

# ETHICS AND DIVERSITY CASES: LEGAL APPLICATIONS IN THE WORKPLACE

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## DIVERSITY FROM THE BENCH

U.S. District Judge Harold Baer, Jr., in observing that class action suits involve thousands of people of both genders and likely from diverse backgrounds, twice required that for class action lawsuits every effort be made to assign at least one minority lawyer and one woman lawyer with appropriate experience.

### Note from the Courtroom

Judge Baer's orders increase opportunities for women and minority lawyers to serve as lead counsel thereby giving them a chance to be spokespersons in a system dominated by white males.

Duchess Harris (2010, December 1). Orders Highlight Need for Diversity in Appointing Class Counsel. In *Litigation News*. Retrieved February 23, 2013, from <http://apps.americanbar.org>

## CASES AND SITUATIONS

The managers of today have gone far beyond consideration of workers in terms of single diversity dimensions. Managers deal daily with multiple identities: a worker who is not just older, but who is older and female or the worker who is male and Asian-American and has a visual disability. The judicial system however, still deals only in single dimensions. Discrimination charges and lawsuits are rarely filed in terms of composites; they are filed in terms of age or gender or race or religion or disability or other *single* dimensions of diversity.

A variety of actual cases and situations are presented here representing a broad spectrum of diversity issues in a wide variety of organizations. Each of the cases and situations outlined below involves ethical as well as legal issues in diversity.

1. For each case or situation, consider the ethical implications according to your own ethical framework. What do you personally think should be the outcome or resolution?
2. Information on the resolution or current status of most of the cases and situations can be found on the Internet. Were the outcomes and rationales similar to what you thought they should be? Why or why not?

Note that ethical and legal questions arise as to what constitutes discrimination and what an employer's obligations are when an employee has a disability. Consider the guidance offered below in making your judgments.

### LEGAL CONSIDERATIONS

**Pretext Analysis.** A key to analyzing almost any discrimination case is determining whether an employer's given reason for taking action against an employee is the real reason, or a cover for intentional discrimination. This is known as a pretext analysis.

Under ADA, employers have the legal obligation to provide reasonable accommodations for workers with disabilities to enable them to perform their jobs. Employers are not required to provide personal accommodations such as hearing aids and wheel chairs.

Employers should be especially vigilant in defining and articulating essential job functions, and documenting the risks associated with an employee's failure to perform such functions.

**Spoilation** refers to the destruction, alteration, or withholding of evidence. It results in the courts assessing penalties or even preventing the party from presenting evidence at all because if some of the evidence is "spoiled," then all of it is suspect.

### CASES AND SITUATIONS

#### 1. EEOC v Sears Roebuck

*Diversity Issue: Disability Accommodation*

A former Sears service technician was injured on the job resulting in a permanent disability. Even though he asked many times to return to work, Sears did not provide accommodations and fired him when his disability leave expired.

U.S. Equal Employment Opportunity Commission. (2009, September 29). Sears Roebuck to Pay \$6.2 Million for Disability Bias. February 26, 2013, from <http://www.eeoc.gov>. Retrieved September 23, 2012. Or, search: EEOC vs Sears Roebuck disability accommodation

#### 2. Universal Studios

*Diversity Issue: Amputation Disability or Rider Safety?*

Two amputees, one with both forearms amputated and one with both legs amputated, were prevented from riding the roller coaster at a Universal Studios SeaWorld theme park.

In 2012, operators of the "Revenge of the Mummy" ride told the first man that he couldn't ride the roller coaster because he didn't have hands to grip the safety bars.

Later that same year, both men were denied rides because a new policy required that riders have at least one hand and one leg.

Universal Studios Amputee Disability. Retrieved December 19, 2013

#### 3. Fitness Chain Kid's Club v Tot Disability

*Diversity Issue: Tot Autism Disability or Safety?*

A three-year-old was playing with toys in front of a slide in the Kid's Club section of a fitness club. When a staff member asked him to move away from in front of the slide, he

refused. Informed by his parents that the tot was autistic, the staff member told them that had the staff known the child was autistic, he would not have been allowed to play in the Kid's Club.

Maciel, K. & Schwartz, J. (2012, July 2). Fitness Club Responds to ADA Claim from Child with Special Needs with Updated Policies and Procedures. Epstein Becker Green. In *Hospitality Labor and Employment Law blog*. Retrieved February 23, 2013, from <http://www.hospitalitylaboremploymentlawblog.com>

#### 4. Miller v Illinois Department of Transportation

##### *Diversity Issue: Acrophobia Disability*

Darrell Miller was a highway maintainer on a bridge crew. Most of his work could be done on the ground or in a "snooper bucket." He was terminated because his acrophobia (fear of heights) restricted his work to no more than 25 feet off the ground. His employer had a history of swapping duties to accommodate the strengths and weaknesses of employees, but fired this worker for failure to meet essential functions of the job. The supervisor stated that they did not grant requests.

Find Law. *United States Court of Appeals, Seventh Circuit. Miller v Illinois Department of Transportation*. No. 09-3143-2013. Retrieved February 21, 2013, from <http://caselaw.findlaw.com>

#### 5. Mammone v. President & Fellows of Harvard College

##### *Diversity Issue: Mental Illness Disability*

Michael Mammone was a museum receptionist at Harvard with bi-polar disorder. He worked for seven years with no problem, but then his behavior changed. He began singing and dancing in the reception area, conducted loud conversations and phone calls and established a website denouncing the low pay at Harvard. He later began wearing East Indian dress with necklaces, rings and bracelets and refused to stop using his personal laptop while on duty. He refused to meet with his supervisor to whom he used "abusive, threatening and sexually derogatory language" and refused police instructions to leave the premises. After receiving disability benefits from Harvard for six months, he was terminated. Mammone charged Harvard with disability discrimination.

Weintraub, B. (2006, May 15). University Wins Anti-Discrimination Suit. In *The Harvard Crimson*. Retrieved February 23, 2013, from <http://www.thecrimson.com/article.aspx?ref=513483>

#### 6. Football Referee

##### *Diversity Issue: Visual Disability*

When Big Ten football official James Filson lost an eye, he informed the head of the Big Ten Officiating and was told to continue working. He officiated games for six years including two Orange Bowl games until the Commissioner of the Big Ten learned about his vision. He was then terminated. He sued for violation of the Americans with Disabilities Act.

Berkow, I. (2006, October 8). One-eyed Referee Flags the Big Ten Over Firing. In *New York Times*. Retrieved February 22, 2013, from <http://www.newyorktimes.com>

### 7. National Federation of the Blind v Penn State University

#### *Diversity Issue: Visual Disability*

The complaint charges that the technology at Penn State University (e.g., course management software, library catalog, website for its Office for Disability Services) is not usable by those who are blind and further that technology allowing professors to connect their laptops to a podium and display content on a screen cannot be operated by blind faculty without assistance from a sighted person, etc.

Penn State vs National Federation of the Blind. Retrieved December 19, 2013

### 8. EEOC v Boh Brothers Construction Co.

#### *Diversity Issue: Gender (Male) Stereotyping*

A supervisor thought a male ironworker on a construction project was too feminine and not tough like ironworkers. He leveled abusive comments and sexual taunts at the man and exposed himself to him. After the ironworker complained, he was transferred to a lower-paying job that was slated for lay-off and then was laid off. The company had no anti-harassment policy nor did it provide training to supervisors on preventing harassment.

U.S. Equal Employment Opportunity Commission. (2011, March 29). *EEOC Obtains \$451,000 Jury Verdict Against Boh Brothers Construction Co. for Male-on-Male Sexual Harassment*. Retrieved February 19, 2013, from <http://www.eeoc.gov>

### 9. Creed v Family Express

#### *Diversity Issue: Transgender Discrimination*

Christopher applied for a job as a male presenting a masculine appearance, although he had already begun a gender change transition. After employment, he continued with the transition, changing to feminine attire with nail polish, mascara, eyebrow trimming, longer hair and finally using the name Amber. She/he continued to wear the company mandated unisex uniform of polo shirt and slacks. After more than 50 customer complaints, the employer demanded that Amber come to work dressed as a man and finally fired her/him. She alleged gender discrimination.

Leonard, A. (2009, January). Retail Employer Can Fire Transgender Employee for Violating "Dress Code." *Leonard Link. New York Law School*. Retrieved February 22, 2013, from <http://newyorklawschool.typepad.com>

### 10. Wildflower Inn v Baker-Linsley

#### *Diversity Issue: Sexual Orientation (same-sex couples)*

In Lyndonville, Vt., the Wildflower Inn refused to book the wedding reception of a lesbian couple. The refusal was made by an employee acting without the owners' knowledge whose email stated that the Innkeepers did not host gay receptions at the facility. The Inn's lawyer stated that the inn did not have a policy of discriminating against same-sex couples.

American Civil Liberties Union. (2012, August 23). *Baker and Linsley v Wildflower Inn*. Retrieved February 19, 2013, from <http://www.aclu.org>

**11. Talavera v Shah (USAID, Wash. DC)****Diversity Issue: Sexual Harassment**

A federal employee filed a complaint alleging sexual harassment from a contractor when, in spite of her excellent evaluations, she was passed over for a promotion. The reason given was that another candidate had a better interview. The interviewing supervisor had destroyed all interview notes, however.

Garland's Digest Case Summaries, March 28–April 1 2011 Cases. *Talavera v. Shah*. Retrieved February 20, 2013, from <http://garlands-digest.com>

**12. University of Toledo****Diversity Issue: Sexual Orientation, Discrimination, or Freedom of Speech?**

A top human resources official at the U. of Toledo wrote a newspaper article challenging the idea that gay people deserve the same civil rights protections as members of racial minority groups. The university fired the HR official.

Blake, E. (2012, February 27). Federal Court Dismisses Suit Against UT. In *Toledo Blade*. Retrieved February 18, 2013, from <http://www.toledoblade.com>

**13. Pickler and Ford Dealership****Diversity Issue: Pregnancy Discrimination or Worker Safety?**

Marilyn Pickler was working for the Berge Ford auto dealership. A week after she told a manager that she was pregnant, she was fired on the ground that it would not be safe for her to drive (a part of her job).

Work Place Fairness Court Cases in the News. State: AZ. (2004, June 16). *Berge Ford Pays 470,000 in Discrimination Costs*. Retrieved February 20, 2013, from <http://workplacefairness.com>

**14. University and Community College System of Nevada v Farmer****Diversity Issue: Race and Gender Discrimination**

Yvette Farmer, a white female, was a finalist for a position in the sociology department at the University of Nevada at Reno. The university hired an African-American male instead, paying him more than the posted salary range. One year later, the white female applicant was offered a position at \$7,000 less than the black male received when he was hired the year before. The female sued, arguing violations of the Equal Pay Act and the Civil Rights Act. The university argued that since only one (1) per cent of its faculty members were black, it followed a minority bonus program whereby a department could hire an additional faculty member if it first hired a minority faculty member.

AAUP. (2005). *University and Affirmative Action Update*. Retrieved February 18, 2013, from <http://www.aaup.org/AAUP/protectrights/legal/topics/aff-ac-update.htm>

**15. New York and New Jersey v Arbitron****Diversity Issue: Minority Discrimination—Portable People Meters**

New York and New Jersey sued Arbitron for civil rights violations with its new Portable People Meters (PPMs). PPMs measure radio station program ratings. The states filed the lawsuits

because they believed the PPMs were not being distributed to people from traditionally under-represented groups.

Attorneys general of New York, New Jersey Sue Arbitron over PPM Issues. (2013, February 24). In *Target Market News from Radio Ink*. Retrieved February 24, 2013, from <http://www.targetmarketnews.com>.

## 16. FedEx

### *Diversity Issue: Ethnic Discrimination*

Ishmail Alijev, a Turkish political refugee from Russia and now a U.S. citizen, worked for GNB Trucking Company in a Salt Lake City suburb for five years. GNB provides uniformed drivers for FedEx trucks. An Iowa weigh station warned Ishmail's company (but did not issue a citation) about his Russian accent. GNB said he was an excellent employee and wanted to keep him, but was told by a FedEx manager (who did not speak to Alijev) to terminate him. Ishmail's offer to demonstrate his speech to high level company officials was declined. He filed suit.

Rumboy, D. (2012, November 27). Utah Truck Driver Claims FedEx Fired Him Due to Russian Accent. In *Desert News*. Retrieved February 17, 2013, from <http://www.desertnews.com>.

## 17. Smith v Lockheed-Martin Corp (11th Cir, 2011)

### *Diversity Issue: Reverse Race Discrimination*

Lockheed-Martin has a "zero tolerance" policy forbidding anyone from engaging in harassment against a legally-protected status such as race. Anthony Mitten, a white supervisor, was fired for violating this policy and for improper-computer-use policies after he received and forwarded an email entitled, "Why There Are No Black NASCAR Drivers." The email contained derogatory stereotypes of Blacks.

Black employees, however, were not fired, but were only suspended for a short time when they used company email to circulate a derogatory characterization of white men ("How to Dance Like a White Guy") during the same time. Anthony Mitten sued, claiming racially discriminatory termination.

Smith vs Lockheed-Martin. Retrieved December 19, 2013

### **Removing Expensive Labor: Forced Retirement**

Cases 18 and 19 examine the practice of removing expensive labor costs from the payroll by forcing retirement. They examine two different practices intended to accomplish the same end—(a) mandating retirement of older workers and (b) forcing payroll labor into contract labor.

## 18. Sidley Austin Brown & Wood v. EEOC

### *Diversity Issue: Age Discrimination (thru forced retirement)*

Sidley, a giant Chicago-based international law firm with 1500 lawyers practicing on three continents, has used a mandatory retirement policy to involuntarily retire partners since 1978. Further, it demoted 32 partners thereby forcing them out also. The EEOC filed a class action suit charging that Sidley expelled partners from the firm on the basis of their age. Mandatory

retirement programs for older attorneys have been criticized because they cheat the public out of competent counselors with a wide body of experience.

Wilkins, D. (2007). Partner, Shmartner! EEOC v. Sidley Austin Brown & Wood. In *120 Harv. L. Rev.* 1264 (2007). Retrieved February 12, 2013, from [www.harvardlawreview.org](http://www.harvardlawreview.org)

## 19. Allstate Insurance

### *Diversity Issue: Age Discrimination (thru demotion to contract work)*

In 1999 Allstate fired 6,400 home and auto insurance agents of which 90% were over age 40. Allstate offered to rehire them as independent contractors with slightly higher pay but without their expensive health and pension benefits—providing they waived their rights to sue Allstate for age or any other discrimination. Allstate also imposed a one-year freeze on rehiring former sales agents in other positions. This procedure was repeated with 650 life insurance agents, 80% of whom were over 40. A class-action suit was filed by employees who were joined by EEOC. Allstate counter sued for fraud.

Sachs, S. (2002, May 22). Not in Good Hands. In *The Harvard Crimson*. Retrieved February 22, 2013, from <http://www.thecrimson.com/article.aspx?ref=214776>. Appelson, G. (2007, May 14). Baby Boomers Battle Bias. In *Houston Chronicle*. Retrieved February 22, 2013, from <http://www.chron.com/disp/story.mpl/business/4798277.html>

### Removing Expensive Labor: Outsourcing

Case 20 examines the practice of removing labor by transferring American jobs to countries where labor is cheaper. There are both positive and negative effects of this practice.

*“Full time jobs become contract work without benefits, and then vanish overseas.”*

Reingold, J. (2004, April). Into Thin Air. In *Fast Company*. Retrieved February 23, 2013, from <http://www.fastcompany.com/magazine/81/offshore.html>

*“In the absence of a public policy that tells me what to do . . . I have no choice as corporate manager, nor do my colleagues . . . [but to make decisions] that very often involve moves of jobs into other countries.”*

Andrew Grove (former Intel CEO) quoted in Reingold, J. (2004, April). Into Thin Air. In *Fast Company*. Retrieved February 23, 2013, from <http://www.fastcompany.com/magazine/81/offshore.html>

## 20. WatchMark Corp. (now WatchMark-Comnitel)

### *Diversity Issue: Off-shoring (outsourcing jobs overseas)*

WatchMark (a software company) terminated 60 people and sent their jobs to India. Some of the terminated workers were asked to stay and train their Indian replacements with the clear understanding that their severance pay and unemployment benefits were contingent upon them doing so.

Ethical dilemma: Cost savings and benefits to economy (increased productivity, lower prices and greater demand for American products) *versus* downward mobility and suffering of displaced workers.

Reingold, J. (2004, April). Into Thin Air. In *Fast Company*. Retrieved February 24, 2013, from <http://www.fastcompany.com/magazine/81/offshore.html>

### 21. *Bhatt v The University of Vermont*

#### *Diversity Issue: Tourette Disability Discrimination*

Dr. Rajan D. Bhatt falsified an evaluation for a surgery rotation and at the hearing, claimed it was an isolated incident. It was learned however, that he had falsified other evaluations too, and falsified a diploma as well. At the next hearing dealing with these other forgeries, he claimed they were due to Tourette's syndrome and a related obsessive-behavior disorder.

The university dismissed him. He sought treatment and later requested that his medical condition be re-evaluated by the university. His application was denied and he sued the university under the ADA charging the university had not accommodated his disability.

Cheney, K. (2008, June 17). Developments in Vermont law. What Accommodations Must A College Give A Liar? In *VT-World*. Retrieved February 22, 2013, from <http://www.vt-world.com> More Law Lexapedia. (2008, May 30). Retrieved February 22, 2013, from <http://www.morelaw.com>

### 22. *Hughes v the City of Bethlehem et al.*

#### *Diversity Issues: Gender and Physical Disability Discrimination*

Catherine Hughes, a diabetic employee from the City of Bethlehem called in sick for two days when she was actually in Las Vegas having her lips and eyebrows permanently tattooed. Her deception was reported and when questioned, she lied, saying that she wasn't in Las Vegas, but had been in her sick bed at her boyfriend's home. She was terminated for dishonesty after an investigation uncovered her deception.

She sued stating she was terminated because of her gender and diabetes and that she was retaliated against for seeking an accommodation under ADA.

HR Specialist: Pennsylvania Employment Law. (2009, January 18). OK to Fire Employee Who Lies About FMLA Absence. Retrieved February 20, 2013, from [www.businessmanagementdaily.com/6970/No-07-2349](http://www.businessmanagementdaily.com/6970/No-07-2349)

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## Discussion Question

A wealthy and frequent guest arrived at a small and very posh golf resort for an extended stay. He was accompanied by a dozen important business associates. He immediately informed the hotel management that there was to be no service for any of his guests made directly by African Americans—no waiters, no housekeepers nor other Black service personnel. He was adamant on this point.

As the general manager of the hotel, what would you do if:

- a. the wealthy guest were American? Explain.
- b. the wealthy guest were Middle Eastern? Explain.

## WRITING ASSIGNMENT

The court decisions on two landmark cases severely erode the rights of workers to sue employers who engage in gender discrimination (*Lilly Ledbetter* case) and age discrimination (*Jack Gross* case). Subsequent legal action changed the impact of the verdicts.

# HOW CANADA PROMOTES WORKPLACE DIVERSITY

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It is easy to fall into the trap of treating Canada as merely a colder version of the United States. Although outwardly similar to the United States, Canada has its own unique history and traditions. The differences between Canada and the United States are deep, yet not immediately visible.

To appreciate the differences between the two countries, one must go back to the time of the American Revolution. The American revolutionaries expected that present-day Canada would join them in the fight against the English king, but the area that makes up present-day Canada stayed loyal to the king and continued under British rule until Canada became independent in 1867. As a result, Canadians have a faith in government that is very different than the usual skepticism and suspicion toward government that many see in the United States.

Another key difference is that the Canadian federal government has less power than the U.S. government, especially where employment regulation is concerned. On employment issues, laws of the Canadian federal government affect only those industries that are federally regulated according to the Canadian constitution: broadcasting, telecommunications, banking, railroads, airlines, shipping, other transport across provincial boundaries, uranium mining, and crown corporations (companies in which the government owns all the stock, such as the Canadian Broadcasting Corporation). The result is that only about 10% of employees in Canada are covered by Canadian federal law, while 90% are covered only by the laws of their province or territory.

All other businesses are beyond the jurisdiction of the Canadian government, and are affected only by the laws of the province in which they operate. As an example, consider Sears, the department store chain. In the United States, Sears must obey U.S. federal law regarding nondiscrimination, minimum wage, and so on. Each state has its own laws, but with some exceptions, a company like Sears can ignore the state laws because state laws are overridden by U.S. federal law.

In Canada, Sears also has stores throughout the country, but retailing is not federally regulated under the Canadian constitution. Therefore, Sears in Canada must obey the laws of each province in which it operates. A Sears store in Ontario must obey Ontario laws; a store in Quebec must obey Quebec laws, and so on, which complicates the work of Sears executives in Canada.

## THE CANADIAN HUMAN RIGHTS ACT

In 1977, Parliament passed the Canadian Human Rights Act, which forbids discrimination by federally regulated employers on the basis of race, gender, sexual orientation, disability status, and certain other grounds. This act prohibits systemic (indirect) discrimination, as when an employer asks an applicant about her childbearing plans or engages in sexual harassment, as well as direct discrimination, as when an employer says women applicants will not be considered. Instead of complaints being heard in court, as in the United States, discrimination complaints are typically made to the Canadian Human Rights Commission if the employer is federally regulated, or to its provincial counterpart if it is provincially regulated. By relying on commissions and tribunals to hear cases instead of courts, the Canadian approach allows victims to have a hearing without having to hire a lawyer, although monetary damages tend to be much lower than they would be in a U.S. court.

Another feature of the Canadian Human Rights Act is that it requires **comparable worth in compensation**, which in Canada is known as **pay equity**. Every covered employer must ensure that predominantly female occupations are paid the same as predominantly male occupations of equal importance or difficulty in the same organization. For example, secretaries working for a railroad might claim that their job is of equal importance or difficulty as that of a track maintenance worker, and thus could demand that their pay be the same. Pay equity or comparable worth is a type of law that does not exist in the United States at the federal level, because it is seen as interfering with market forces, but it is a fact of life for organizations under the jurisdiction of the Canadian federal government. At the provincial level, Ontario and Quebec also have pay equity laws that cover both public- and private-sector employers. Some other provinces have pay equity laws limited to public-sector organizations, such as universities and hospitals. A few provinces have no pay equity legislation at all, although *pay equality* legislation exists in every jurisdiction of Canada, meaning men and women doing the same job must be paid equally. Where pay equity is concerned, there can be a large impact depending on which side of a provincial border an employer locates.

## EMPLOYMENT EQUITY LEGISLATION

Initially it was hoped that the Canadian Human Rights Act would be sufficient to break down the barriers that prevent the economic progress of women and minorities. However, it became apparent that simply forbidding discrimination was not enough. In 1984 a parliamentary commission recommended legislation that would push employers to take proactive or aggressive measures to increase the numbers of women and minority employees (Canada, 1984). This commission noted that in the United States, affirmative action has been divisive because it pits men against women and whites against minorities. Thus, to avoid the ill will surrounding the term affirmative action, a new term, **employment equity**, was created to cover such proactive measures as targeted recruiting, providing child care facilities, accommodating the needs of people with disabilities, and so on.

The resulting legislation, the Canadian Employment Equity Act of 1986, was mainly symbolic, relying on persuasion and embarrassment so that employers would be more serious about creating workplaces that value diversity. Covered employers submit their data to the federal government, which then assigns grades (A, B, etc.) to each employer, which are made public. A later version of the law, the Canadian Employment Equity Act of 1995, put in place modest fines up to \$50,000 for not meeting targets. In practice, these fines are rarely imposed (Agocs, 2002). Some have criticized these provisions for being too weak (Lum, 2008), but on the other hand, there was an underlying intent to rely on gentle persuasion on employers to maintain a constructive atmosphere and to avoid ill will (Grundy & Smith, 2011).

## THE FOUR PROTECTED GROUPS

In the United States, the main thrust of civil rights legislation was initially to end discrimination against Blacks. However, in Canada, Blacks comprise only three percent of the population versus 14 percent in the United States. Although Black Canadians have been victims of racism, the difference in numbers means that discrimination against Black Canadians has never been the predominant issue that it has been in the United States. Similarly, Hispanics constitute only one percent of the Canadian population, compared with 16 percent in the United States. On the other hand, Canadians of Asian ancestry form a large portion of the Canadian population. For example, there are more Chinese Canadians than Black Canadians.

Therefore, when Canada introduced employment equity legislation, there was a question about which groups should be chosen for coverage. In the end, the government designated four groups to be targets of proactive measures in the spirit of affirmative action:

1. **Women:** As in the United States, Canadian women lag behind men in income and in representation in high-paying jobs.
2. **Aboriginal Peoples:** This group includes Indians, Inuit (the Aboriginal people of the Arctic regions), and Métis (pronounced MAY-tee), who are those of mixed French-Indian ancestry in western Canada. Aboriginal people constitute four percent of the Canadian population, compared with less than 1 percent in the United States.
3. **People with Disabilities:** Both Canada and the United States define disabilities to include psychological as well as physical conditions.
4. **Visible Minorities:** This is the most interesting and most controversial protected group under Canadian law and it has no exact equivalent in U.S. law. "Visible minorities" refers to those of Black, Asian, Arab, Pacific Islander, or Latin American ancestry. The visible minority category includes some groups, such as Japanese Canadians, who have very high income levels today, but had historically been targets of discrimination. "Visible minorities" includes other groups, such as Pacific Islander Canadians and Southeast Asian Canadians, who are relatively recent arrivals in Canada with high unemployment rates and very low incomes on average. The category of visible minorities, comprising 16 percent of the Canadian population, is an assortment of ethnic groups that have little in common with one another (Hum & Simpson, 2000).

Other minorities sought to be included under the Employment Equity Act, but were excluded, although it is still illegal to discriminate against them because of the Canadian Human Rights Act and similar legislation in the provinces. For example, note that lesbians and gays are not a protected group. Also, French-speaking people in predominantly English-speaking areas wanted to be treated as a protected group, but were not included. One fifth of the Canadian population speaks French as their first language, and in some areas they are at a disadvantage in an English-language-dominated society. Because the Canadian Human Rights Act (and its provincial counterparts) covers these minority groups, it is illegal to discriminate against people on the basis of their sexual orientation or whether they learned French before English. However, employers are not required to engage in proactive aggressive actions to increase their representation in the workforce.

There have been some problems in the implementation of employment equity (Dunne, 2002). An employee cannot be counted as a member of a minority group unless he or she identifies as such on a questionnaire administered by the employer. If some minority employees do not complete the questionnaire due to a desire to blend in and not draw attention, then the employer

cannot count them in employment equity statistics (Lum, 2008). Another dilemma is that people of Arab or West Asian (e.g., Turkish or Iranian) descent often don't realize that the government defines them as being in the visible minority category, so the resulting statistics are likely to undercount visible minority employees.

In the United States, some white individuals have won lawsuits claiming reverse discrimination, causing the unraveling of some of the U.S. affirmative action initiatives. A claim of reverse discrimination cannot be made in the Canadian legal system. Section 15 of the Charter of Rights and Freedoms, which is part of the Canadian constitution, states that discrimination is illegal. It then goes on to state that policies that improve the situation of disadvantaged groups are an allowable exception to the antidiscrimination clause. This key difference between the U.S. and Canadian constitutions has far-ranging implications for affirmative action and employment equity policies.



### Points of Law

Summary of key diversity legislation in Canada's federal jurisdiction:

**Charter of Rights and Freedoms:** This is part of the Canadian constitution and is roughly parallel to the U.S. Bill of Rights.

**Canadian Human Rights Act:** This forbids direct or indirect discrimination on the basis of race, gender, sexual orientation, disability status, and certain other grounds.

**Canadian Employment Equity Act:** This requires employers to engage in proactive measures to increase the representation of four specific groups: women, Aboriginal people, people with disabilities, and members of visible minorities. Of the groups covered under the Canadian Human Rights Act, the federal government has selected these four groups for additional legal attention under the Employment Equity Act.

### EMPLOYMENT EQUITY IN ACTION

Employment equity, when properly implemented, should go beyond increasing the number of women and minority employees, although this is important. The focus of employment equity should be to encourage flexibility and create a workplace in which people of all backgrounds feel comfortable. Employment equity programs typically include mentorship programs, in which employees in the four protected groups received coaching and career advice from senior employees.

An example of a success story is RBC (Royal Bank of Canada), which strives to create flexible work arrangements whenever feasible, as a way of creating a friendlier environment for women and people with disabilities. RBC makes available such options as job sharing, flexible work schedules, and work-from-home arrangements, as ways of accommodating employees' individual needs (RBC, 2011).

Notice that all of these examples of Best Practices are in industries that are federally regulated in Canada—banking, telecommunications, broadcasting, and so on—because only federally-regulated industries are covered by the Employment Equity Act. These examples show how Canadian employers creatively reach out to those in the four protected groups. When properly implemented, employment equity changes an organization's internal culture to one that welcomes diversity in all its forms, and where all employees can reach their full potential.

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## Best Practices in Canada

Employers often look for creative ways to increase the number of applicants from the four protected groups. For example, recruitment ads can be run in publications directed toward visible minority groups, such as Chinese Canadian newspapers. Job fairs can be conducted in predominantly Aboriginal communities. One creative example of recruiting is by Pelmorex, a company which operates The Weather Network on Canadian TV systems. Pelmorex identifies jobs that can be done by people who are blind, and works with the Canadian National Institute of the Blind to increase the number of employees with vision-related disabilities (Pelmorex, 2012). In the same spirit, Telus, a telecommunications company, has an ongoing partnership with the First Nations Employment Society to increase the number of applicants from the Aboriginal peoples of Canada (Telus, 2012).

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### CANADA'S PROVINCES AND TERRITORIES

Canada is divided into ten provinces and three territories, which in matters of employment legislation, have more power than U.S. state governments. Each of the ten provinces and three territories has its own human rights laws forbidding discrimination. While every province and territory forbids discrimination, none of them, generally speaking, have laws requiring proactive measures in the spirit of employment equity or Affirmative Action.

The result is that only those employers in federally regulated industries are required by legislation to have employment equity programs. Such household names as Wal-Mart, McDonald's, or General Motors are not in federally regulated industries, and therefore are not covered by the Canadian Employment Equity Act. However, such companies must obey the antidiscrimination laws of the provinces and territories in which they operate. Lastly, provincially regulated companies that sell goods or services to the federal government are required to have employment equity programs or else risk losing their federal contracts.

Executives of companies operating in both the United States and Canada face a special challenge, because they must be knowledgeable about the laws of two countries, and in many instances the laws of Canada's ten provinces and three territories as well. Frequently, a human resource policy that is legal in the United States will be illegal in Canada, or vice versa, and such companies have to obey the laws of the jurisdiction in structures to address the issue of increasing diversity in the workplace.

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### Discussion Questions

1. How does the power of the Canadian federal government in relation to the provinces differ from the power of the U.S. federal government in relation to the states?
2. If a U.S.-based retail chain has stores throughout Canada, which laws apply—those of the United States, those of the Canadian federal government, or those of each province?
3. What is the difference between employment equity and pay equity?

# EXERCISES IN MEDIA DIVERSITY

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To examine media messages, select one of the following media to investigate.

Note: Your instructor will provide the recording forms from the Instructor's Manual to you in recording your observations.

1. **Electronic Media: Prime Time TV** Watch prime time television, selecting option (a) or option (b) below. Record the information (role, gender, ethnicity, social group and behaviors) about the principal and secondary characters on the Recording Form. You will need several copies of the Recording Form for each program. Be sure to use separate forms for each program.

Option (a) Watch two hours of prime time TV drama (between 6 and 11 P.M.)

Option (b) Watch three different prime time crime dramas (between 6 and 11 P.M.)

After recording your observations, answer the following questions:

- i. What audience do you think each program targets? Explain. Give examples.
  - ii. What stereotype and cultural messages do you think the programs send? Explain. Give examples.
  - iii. What audience do you think the commercials target? Explain. Give examples.
  - iv. What stereotype and cultural messages do you think the commercials send? Explain. Give examples.
2. **Print Media: Mass Circulation Newspapers** Examine a single issue of a mass circulation daily or Sunday newspaper selecting option (a) or option (b) below. Record your observations of the ethnicity, gender, social class and tone (i.e., positive, negative, neutral) of the content on the Recording Form. You will need several copies of the form.

*Option (a) Newspaper stories*

*Option (b) Features including wedding, engagement, anniversary and death notices, financial reporting, clothing, travel articles, etc.*

After recording your observations, answer the following questions:

- i. Are groups treated in proportion to their numbers in the population? Explain. Give examples.
- ii. Do you think groups are treated equally in tone (i.e., positive, negative, neutral)? Explain. Give examples.

- iii. What audience do you think these publications may target? Explain. Give examples.
  - iv. What stereotypes do you think they may foster? Explain. Give examples.
3. **Print Media: Magazines** Visit a library or book store. Select three magazines, one from each column below. Use the Recording Form for your observations of the ethnicity, gender and social class and the tone of the commentary. You will need several copies of the Recording Form for each magazine.

Cosmopolitan	Brides	Business Week
<i>Good Housekeeping</i>	Maxim	Bicycling
Instyle	Vanity Fair	Jet
Marie Clair	Seventeen	Real Simple
Martha Stewart Living	Sports Illustrated	Time
Shape	Travel & Leisure	Money
Woman's Day	People	TV Guide

After recording your observations, analyze the media messages and answer the following questions for each magazine:

- a. What group(s) (gender, class, race/ethnicity, age, etc.) does the content of each magazine seem to target? Explain. Give examples.
  - b. What messages (cultural value, stereotypes, etc.) does the content of each magazine seem to convey? Explain. Give examples.
  - c. What group(s) (gender, class, race/ethnicity, age, etc.) do the advertisements in each magazine seem to target? Give examples.
  - d. What messages (cultural value, stereotypes, etc.) do the advertisements in each magazine seem to convey? Explain. Give examples.
4. **Other Cultural Products** Transmission of cultural expectations for both genders begins at birth and continues throughout childhood. Verify this by making observations of one the following cultural products. Your instructor will supply Recording Forms to aid you in making your observations. You will need several copies of the Recording Forms.
- a. *Baby cards.* Visit a store selling baby cards and record the gender differences in color, design and message. Use separate Recording Forms for male and female cards. Do not use cards from the Internet.
  - b. *Toys.* Visit a large toy store and record gender and racial differences in color, design and message. Use separate Recording Forms for male and female toys.
  - c. *Comic books.* Examine three different comic books and record social identity information such as gender and race about the principal and secondary characters. Use separate Recording Forms for each comic book.
  - d. *Children's books or elementary school textbooks.* Visit a library or bookstore and examine the textbooks used in a single grade or examine subject textbooks (e.g., social science, biology) for several grades recording information about the characters. Use separate Recording Forms for each book.

- e. *Video games.* Examine three different video games, noting information about the principal and secondary characters. Use separate Recording Forms for each game.

After recording your observations, answer the following questions:

- i. What stereotypes and cultural messages do you think are being sent? Explain. Give examples.
  - ii. How are ethnic and racial groups represented? As leading characters? Villains? Heroes? What are the gender roles? Explain. Give examples.
5. **Optional Group Assignment: Anatomy of an English Language Newspaper** Select one newspaper. One person will examine each of the following parts (i-vi) of the paper for a single day (issue). Other individuals will examine the same parts of the paper on different days. Use Recording Forms to make observations.
- i. Comic strips
  - ii. Advertising
  - iii. Letters to the editors
  - iv. Features
  - v. News stories
  - vi. Photographs

Combine group member observations into a "profile" of the newspaper.

6. **Optional Group Assignment: Anatomy of Foreign Language Newspapers** Examine foreign language newspapers in the same fashion as the English language newspapers in 5 above.
7. **Optional Individual or Group Assignment: Specialty Magazines** Select unusual magazines (such as biking magazines or skiing magazines or *Travel Over 50*) and analyze them to determine what segment of society they target in terms of race/ethnicity, age, social class, gender, etc.
8. **Optional Individual or Group Assignment: Specialty TV Networks** Select TV networks targeting special groups such as the Home and Garden channel or ESPN and compare their programming (messages) to those of mass TV.