Laws to Protect Diverse Employees

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LEARNING OBJECTIVES:

1. Explain the importance of accepting and welcoming diversity in the laboratory.
2. Describe laws that have been important in protecting workers from employer and coworker harassment and discuss instances in which these laws may be difficult to enforce.
3. Illustrate examples of lawsuits that have occurred due to various diversities not being treated according to protective laws.
4. Justify the need for various laws, and the ongoing need for updated laws, that protect employees with a wide variety of diversities.

ABSTRACT

Although a diverse working environment can produce an efficient workflow, employees are not always treated fairly based on these diversities. Laws were established in 1963 to protect workers from unfair treatment by employers and coworkers. Since that time, laws have been added and amended to parallel changes in society and technology, from equal pay and equality based on sex, race, and religion, to genetic nondiscrimination. The Equal Employment Opportunity Commission supports these laws and can sue employers when the complaints of diverse workers do not solve problems they face in the workplace. It is vital that employees understand their rights and that employers strictly follow these laws that require them to treat workers with fairness.

ABBREVIATIONS: EEOC - Equal Employment Opportunity Commission, UPS - United Parcel Service, ADEA - Age Discrimination in Employment Act, IRCA - Immigration Reform and Control Act of 1986, GINA - Genetic Information Nondiscrimination Act of 2008

INDEX TERMS: Clinical laboratory, cultural diversity, discrimination, diversity laws

Clin Lab Sci 2017;30(1):38

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INTRODUCTION

Diversity has been increasing over the past few decades in the laboratory just as it has across the U.S., and this trend is projected to continue.[1,2] It is important for employees to be comfortable with coworkers from various backgrounds in order to improve workflow.[2,3] This can lead to optimal efficiency, thereby helping to decrease costs, mistakes, and employee turnover while increasing competitiveness of the organization. In addition, employees who feel valued are happier to contribute to the organization. For these reasons, it is important for companies to be perceptive about, and adaptable to, changing global world markets and encourage employees to do the same.[3] In the workplace, employees may have a wide range of differences, including age, gender, nationality, race, sexual orientation, religion, and physical and mental variations. When employers are accepting of these differences, work can flow more smoothly and without employee complaints. However, there are instances when workers feel that they are not treated fairly based on their unique differences. This can lead to the need to file a complaint or even seek legal action. Fortunately, there are established laws that protect employees from mistreatments of this nature. The government began establishing laws in the 1960s and has been modifying and making additions since that time.

Diversity Laws and Lawsuits

Many of the laws that protect people of all diversities in the workplace are supported by the Equal Employment Opportunity Commission (EEOC).[4] This organization was given the right by Congress to sue employers in 1972, although there were laws enacted before this time.

Equal Pay Act

One of the earliest laws protected by the EEOC was The Equal Pay Act of 1963, which made it illegal to pay men and women different wages for the same work.[5] Since 78% of medical laboratory employees are female, this law is particularly valuable to the field.[6,7] However, it is questionable whether this law is being followed and enforced in laboratories. In its annual salary survey, Medical Laboratory Observer reported that in 2013, men with an associate's degree earn $68,750 annually while women earn $49,390 on average.[8] Men with a bachelor's degree earn $78,830 on average while women earn $70,622. This disturbing trend continues with postgraduate degree laboratorians with women earning $77,908 and men earning $89,694. Females with a graduate degree do not earn as much as men with a bachelor's degree. This discrepancy is illegal through the Equal Pay Act of 1963 and yet it is not directly monitored on an individual basis. The National Committee on Equity Pay gives a number of key reasons for the continued discrepancy, including wage secrecy, the impracticality of suing, the strength of current laws, and that not all jobs are open to women.[9] These alarming and illegal pay discrepancies certainly deserve further scrutiny.

The Civil Rights Act: Title VII

The Equal Pay Act of 1963 is not the only law designed to protect employed women. An all-encompassing law that was enacted the following year was Title VII of the Civil Rights Act of 1964, making it illegal to discriminate against anyone due to their sex, race, national origin, religion, or sexual orientation.[10] With regard to sex discrimination, this law prohibits any offensive remark about a person's sex, including those made from the same gender, but does not include isolated events such as simple teasing. Each year, between 1992 and 2015, thousands of lawsuits were filed in the U.S. that were based on sex discrimination, with roughly half ending in a "no reasonable cause" verdict.[11] Other cases were withdrawn with benefits, settled, ended with successful or unsuccessful conciliation, or given the verdict of reasonable cause, with monetary benefits in the millions nationally each year.

Similarly, sexual harassment is also covered by Title VII and states that "unwelcome sexual advance, requests for sexual favors, and other verbal or physical harassment of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment." Since about 78% of medical laboratory employees are women, it is important to consider the protection of women from sexual harassment. It is also important to consider the protection of men, the minority group in this environment. The percentage of men filing sexual harassment lawsuits has gradually increased from 9% of all cases in 1996 to 17% of cases in 2015. More claims are filed by men during times of increased unemployment as reflected by the greatest number of lawsuits filed in states with higher unemployment rates.[12] Thus, most likely, it is not actual harassment that is increasing, but simply that more men are filing the claims during these stressed times. It is important that employers have a current, updated policy so that employees are well-informed about workplace expectations and, thus, help to prevent sex discrimination and sexual harassment.

In addition to discrimination based on sex, Title VII of the Civil Rights Act of 1964 prohibits employee discrimination based upon race.[10] The EEOC has been involved in a number of race discrimination cases since its enactment, with complaints ranging from hiring issues, to compensation disparities, to discharge based on race.[13] Discrimination related to race includes that of color, associational, reverse, same-race, biracial, and intersectional. These numerous categories of race discrimination may be resolved by the EEOC as a result of the Civil Rights Act. Court cases related to discrimination are numerous and varied and include complaints of not being hired or promoted, the use of racial slurs, wage disparities, retaliation for complaining, and more. Other cases involve combinations of race complaints along with another discriminatory group such as age or disability, indicating hostile work environments with discrimination using selective enforcement.

The Title VII of the Civil Rights Act of 1964 offers protection for those discriminated against based on national origin as well.[10] Additionally, there is the Immigration Reform and Control Act of 1986 (IRCA), which makes it illegal to fire or refuse to hire according to a worker's nationality or citizenship.[14] Employers who have citizenship requirements or give preference to U.S. citizens may violate this act.

Title VII also prohibits discrimination against people of various religions. This protection extends to employers when they take time off of work for religious observances, practices, and beliefs, unless the employer can show that reasonable accommodations cannot be made without hardship on the business.[10] There have been a number of lawsuits over the past several years by workers based on this law.[15] Examples include employers not willing to accommodate religious beliefs, such as one company refusing to allow a worker to wear her khimar. Others involved managers and coworkers harassing employees using offensive slurs based on religion.

In July of 2015, the EEOC announced that sexual orientation discrimination was illegal in all 50 states and that this had already been covered by the Civil Rights Act of 1964.[16] This includes all aspects of employment, such as hiring, firing, pay, job assignment, and also protects employees from offensive remarks and sexual advances.[17] The first two cases concerning this law were filed in March, 2016, one by a female who was issued harassing slurs and gestures by her supervisor at a manufacturing plant. The second was filed by a man working at a medical center in Pittsburgh claiming that his supervisor delivered anti-gay epithets and that the medical director did nothing to stop the behavior.[18] The first case was settled by the company in July with a payout of $202,200 in damages and the latter is still pending. There have since been other cases filed, both resolved and pending, through the EEOC. In addition, 22 states do and 28 states do not also have their own laws to protect workers from being fired based on their sexual orientation.[19] Some cities and counties have provisions to prevent this harassment as well.

Pregnancy Discrimination Act

The Civil Rights Law of 1964 was amended with The Pregnancy Discrimination Act in 1978, which not only protects from discrimination against pregnant women, but anything related to childbirth or similar medical conditions.[20] One of the most recent cases involving pregnancy discrimination was by a pregnant woman, Peggy Young, who was working for the United Parcel Service (UPS).[21] Because Ms. Young claimed that she should not lift more than 20 pounds she was, thus, placed on unpaid leave. Ms. Young submitted several lawsuits, all of which were unsuccessful, before the Supreme Court took her case and ruled that she should have been accommodated with light duty work just as other workers with disabilities. UPS changed its policy so as to offer temporary light duty to pregnant women who require it. Although many laboratory positions may not require heavy lifting, this law could be important for laboratory employees since a large percentage of workers are female. This act not only protects pregnant employers from being overworked, but it prohibits pregnancy harassment as well as protection of family leave with specific qualifying criteria.[20]

Age Discrimination in Employment Act

Older workers may also be discriminated against and since the average age of medical laboratory technicians and technologists/scientists is currently 50 years, many fall into this vulnerable group.[22] A law that is important to the modern laboratory due to the number of workers nearing retirement is the Age Discrimination in Employment Act (ADEA) of 1967, which is also enforced by the EEOC.[23] The ADEA prohibits discrimination in the workplace of those 40 years-of-age and older. Employers must hire workers based on ability and not age, and wages cannot be reduced because of age. This act recognizes the need for this group to contribute to the economy and seeks to help these workers reduce barriers based on age. There have been numerous lawsuits based on this act, with some deciding on the behalf of the plaintiff and others with the defending employer. If the employer can show that the reason for dismissal was other than age, then the company can win the lawsuit. Furthermore, this law may make younger workers more vulnerable since they are not protected. It only protects those over 40 years-of-age and it also specifies that companies can specifically advertise for workers over this age and, thus, favor older workers. Many employers also have a "last in, first out" policy that discriminates against younger workers who will be the first ones terminated during a financial crisis.[24] It may be that this group needs more protection in the workplace as they are not necessarily covered by any law, if harassed, due to lack of experience or age.

Vocational Rehabilitation and American with Disabilities Acts

With an aging workforce comes general increases in disabilities, a group that is also protected by the EEOC. Title I of the Americans with Disabilities Act of 1990 is enforced by the EEOC, protecting mentally and physically disabled workers against discrimination with regard to the application process, hiring, promoting, setting wages, and other details.[25] This is a valuable act because this group has historically been segregated and, until it was established, they previously had no legal foundation of protection. There have been several lawsuits by laboratorians based on these acts in the past several years. One involves a clinical laboratory assistant suing Tricore in New Mexico, with the help of the EEOC, claiming that the company terminated her after an ankle surgery.[26] The defendants claimed that she was unable to return to normal duties following the surgery and that she was not "an otherwise qualified individual with a disability," and she lost the suit. Another lawsuit involved a 59 year old man working for LabCorp in Charleston who claimed that he was maliciously terminated in 2013 after having a tumor on his kidney removed.[27] He missed a few days, then returned to light duty for 2 weeks, soon resumed full duties, and was then dismissed. He claimed that this violated the West Virginia Human Rights Act and that his dismissal was based both on disability and age. However, LabCorp was able to demonstrate a nondiscriminatory reason for firing the plaintiff.[28]

Genetic Information Nondiscrimination Act

With changing technology in society, it may be necessary to add to or amend existing laws. A relatively new act that protects employee diversity is the Genetic Information Nondiscrimination Act of 2008 (GINA).[29] Title II prohibits discrimination of employees based on genetic information, stating that employers cannot refuse to hire, fire, limit, segregate, or classify workers based on the employee's genetic information, the employee's family's genetic information, or family history. The first lawsuit of this nature occurred in 2013. A fabric distribution company paid $50,000 to a woman after refusing to hire her as a memo clerk after the company learned that she had a family history of carpal tunnel syndrome.[30] Similarly, $370,000 was awarded to 138 plaintiffs who were asked by a nursing and rehabilitation center for their genetic information as part of a pre-employment medical examination.[31] There have been several other GINA lawsuits in recent years.[29]

CONCLUSIONS

Prior to 1963, there were virtually no laws to protect people at work from not being hired, being retaliated against or bullied on the job, not being promoted, or being fired based on unique differences. The various laws that have been enacted since this time have likely allowed people to be more comfortable at work by offering legal protection. As an increasingly diverse group of medical laboratorians in the national workforce, it is important to be aware of these laws. Laboratory employers need to be sure that they are treating all workers fairly and equally and encouraging an environment that does the same in order to ultimately help produce a happy and efficient workplace.[2] A more hostile environment could fuel lawsuits that may be necessary in cases of unfair treatment of employees with any of these diverse and protected backgrounds.

REFERENCES

1. Colby S, Ortman J. Projections of the size and composition of the U.S. Population: 2014 to 2060. U.S. Census Bureau 2015. Available from http://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf?
2. Seidenfeld M. Managing diversity in the laboratory. ALN 2014. Available from https://www.alnmag.com/article/2014/06/managing-diversity-laboratory
3. Hudson J. Principles of Clinical Laboratory Management: a Study Guide and Workbook. Celebrating diversity. Chapter 8. 2004. Pearson Education, Incorporated.
4. U.S. Equal Employment Opportunity Commission. Laws Enforced by EEOC. 2016. Available from https://www.eeoc.gov/laws/statutes/index.cfm
5. U.S. Equal Employment Opportunity Commission. The Equal Pay Act of 1963. 2016. Available from https://www.eeoc.gov/laws/statutes/epa.cfm
6. CareerWise Education. Women in science, technology, engineering, and math (STEM). Available from https://www.careerwise.mnscu.edu/careers/womenstem.html
7. Smith P. High paying careers and degrees for women in STEM. Career Glider. 2016. Available from http://www.careerglider.com/blog/high-paying-jobs-degrees-for-women-in-science-technology-engineering-math/
8. Medical Laboratory Observer Staff. We asked and you answered...results of the 2013 MLO annual salary survey. Medical Laboratory Observer 2013. Available from http://www.mlo-online.com/we-asked-and-you-answered-results-of-the-2013-mlo-annual-salary-survey.php
9. National Committee on Pay Equity. Top 10 reasons for the wage gap. 2016. Available from http://www.pay-equity.org/info-top10.html
10. U.S. Equal Employment Opportunity Commission. The Title VII Civil Rights Act of 1964. 2016. Available from https://www.eeoc.gov/laws/statutes/titlevii.cfm 7. U.S. Equal Employment Opportunity Commission. The Age

Discrimination and Employment Act of 1967. 2016. Available from https://www.eeoc.gov/laws/statutes/adea.cfm
11. U.S. Equal Employment Opportunity Commission. Sexual harassment charges EEOCs and FEPAs combined: FY1997- FY 2011. 2016. https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm
12. Rubin C. Sexual harassment cases by men surge. Inc 2016. Available from http://www.inc.com/num-pang/best-method-for-perfecting-your-product.html
13. U.S. Equal Employment Opportunity Commission. Eradicating racism and colorism from employment. 2016. Available from https://www.eeoc.gov/eeoc/initiatives/e-race/ caselist.cfm
14. U.S. Equal Employment Opportunity Commission. Workplace laws not enforced by the EEOC. 2016. Available from https://www.eeoc.gov/laws/other.cfm#irca
15. U.S. Equal Employment Opportunity Commission. Fact sheet on recent EEOC religious discrimination litigation. 2016. Available from https://www.eeoc.gov/eeoc/litigation/selected/religious_discrimination_facts.cfm
16. Stern M. EEOC rules workplace sexual orientation discrimination already illegal under federal law. Dreamforce. 2015. Available from http://www.slate.com/articles/arts/sixpoint/2016/09/small_batch_brews_and_shelter_animals_collide_in_brooklyn.html
17. U.S. Equal Employment Opportunity Commission. Sex-based discrimination. 2016. Available from https://www.eeoc.gov/laws/types/sex.cfm
18. U.S. Equal Employment Opportunity Commission. Fact sheet: recent EEOC litigation regarding title VII and LGBT-related discrimination. 2016. Available from https://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm
19. Workplace fairness. Sexual orientation discrimination. 2016. Available from http://www.workplacefairness.org/sexual-orientation-discrimination#3
20. U.S. Equal Employment Opportunity Commission. Pregnancy Discrimination. 2016. Available from https://www.eeoc.gov/laws/types/pregnancy.cfm
21. Zillman C. UPS loses Supreme Court pregnancy discrimination case. Fortune. 2015. Available from http://fortune.com/2015/03/25/ups-pregnancy-discrimination/
22. Chicago Tribune. Clinical laboratory technicians, technologists focus on results. 2013. Available from http://articles.chicagotribune.com/2013-01-21/classified/chi-clinical-lab-technician-technologist-careers-20130121_1_technologists-clinical-laboratory-technicians
23. U.S. Equal Employment Opportunity Commission. Age Discrimination and Employment Act of 1967. 2016. Available from https://www.eeoc.gov/laws/statutes/adea.cfm
24. Weller E. Discrimination against young workers in the workplace. Chron. 2016. Available from http://smallbusiness.chron.com/discrimination-against-young-workers-workplace-46927.html
25. EEOC 35th Anniversary. The Americans with Disabilities Act of 1990. 2016. Available from https://www.eeoc.gov/eeoc/history/35th/1990s/ada.html
26. Modrall Sperling Lawyers. Tricore wins disability discrimination suit brought by the EEOC. 2016. Available from http://www.modrall.com/764
27. Casetext. Lindenmuth v. LabCorp. 2016. Available from https://casetext.com/case/lindenmuth-v-lab-corp
28. Asbury K. 30 year employee accuses LabCorp of discrimination, wrongful firing. West Virginia Record 2015. Available at http://wvrecord.com/stories/510644727-30-year-employee-accuses-labcorp-of-discrimination-wrongful-firing
29. U.S. Equal Employment Opportunity Commission. The Genetic Information Nondiscrimination Act of 2008. 2016. Available from https://www.eeoc.gov/laws/statutes/gina.cfm
30. U.S. Equal Employment Opportunity Commission. Fabricut to pay $50,000 to settle EEOC disability and genetic information discrimination lawsuit. 2013. Available from https://www.eeoc.gov/eeoc/newsroom/release/5-7-13b.cfm
31. U.S. Equal Employment Opportunity Commission. Founders Pavilion will pay $370,000 to settle EEOC genetic information discrimination lawsuit. 2014. Available from https://www.eeoc.gov/eeoc/newsroom/release/1-13-14.cfm
32. U.S. Equal Employment Opportunity Commission. Joy Mining Machinery settles EEOC Genetic Information Non-discrimination Act lawsuit. 2016. Available from https://www1.eeoc.gov/eeoc/newsroom/release/1-7-16.cfm