions both in person and virtually for employers, including private, state, and federal employers, veteran service organizations (VSOs), and other stakeholders.

	Topics include the interactive reasonable accommodation process, accommodations for specific types of conditions (mental health, neurodiversity, hearing loss, Long COVID, etc.), disability inclusion during the hiring process, reasonable accommodations related to the future of work/telework, and others. The EEOC again offered a training program on Respectful Workplaces consistent with recommendations made in the Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace Additionally, the EEOC Training Institute continued providing fee-based training at 285 virtual events reaching over 11,667 people.106 Free outreach and training efforts also continued, with the EEOC reaching a total of 218,184 people at approximately 3,040 outreach events during FY 2022. The Employment Litigation Section of the Civil Rights Division of the Department of Justice (DOJ ELS) engages in sustained, affirmative outreach efforts to workers and advocates all over the United States. The Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice (DOJ IER) also continued to educate workers and their advocates, and employers and their representatives on rights and obligations under the Immigration and Nationality Act’s anti-discrimination provision. The Disability Rights Section of the Civil Rights Division of DOJ (DOJ DRS) spoke at conferences throughout the country to explain the rights of people with disabilities under the Americans with Disabilities Act (ADA), including the rights of job applicants and employees under the ADA.
Awareness raising	OFCCP is charged with protecting America’s workers by ensuring that those who do business with the federal government (federal contractors and subcontractors) fulfill the promise of equal employment opportunity. During the reporting period, OFCCP focused its outreach and engagement efforts on educating workers about their workplace rights. The agency conducted 300 outreach events with worker rights organizations, community-based organizations, and Minority Serving Institutions, including Historically Black Colleges and Universities. These events focused on bringing awareness of the agency and connecting these organizations with employers doing business with the federal government. In FY 2022, the OFCCP Customer Service Help Desk responded to 4,659 inquiries, 3,045 were telephone and 1,614 were written inquiries. The OFCCP Help Desk provided information about the OFCCP complaint process, the rights of protected veterans and individuals with disabilities, referrals to other agencies, and affirmative action obligations of federal contractors.

	In FY 2022, the EEOC prioritized outreach to vulnerable workers that reached almost 80,000 individuals in over 1,000 events. DOL's Office of Disability Employment Policy (ODEP) shapes policies and practices to increase the hiring, job success, and career advancement of people with disabilities through the development, adoption and promotion of accessible workplace technology. Through robust cross-sector collaborations, ODEP ensures that accessibility and equity are built into all workplace technologies, including but not limited to AI tools.
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Particular attention to specific groups

	During the reporting period, the Presidency continued a whole-of-government approach to establish equity across federal policymaking and to root out systemic racism and other barriers to opportunity from federal programs and institutions. https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal In March 2023, the Office of Federal Contract Compliance Programs launched its Mega Construction Project (Megaproject) Program to bring the public and private sectors together on a select group of projects known as "Megaprojects" to foster equal opportunity in the construction trades workforce.
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Special initiatives-Progress

	In FY 2022, the EEOC continued to make significant progress in modernizing its charge management system. The EEOC defined and developed an end-to-end charge management solution for the agency's private sector processes and the accompanying processes for its local Fair Employment Practices Agency (FEPA) partners. The DOL Office of Apprenticeship (OA) continues to work with sponsors of Registered Apprenticeship programs and State Apprenticeship Agencies to implement the Equal Employment Opportunity (EEO) regulations. OA has sought to diversify the pool of apprenticeship applicants by encouraging sponsors and employers to strengthen their relationships with colleges and universities, including historically Black colleges and universities (HBCUs) and Minority Serving Institutions (MSIs). OA also prioritized the advancement of inclusive apprenticeship programs, including efforts to engage stakeholders on issues related to outreach, barriers, and partnerships.
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The Department of Labor’s Women’s Bureau (WB) WANTO grant program has produced many best practices for ensuring women and other underrepresented populations have equitable access to employment. Best practices include provision of supportive services, including but not limited to childcare. Through DOL’s Good Jobs Initiative, launched in January 2022, and Memorandums of Understanding with federal agencies such as the Department of Commerce, Department of Transportation, Department of Energy, Department of the Interior, and others, best practices and lessons learned from WANTO are being incorporated in federally funded infrastructure projects to increase women’s inclusion and equity in jobs created by those projects.