Theories of Discrimination

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Theories of Discrimination

- Theories (Examples)
- Burdens of Proof
- Basis of Discrimination
- Causes of Complaints
Theories of Discrimination

1. Disparate Treatment
   a. Individual discrimination
   b. less favored treatment based on protected group status

2. Disparate Impact
   a. Policy or practice neutral on its face which has a disproportionate negative impact upon a protected group
   b. Most often in a class action or pattern or practice suit
Theories of Discrimination

3. Accommodation
   a. Religious
   b. Disability
   c. Failure to accommodate the religious beliefs of employees and applicants and disabilities is discriminatory in some circumstances

4. Sexual Harassment
   a. Hostile and intimidating work environment
   b. Quid pro quo sexual favors requested in exchange for a job benefit.
1. Disparate Treatment

a. Burden always with complainant to prove intentional discrimination by the preponderance of the evidence

b. First, establish an inference of discrimination by establishing a prima facie case through:

1) Direct evidence
2) Indirect evidence/comparison of treatment by protected group
3) Historical treatment of protected group
Burdens of Proof

C. If prima facie case, then employer must articulate a legitimate, nondiscriminatory reason for its actions
   1. reason must be sufficiently specific to allow complainant to prove that they are not true or believable

D. Complainant can still prevail by demonstrating pretext -- that the employer’s articulated reason is not true or worthy of belief but merely a pretext for discrimination
2. Disparate Impact
   a. Complainant must show statistically that a neutral policy or practice has a negative impact upon his protected group.
   b. Once impact has been identified, the burden shifts to the employer to prove that there is a business necessity reason to use it; this is a difficult burden to overcome.

3. Accommodation
   a. Religion
      1) complainant must have a sincere belief
      2) burden rests primarily on complainant to demonstrate how accommodation can be achieved
      3) employer can overcome the accommodation requirement by showing undue hardship
      4) accommodation need not be made at the expense of other employees
3. Accommodation Continued

b. Disability

1) must be qualified (e.g. perform essential functions of positions with or without accommodation)

2) employee must demonstrate why accommodation is not possible

3) the standard by which the employer is evaluated is that of the reasonableness; such factors as costs, content of the position, etc. and is determined on a case-by-case basis
4. Sexual Harassment

1) Complainant must show that they have been subjected to a hostile work environment, OR

2) subjected to unwanted sexual advances as a term or condition of employment
Bases of Discrimination

- Race
- Color
- National Origin
- Religious
- Disability
- Age
- To speak English
- Harassment
- Height & Weight
- Sex
- Reprisal
- Sexual Harassment
- Sex Discrimination
Complaint Flow Chart

Alleged Discrimination
Contact AAO within 45 Days

Pre-Complaint Activities
60 Days

Formal Complaint
180 Days to Investigate and Issue Report
Causes of Complaints

- 1) Employees are selected because of their race, sex etc. This may be considered a prima facie case of discrimination.

- 2) An agency fails to follow its own policy on merit promotion (50%+), incentive awards, upward mobility, leave, discipline, etc.

- 3) During interviews, managers ask non related job questions (i.e., marital status and family planning).
Causes of Complaints

- 4) Managers overlook opportunities to attract minorities and women through broad advertisements and vacancies. Instead they choose to laterally reassign a White/male.

- 5) Supervisors frequently commit vacancies to candidates before all eligible candidates are considered. At times, incumbents are warned they will not be considered.

- 6) Supervisor uses formal discipline without previous attempts at discussion or informal admonitions. Employees perceive it as unfair and prejudiced.
Causes of Complaints

7) Managers are sometimes flippant about subjects which are offensive to employees with particular ethnic or racial backgrounds (e.g. Spanish jokes).

8) Managers pressure older employees to retire or exclude them from training and career development.

Source: NASA