

Discrimination at Work in Europe

Europe in general and EU Member States in particular have developed some of the broadest and most effective social policies against discrimination in the workplace and have accumulated much experience in addressing the practice.

Nonetheless, research has revealed widespread discrimination exists in the labour market, primarily against immigrants and minorities. What's more, traditional forms of discrimination based on gender, race, ethnic origin, religion and age still persist in the European workplace.

Further compounding these issues are the newly emerging forms of discrimination based on sexual orientation, disabilities, genetics and lifestyle that challenge Europe's ability to respond to these important workplace issues.

GENDER ISSUES

The data for 1995-2004 in the European Union (EU) confirm that women's participation in the labour force, currently reaching 62%, and in paid employment, at 47.1%, has continued to rise significantly. More broadly speaking, this indicates a narrowing of the gender gap in labour force participation for women.

A key measure of women's improvement in employment is the availability of good-quality jobs for women in legislative, senior official or managerial (LSOM) positions. Higher participation rates for women in LSOM jobs indicate a reduction of discriminatory barriers. Although women still represent a distinct minority in such positions throughout the world, holding only 28% of these senior jobs, there has been considerable progress. In the EU, women have increased their share of high-status positions over the past decade by 3.1% to current level of 30.6%.

Given these advances, however, women in Europe still earn less than men. Throughout the EU, the difference in average gross hourly earnings between women and men has remained high at 15%. According to the European Commission, the difference in earnings levels between men and women results from "non-respect of equal pay legislation and from a number of structural inequalities".

Gender discrimination is also visible in other aspects of employment. In the United Kingdom, for example, a recent report by the Equal Opportunities Commission states that 30,000 women each year lose their jobs because of their pregnancy, and only 3% of those who experience a problem lodge a claim at an employment tribunal.

TRADITIONAL FORMS

Although much has been done to incorporate people of different ethnicities into society at large, discrimination in employment based on ethnicity still persists. In the United Kingdom, people of African and Caribbean origin continue to experience high unemployment rates and concentration

in low-skilled, low-paid jobs. According to the 2005 Citizenship Survey, these people are the most likely to be refused a job or to have been denied a job in the past five years.

In the Russian Federation, racism and xenophobia have become more overt since the collapse of the USSR. Anecdotal evidence shows an increase in racism against people from the former Soviet Republics, especially Caucasian and Central Asian countries. With illegal labour migration estimated at between 5 and 14 million people, a 2005 survey of the Moscow Bureau for Human Rights reveals that about 40% of Russians doubt that the economy will benefit from migrants and 70% support immigration of Russians and Russian speakers, but feel that migration of other ethnic groups should be curbed.

A particular issue of concern for Europe has been the poor treatment and extreme poverty of the Roma people, also commonly known as gypsies: the largest ethnic minority group in Europe at about 10 million people. In countries such as Albania, Bosnia and Herzegovina, Bulgaria, Croatia, The former Yugoslav Republic of Macedonia, Montenegro, Romania and Serbia unemployment among Roma people, and especially Roma women, ranges between 50 and 90%.

The increased presence of migrant workers has engendered feelings ranging from concern over jobs to outright hostility. Foreign-born workers represent a significant and rising proportion of the workforce in many countries. With 10% of the workforce in Western Europe currently made up of migrants seeking better job opportunities abroad, a number likely to increase over the coming years, the plight of migrants will be a growing concern.

There are many ways in which migrant workers' free choice of employment and access to the labour market are restricted. The system of work permits allows governments to limit access of foreigners to certain job categories as is the case in Cyprus, Belgium and the Czech Republic among others. Migrants may also be confined to a specific region of the country as in Bulgaria and Switzerland.

Discrimination based on religion is another issue that is affecting many countries. In the EU, the issue of the "Islamic veil" or hijab has highlighted the different perceptions prevailing among European countries regarding secularism and religious freedom and has revealed some inconsistencies. For instance, in 2003, the Federal Constitutional Court of Germany ruled in favour of a teacher who wanted to wear an Islamic scarf to school; but at least four German states have banned teachers from wearing scarves, and in one state the ban applies to all civil servants.

NEWLY EMERGING FORMS

Discrimination based on age, at both ends of the spectrum, is becoming an urgent workplace issue. In 2005, young people accounted for 44% of the world's total unemployed, although their share of the total working-age population aged 15 and above was only 25%.

Less favourable treatment, often unjustified, on the basis of age seems to play an important role in explaining the lower occupational attainments of younger workers and, in particular, their over-representation in casual jobs with lower benefits, training opportunities and career prospects. Recent surveys show that younger workers may be more vulnerable to age discrim-

ination than their older peers. According to a report issued by the UK Employers Forum on Age, ageism at work is a bigger problem for people in their late teens than for those in their 50s.

An obstacle to the recruitment of older workers may be the perceived higher cost of employing them and their declining productivity because of the deterioration of their physical and mental capacities. This belief is particularly common in countries where wage systems and benefits are strongly linked to age and length of service such as Austria, Belgium and France.

Discrimination based on disability is already a serious issue in employment. An important source of exclusion or disadvantage of people with disabilities is the fact that they are still often perceived as unproductive, unable to perform a job or too costly to employ.

The likelihood for a person with a disability of finding a job seems to decrease as the level of disability increases. In Europe, a person with a disability aged between 16 and 64 has a 66% chance of finding a job; this rate falls to 47% for a moderately disabled person and 25% for a person with a severe disability.

Lifestyle and, more specifically, whether an individual leads a "healthy" life, is becoming a factor in obtaining or keeping a job. Being overweight or a smoker or suffering from hypertension can be an occupational disadvantage in several industrialized countries. In recent years, unfavourable employment practices against smokers has spread to many parts of the world. Some employers have adopted official corporate policies to prohibit smoking. The question therefore is where to draw the line between what an employer can regulate and the freedom of employees to lead the life of their choice.

One key aspect of the principle of non-discrimination and equality at work is that all employment decisions must be based on a person's capacity to perform a job. Denying a job or dismissing qualified persons solely on the basis of their obesity or because they are off-duty smokers would amount to discrimination and constitute an undue intrusion in their private life.

In some developed countries genetic testing has become a cause for concern. Genetic screening has important implications for the workplace, as employers may have an interest in excluding or dismissing employees whose genetic status shows a predisposition to developing a certain disease in the future.

Making an employment decision on the basis of the probability of an individual's developing a certain disease, rather than on his/her actual capacity to perform the work, constitutes discrimination. Genetic discrimination at the workplace has been proven and contested in several courts around the world.

ACTION TO COMBAT DISCRIMINATION

Addressing discrimination requires the capacity and a clear mandate to do so; experience in a number of countries shows that labour inspection can fulfil its potential in combating discrimination. The labour administration in Belgium, for example, has set up a unit to advise and train labour inspectors on discrimination issues.

The European Employment Strategy (EES), launched in 1997, requires Member States to develop annual National Action Plans on employment based on common agreed targets. Gender equality was incorporated into this process by requiring gender issues to be addressed by the adoption of a specific female employment rate target of 60% by 2010 (2000 Lisbon Summit), and the introduction in the period 1997-2002 of a specific goal of promoting equal opportunities between men and women.

On the pay equity front, Finland, France and Spain adopted proactive laws in 2005 and 2006 requiring employers not just to abstain from discriminating in remuneration on the basis of sex, but to take measures to promote equal opportunities in pay, for example through equal pay reviews and job evaluation methods, and to correct any pay differentials due to discrimination.

Pay equity commissions or commissions with broader anti-discrimination jurisdictions can play a very helpful role in the achievement of pay equity. In Sweden, for instance, since 2001 the Equal Opportunities Ombudsman has undertaken information and education measures to assist workers' and employers' organisations in meeting their obligations under the Equal Opportunities Act, with special emphasis on wage mapping.

Under the impetus of the EU framework Directive on Equality, the majority of Member States have transposed into national law the provisions on age-based discrimination. For example, the UK Employment Equality (Age) Regulations, which came into force in October 2006, prohibit direct and indirect discrimination, harassment and victimization on grounds of age of people of any age, young or old.

In regard to genetic testing, the potential for using this to deny a job due to a person's predisposition to a present or future medical problem has led many countries to adopt legal measures. Several EU Member States have introduced legislation prohibiting genetic discrimination such as France, Sweden, Finland and Denmark. Others have prohibited or restricted the collection of genetic data from employees without their explicit consent as seen in Austria, Netherlands, Luxembourg, Greece and Italy. ■