Do Human Rights Laws Harm Those They Were Meant To Protect?



Human rights laws often create discrimination against the very groups they are designed to protect. Take, for example, the many laws created to end discrimination of women in the workplace.

In reality, women are now doing very well. A 2010 study of employment in large U.S. cities by Reach Advisors found that unmarried, childless women earned more than their male counterparts by considerable margins. And last December a Pew Research study, covering all Americans, found women between the ages of 25 and 32 earned 93% of what their male peers earned, compared with 84% for women generally.

Among Millennial women – the generation aged 18 to 32 – 38% have college degrees, compared with 31% of males. Both sexes agreed women in the Millennial generation are more focused on their careers than their male counterparts. Notwithstanding these successes, Pew found 75% of Millenial women believed changes are required to obtain gender equity. This despite only 15% of them reporting ever having experienced discrimination.

Given these results, what is that fear based on? One revealing finding in the study was that 59% of Millennial women, as opposed to a relatively minuscule 19% of their male counterparts, believed that being a working parent makes it more difficult to advance. They may have something there.

Employers are looking for hard-working, smart, well-educated, assiduous and reliable employees. By those criteria, Millennial women seem to have it all over men. The only qualifier is that many of these women will take 12 months off, potentially in the middle of a project and potentially more than once. Following their maternity leave, some will be more likely to request time off or work-life balance of their employers. This is compounded by recent court decisions requiring employers to accommodate childcare needs of women, at any cost.

But many women in this generation aren't planning to have children, at least not for several years. Yet that is not a question the employer can ask a woman applying for a job. Illegal as it may be, that is why when faced with a choice between hiring a young man or woman many employers choose the man. After all, a year's absence is disruptive.

I wonder if it would ultimately serve women's interests to make it clear to employers

what their family intentions are. It might even result in their obtaining a job they would not otherwise have got. I have often advised female friends and clients to make their intentions clear to their employer and if they already have children, to describe the arrangements they have made to enable them to work long hours and travel as necessary.

At the opposite end of the age spectrum, the abolition of mandatory retirement was a boon for older, employed, workers, but a disaster for unemployed ones. Previously, there was little risk to employers in retaining older workers, with their relative experience, wisdom and training. The fact they would obtain somewhat more than younger workers in wrongful dismissal damages, was an acceptable tradeoff for many employers. Not to mention that employers could retire those workers without compensation once they turned 65.

Now, employers must either build a case for cause, an arduous and expensive process, or pay wrongful dismissal damages that are enhanced by age, to terminate employment for older workers. Furthermore, if the reason for wishing to dismiss them is age related, these workers have human rights protections. The employer cannot terminate them but must instead create modified work for them, often providing little real value.

In other words, the abolition of mandatory retirement has made older workers a potential major liability to employers so who would hire those out of work?

The onerous nature of human rights laws also has become the obstacle to employees with a history of injury or disability ever securing employment in the first instance, despite the inherent illegality of that.

Unless they cannot do any job at all and go on disability, disabled workers must be accommodated, often at tremendous cost to employers and with little value. Any hint of a history of absenteeism, often ascertained through reference checking, will make it difficult if not impossible to secure new employment.

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